

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN TONY WHITESELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

JOHN TONY WHITESELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77441

FILED

FEB 26 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

No. 77442

BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEALS

These are pro se appeals from an order of the district court denying appellant's motion to quash remaining sentence/motion to run sentences together. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

This court's preliminary review of these appeals revealed a potential jurisdictional defect. Specifically, appellant's notices of appeal were due on November 5, 2018. See NRAP 4(b). Appellant's notices of appeal, however, were not filed in the district court until November 13, 2018, eight days beyond the relevant appeal period. "[A]n untimely notice of appeal fails to vest jurisdiction in this court." *Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994).

Under this court's holding in *Kellogg v. Journal Communications*, if appellant delivered his notices of appeal to a prison official for mailing on or before November 5, 2018, his notices of appeal would be deemed timely filed. 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that a notice of appeal is deemed "filed" when it is delivered to a prison official). Because appellant signed his notices of appeal on October

22, 2018, this court directed the attorney general to obtain and transmit to this court a certified copy of the notice of appeal log or any other log maintained at the prison indicating the actual date appellant delivered the notices of appeal to a prison official. The attorney general has responded, provided the notice of appeal log, the outgoing legal mail log, the brass slip records, and indicates that there is no record of when appellant mailed his notices of appeal. Because there is no record that appellant timely delivered his notices of appeal to a prison official, the November 13, 2018, date controls. Appellant's notices of appeal were untimely filed, we conclude that we lack jurisdiction, and we

ORDER these appeals DISMISSED.

Hardesty, J.
Hardesty

Stiglich, J.
Stiglich

Silver, J.
Silver

cc: Hon. Robert W. Lane, District Judge
John Tony Whitesell
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk