

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK J. MATYLINSKY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78088

FILED

APR 08 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a motion to correct error in judgment and to correct facially illegal sentence. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

The district court entered the order challenged in this appeal on January 4, 2019. Appellant's notice of appeal was due to be filed by February 4, 2019. See NRAP 4(b)(1)(A); NRAP 26(a); *Edwards v. State*, 112 Nev. 704, 709, 918 P.2d 321, 325 (1996). Appellant's notice of appeal, however, was not filed in the district court until February 5, 2019.

Because appellant signed his notice of appeal on February 2, 2019, within the prescribed appeal period, this court entered an order directing the attorney general to obtain and transmit to the clerk of this court a certified copy of the notice of appeal log maintained at the prison indicating the actual date upon which appellant delivered his notice of appeal to a prison official. See NRAP 4(d) (a notice of appeal filed by an inmate confined in an institution is timely "if it is delivered to a prison official for mailing on or before the last day for filing."). If appellant used

any other log maintained by the prison during the relevant time frame, the attorney general was to inform this court of that fact and provide a copy of the log.

Having considered the responses of the attorney general and appellant, there appears to be no record that appellant timely delivered his notice of appeal to a prison official or used or attempted to use the notice of appeal log or another log. The redacted notice of appeal log provided by the attorney general does not appear to contain any entries from appellant during the relevant time period. Appellant notes that the attorney general did not inform this court that appellant used any other log maintained by the prison. But this court's order only directed the attorney general to inform this court if appellant used another log. Presumably, the attorney general did not inform this court that appellant used another log because appellant did not in fact use another log. Appellant does not indicate in his response that he used any other log.


Appellant also points out that the notice of entry of the appealed order states that a notice of appeal must be filed within 33 days of the date the notice was mailed to appellant. He asserts that his notice of appeal was timely filed within the 33 days, i.e., before February 7, 2019. However, the statement in the notice of entry of order regarding the time to appeal is incorrect. A notice of appeal from an order denying a motion to correct an illegal sentence must be filed within 30 days of entry of the order. NRAP 4(b)(1)(A); *Edwards*, 112 Nev. at 709, 918 P.2d at 325.

Because there is no record that appellant timely delivered his notice of appeal to a prison official, the February 5, 2019, date controls. See NRAP 4(d) (an inmate must use the notice of appeal log or other system designed for legal mail to receive the benefit of the rule). Appellant's notice

of appeal was untimely filed. Accordingly, this court lacks jurisdiction, *see Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994) (“[A]n untimely notice of appeal fails to vest jurisdiction in this court.”), and

ORDERS this appeal DISMISSED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Cadish

cc: Hon. Egan K. Walker, District Judge
Frank J. Matylinsky, Jr.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk