

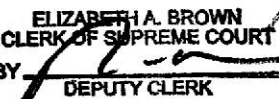
IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN LEE SHONGARY,
Appellant,
vs.
TIMOTHY FILSON, WARDEN; JAMES
DZURENDA, DIRECTOR; THE STATE
OF NEVADA DEPARTMENT OF
CORRECTIONS; AND THE STATE OF
NEVADA,
Respondents.

No. 78716

FILED

JUL 09 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Gary Fairman, Judge.

The district court entered the order challenged in this appeal on March 22, 2019. The clerk of the district court served appellant with notice of entry of the order that same day. Thus, appellant's notice of appeal was due to be filed in the district court by April 25, 2019. *See* NRS 34.575; NRAP 26(a), (c). Appellant's notice of appeal, however, was not filed in the district court until May 1, 2019.

Because appellant dated his notice of appeal April 25, 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."); *see also Kellogg v. Journal Commc'ns*, 108

Nev. 474, 477, 835 P.2d 12, 13 (1992). 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.

In response, the attorney general provides an affidavit from the Law Library Supervisor at Ely State Prison who states that there are no entries in the notice of appeal log for the month of April 2019; the last entry in the log was made in September of 2018. The attorney general also provides a heavily redacted copy of a legal mail log that seems to indicate the only legal mail appellant sent out during the month of April was placed in the prison mail system on April 29, 2019. Accordingly, there appears to be no record that appellant timely delivered his notice of appeal to a prison official.

Because there is no record that appellant timely delivered his notice of appeal to a prison official, the May 1, 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.

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Cadish, J.
Cadish

cc: Hon. Gary Fairman, District Judge
Bryan Lee Shongary
Attorney General/Carson City
White Pine County District Attorney
White Pine County Clerk