

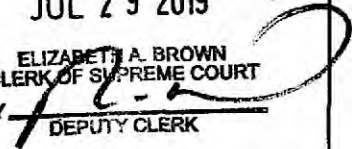
IN THE SUPREME COURT OF THE STATE OF NEVADA

WYKEAN DAWONE JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78669

FILED

JUL 29 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 for revocation of probation and third amended judgment of conviction. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

The district court entered the order challenged in this appeal on March 18, 2019. Appellant's notice of appeal was due to be filed by April 17, 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 April 23, 2019.

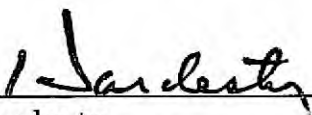
Because appellant dated his notice of appeal April 17, 2019, within the prescribed appeal period, this court entered an order directing the attorney general to obtain and transmit to the clerk of this court a certified copy of the notice of appeal log maintained at the prison indicating the actual date 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 Comm'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.

19-31814

The attorney general has filed a response stating that appellant's name does not appear in the notice of appeal log for the period between late August 2018 through mid-May 2019, High Desert State Prison does not maintain any other outgoing legal mail log, and the prison's financial records do not show any postage or legal expense for appellant in March or April 2019. The copy of the notice of appeal log provided by the attorney general does not contain any entries from appellant during the relevant time period.

Because there appears to be no record that appellant timely delivered his notice of appeal to a prison official, the April 23, 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.
Hardesty


_____, J.
Stiglich


_____, J.
Silver

cc: Hon. Stefany Miley, District Judge
Wykean Dawone Johnson
Attorney General/Carson City
Attorney General/Las Vegas
Clark County District Attorney
Eighth District Court Clerk