

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN ESBER MANZUR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70417

FILED

SEP 02 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from an order denying appellant's motion for modification of his sentence. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.


This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, appellant's notice of appeal was due on May 11, 2016. See NRAP 4(b), *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 May 16, 2016, five 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).

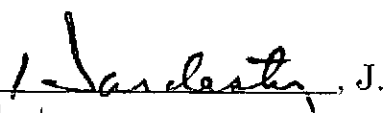
Under this court's holding in *Kellogg v. Journal Communications*, if appellant delivered his notice of appeal to a prison official for mailing on or before May 11, 2016, his notice of appeal would be deemed timely filed. 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that a notice of appeal is deemed "filed" when it is delivered to a prison official). Because appellant signed his notice of appeal on May 10, 2016, 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

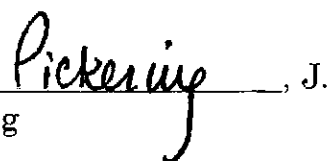
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maintained at the prison indicating the actual date appellant delivered a notice of appeal to a prison official. The attorney general has responded, provided the notice of appeal log, and indicates that there is no record of when appellant mailed his notice of appeal. Because there is no record that appellant timely delivered his notice of appeal to a prison official, the May 16, 2016, date controls. Appellant's notice of appeal was untimely filed, we conclude that we lack jurisdiction, and we

ORDER this appeal DISMISSED.¹


Parraguirre


Hardesty


Pickering

cc: Hon. Susan Johnson, District Judge
Juan Esber Manzur
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹Appellant's motion for reconsideration did not toll the 30-day appeal period. *See Phelps v. State*, 111 Nev. 1021, 900 P.2d 344 (1995).