

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT T. BARFIELD,
Appellant,
vs.
DIRECTOR, NEVADA DEPARTMENT
OF CORRECTIONS,
Respondent.

No. 82844

FILED

JUN 25 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court order dismissing appellant's postconviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James Todd Russell, Judge.

This court's preliminary review of this appeal revealed two potential jurisdictional defects. Specifically, it appeared the notice of appeal was untimely filed, and it appeared that appellant may have already been granted a parole hearing, which would render this appeal moot. See *Williams v. State, Dep't of Corr.*, 133 Nev. 594, 600 n.7, 402 P.3d 1260, 1265 n.7 (2017).

The district court denied appellant's petition on March 8, 2021, with written notice of entry served on March 9, 2021. The notice of appeal was therefore due by April 12, 2021. The notice of appeal was signed on April 10, 2021, but not filed until April 27, 2021. "[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). If appellant delivered his notice of appeal to a prison official for mailing on or before April 12, 2021, his notice of appeal would be deemed timely filed. NRAP 4(d); see also *Kellogg v. Journal Communications*, 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). This court therefore directed the attorney general, on behalf of the State, to investigate and provide this court a certified copy of the notice of appeal log maintained at the prison indicating the actual date upon which appellant delivered to a prison official his notice of appeal and to answer the question of appellant's parole hearing status.

The State has responded and informs this court that appellant is currently housed at the Corrigan-Radgowski Correctional Center in Connecticut pursuant to the Interstate Correctional Compact. The Connecticut institution does not maintain a notice of appeal log, and the outgoing mail log only tracks mail that costs over \$.51 in postage. The State represents that after investigation, communication with the prison in Connecticut, and a review of the relevant log books available from the Connecticut prison, there are no entries for appellant in the prison mail logs that would support a finding that the notice of appeal was timely delivered to a prison official or timely mailed from the prison. *See* NRAP 4(d) (providing that "[i]f the institution has a notice-of-appeal log or another system designed for legal mail, the inmate must use that log or system to receive the benefit of th[e] Rule."). Accordingly, the April 27, 2021, filing date controls.

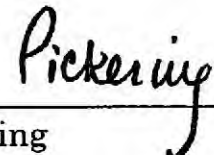
In addition, the State informs this court that appellant received a parole hearing on March 30, 2021, at which he was provisionally granted parole for April of 2021. That parole grant was subsequently rescinded based on errors discovered in the calculations of his statutory credit history and, based on the corrected calculations, he is currently eligible for parole on November 29, 2021, with an anticipated parole hearing in August of

2021. Accordingly it appears that he received the remedy he would have been provided on appeal.

Accordingly, appellant has not demonstrated that he timely submitted his notice of appeal, and it appears his appeal is moot. This court lacks jurisdiction and therefore

ORDERS this appeal DISMISSED.


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Herndon

cc: Hon. James Todd Russell, District Judge
Robert T. Barfield
Attorney General/Carson City
Attorney General/Las Vegas
Carson City Clerk