

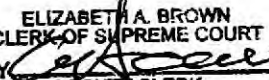
IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCOS RAMOS HERNANDEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83811

FILED

FEB 18 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a direct appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

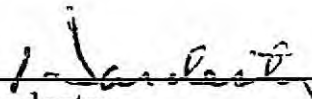
Preliminary review of this appeal revealed a potential jurisdictional defect. The district court entered the judgment of conviction on October 4, 2021. Thus, appellant's notice of appeal was due to be filed in the district court by November 3, 2021. See NRAP 4(b)(1)(A) (providing that a notice of appeal must generally "be filed with the district court clerk within 30 days after the entry of the judgment or order being appealed"). However, the notice of appeal was not filed in the district court until November 16, 2021, 13 days after expiration of the 30-day appeal period.

Appellant dated his notice of appeal November 2, 2021. Pursuant to NRAP 4(d), if appellant delivered his notice of appeal to a prison official for mailing on or before November 3, 2021, and utilized the notice-of-appeal log or other system designed for legal mail, his notice of appeal would be deemed timely filed. Because this court could not determine from the documents before it whether the notice of appeal should be deemed timely, this court ordered the attorney general to obtain and transmit to the clerk of this court certified copies 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.

The attorney general has now provided this court with a response, a copy of the notice-of-appeal log, and an affidavit from the law library supervisor at High Desert State Prison. These documents indicate that appellant did not use the notice of appeal log in October or November 2021. Further, the documents indicate that High Desert State Prison does not maintain any other incoming or outgoing mail logs. Accordingly, the November 16, 2021, date controls and appellant's notice of appeal was untimely filed and this court lacks jurisdiction to consider this appeal. 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.”). We therefore

ORDER this appeal DISMISSED.


_____, J.
Hardesty


_____, J.
Stiglich


_____, J.
Herndon

cc: Hon. Tara D. Clark Newberry, District Judge
Marcos Ramos Hernandez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk