

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL JOHN AWBREY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88287

FILED

MAY 16 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a judgment of conviction. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

This court's preliminary review of this appeal indicated that appellant's notice of appeal was untimely filed. Appellant signed the notice of appeal on February 10, 2024. The district court entered the judgment of conviction on January 19, 2024. The notice of appeal, however, was not filed until March 8, 2024, 17 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). Accordingly, this court entered an order directing the attorney general to obtain and transmit a copy of the notice of appeal log maintained at the prison indicating the actual date upon which appellant delivered the notice of appeal to a prison official pursuant to NRAP 4(d). *See also Kellogg v. Journal Commc'ns*, 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).

The attorney general has responded and provided this court with a copy of the applicable notice of appeal log and outgoing mail logs from January, February, and March 2024, and a declaration from the law

librarian who maintains the notice of appeal and outgoing mail logs at the prison where appellant is housed and who communicated with the prison mail room for the same months. These documents evidence that 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 when 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 the rule). Appellant has not demonstrated that he timely submitted his notice of appeal. The March 8, 2024, filing date controls. This court lacks jurisdiction and therefore we

ORDER this appeal DISMISSED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. Thomas L. Stockard, District Judge
Michael John Awbrey
Attorney General/Carson City
Churchill County District Attorney/Fallon
Attorney General/Las Vegas
Churchill County Clerk