

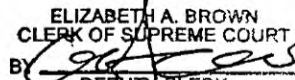
IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD HARVEY PHILLIPS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89517

FILED

FEB 14 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

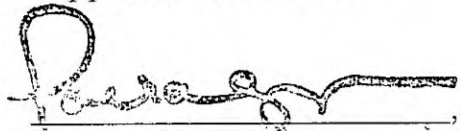
This is an appeal from a judgment of conviction. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Respondent moves to dismiss this appeal. Respondent asserts that appellant untimely filed his notice of appeal, *see* NRAP 4(b)(1)(A), and the provisions of NRAP 4(c) (allowing an untimely notice of appeal under certain circumstances) do not apply. Respondent further contends the notice of appeal cannot be deemed timely under NRAP 4(d) because appellant did not utilize the notice of appeal log or outgoing mail log.¹ Appellant does not dispute that the notice of appeal was untimely filed and agrees that his name will not be found in the notice of appeal log or mail log. He nevertheless suggests that the notice of appeal should be considered timely where the notice of appeal is dated within the relevant appeal period and prison documents indicate that appellant was attempting to utilize the law library within that period to facilitate transmission of the notice of appeal.

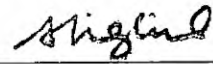
¹NRAP 4(d) provides: "If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is delivered to a prison official for mailing on or before the last day for filing. If the institution has a notice-of-appeal log or another system designed for legal mail, the inmate must use that log or system to receive the benefit of this Rule."

Appellant's judgment of conviction was entered in the district court on August 19, 2024. The notice of appeal was not filed in the district court until October 9, 2024, well after expiration of the 30-day appeal period prescribed by NRAP 4(b). We agree with respondent that NRAP 4(c) does not apply in this matter and the notice of appeal was not timely filed under NRAP 4(d) where appellant did not utilize the notice of appeal log or other system for legal mail as required. "[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). This court lacks jurisdiction.² The motion is granted and we

ORDER this appeal DISMISSED.³


_____, J.
Parraguirre


_____, J.
Bell


_____, J.
Stiglich

²If appellant believes he has a valid appeal-deprivation claim, he may file a timely post-conviction petition for a writ of habeas corpus in the district court alleging that he was unlawfully deprived of the right to a timely direct appeal pursuant to NRAP 4(c). This court expresses no opinion on the merits of any such claim.

³Given this order, the motion to consolidate this appeal with Docket No. 89518 is denied as moot.

cc: Hon. Alvin R. Kacin, District Judge
Andrew S. Fritz
Richard Harvey Phillips
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk