

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD MICHAEL PIERCE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89927-COA

FILED

AUG 28 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

Richard Michael Pierce appeals from a judgment of conviction, entered pursuant to a guilty plea, of driving under the influence of alcohol and/or a controlled or prohibited substance, above the legal limit, with a prior felony driving under the influence conviction. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the judgment of conviction was entered on November 25, 2024, and Pierce's pro se notice of appeal was filed on December 27, 2024, after the 30-day appeal period expired. See NRAP 4(b)(1); *Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994) (providing that "an untimely notice of appeal fails to vest jurisdiction in this court"), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 426 n.18, 423 P.3d 1084, 1100 n.18 (2018).


In response to an order to show cause, Pierce concedes that his name does not appear on the notice of appeal log for the Northern Nevada Correctional Center for the relevant period between November 25, 2024, and December 27, 2024. Pierce contends, however, that under the reasoning adopted by the Nevada Supreme Court in *Kellogg v. Journal*

Communications, 108 Nev. 474, 835 P.2d 12 (1992), his appeal should be considered timely because it was only one day late and as a practical matter, “it would have been virtually impossible for his appeal to have been delivered to prison officials for mailing any time after December 26.”

Kellogg and NRAP 4(d) contemplate that the date of delivery of the notice of appeal to a prison official will be determined by the date recorded in the prison log. 108 Nev. at 476-77, 835 P.2d at 13. Here, there is no record of the date Pierce delivered his notice of appeal to a prison official pursuant to *Kellogg* and NRAP 4(d). Therefore, the December 27, 2024, filing date of the notice of appeal controls. Because Pierce’s notice of appeal was untimely filed, we lack jurisdiction over this appeal. Accordingly, we

ORDER this appeal DISMISSED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Barry L. Breslow, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk