

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN WEST,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent,

No. 39365

FILED

APR 11 2002

JANE TTE M. BLOOM
CLERK OF SUPREME COURT
BY *Richard*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court revoking appellant Brian West's probation. The district court entered the order revoking probation on February 25, 1999. West did not file the notice of appeal, however, until March 14, 2002.

West was originally convicted, pursuant to a guilty plea, of one count each of leaving the scene of an accident involving personal injury (Count I) and misdemeanor driving under the influence of alcohol (Count II). On Count I, the district court sentenced West to serve a prison term of 10 years with parole eligibility after 4 years. The district court then suspended execution of the sentence and placed West on probation for a period not to exceed 5 years. As a condition of his probation, the district court ordered West to abstain from alcohol and attend a substance abuse program. On Count II, the district court sentenced West to serve 7 days in jail.

On February 23, 1999, a probation revocation hearing was held. At the hearing, West admitted to drinking alcohol thereby violating a condition of his probation. The district court exercised its discretion and entered an order revoking West's probation on February 25, 1999. On March 1, 1999, West's parents wrote a letter to his counsel informing him

that they had "General Power of Attorney to act on [West's] behalf while he [was] incarcerated." The letter also asked counsel to file an appeal on West's behalf. West's counsel never filed an appeal from the district court order revoking probation.

On July 15, 1999, West filed a post-conviction petition for a writ of habeas corpus, alleging that his counsel was ineffective for failing to effectuate an appeal on his behalf. Without conducting an evidentiary hearing, the district court denied the petition. On appeal, this court concluded that an evidentiary hearing was required to determine whether West had been denied an appeal without his consent. Accordingly, this court reversed the order of the district court denying West's post-conviction petition, and remanded the matter for an evidentiary hearing.¹

Following the evidentiary hearing, the district court entered an order finding that West's attorney should have filed a notice of appeal from the order revoking probation. The district court therefore ruled that West "should be allowed to file an appeal of his probation revocation." Based on the district court's order, West's counsel filed the instant notice of appeal.

As this court noted in the previous order of remand, the remedy, if West was deprived of his appeal, is to allow West to file a post-conviction petition for a writ of habeas corpus in the district court raising any issues he could have raised in an appeal from the order revoking his probation.²

¹West v. State, Docket No. 35764 (Order of Reversal and Remand, December 17, 2001).

²See Lozada v. State, 110 Nev. 349, 359, 871 P.2d 944, 950 (1994).


Accordingly, the district court shall appoint counsel to represent West and shall permit West to file and litigate a petition for a writ of habeas corpus raising issues appropriate for an appeal from the order revoking probation.

The instant notice of appeal was filed more than three years after the order revoking probation was entered by the district court, well after the expiration of the thirty-day appeal period prescribed by NRAP 4(b). An untimely notice of appeal fails to vest jurisdiction in this court.³ Accordingly, we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.⁴


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. John P. Davis, District Judge
Steve E. Evenson
Attorney General/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk

³See *id.* at 352, 871 P.2d at 946.

⁴This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.