

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL HARDISON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40292

FILED

DEC 9 4 2002

ORDER DISMISSING APPEAL

JUDITH L. SOGA
CLERK OF SUPREME COURT
BY *J. Ribard*
DEPUTY CLERK

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Notice of entry of the order was served by the district court on August 20, 2002. The signature on the notice of appeal was dated September 9, 2002, but the notice of appeal was not filed until September 26, 2002, three days after the thirty-day appeal period prescribed by NRAP 4(b). Accordingly, on October 9, 2002, this court ordered counsel for appellant to investigate whether the notice of appeal might be deemed to have been timely filed.¹

On October 30, 2002, counsel filed a response. Copies of the prison mail log are attached to the response. The log shows that appellant either sent or received legal mail on August 28, 2002. This date is prior to the date on the notice of appeal, and it therefore appears not to be the date the notice of appeal was mailed. The log also shows that appellant either sent or received legal mail on October 2, 2002, a date which is after the

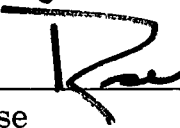
¹See Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992) (notice of appeal shall be deemed filed on the date it is delivered to a prison official).

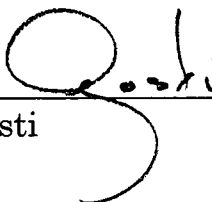
deadline for the filing of the notice of appeal, and in fact, after the notice of appeal was actually filed.

Based on the foregoing, appellant has failed to demonstrate that the notice of appeal was delivered to a prison official within the thirty-day appeal period. The notice of appeal is therefore untimely, and an untimely notice of appeal fails to vest jurisdiction in this court.² We therefore conclude that we lack jurisdiction to entertain this appeal and we

ORDER this appeal DISMISSED.


_____, C.J.
Young


_____, J.
Rose


_____, J.
Agosti

cc: Hon. Joseph T. Bonaventure, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk

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