

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELVYN LEE HOLBROOK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40385

FILED

JAN 06 2003

ORDER DISMISSING APPEAL

JANE TIE H. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted sexual assault. The judgment of conviction was entered by the district court on September 11, 2002. The notice of appeal was filed on October 16, 2002, after the thirty-day appeal period prescribed by NRAP 4(b). An untimely notice of appeal fails to vest jurisdiction in this court.¹ Because the notice of appeal was dated within the thirty-day period, it appeared possible that the notice of appeal was delivered to prison officials within the thirty (30) day period, and might therefore be timely.²

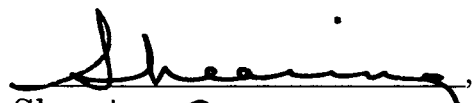
Accordingly, on November 14, 2002, this court ordered appellant's counsel to investigate on behalf of appellant whether any documents in the custody of prison officials, such as a prison log, would verify whether appellant submitted his notice of appeal to a prison official for mailing prior to the expiration of the thirty-day appeal period. On

¹See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

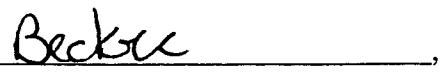
²See Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992) (notice of appeal shall be deemed filed on the date it is delivered to a prison official).

December 5, 2002, counsel filed a response to this court's order. In the response, counsel informs this court that there is no record of appellant sending out any legal mail, and that there are no entries for appellant in the "Notice of Appeal Log." We therefore conclude that we lack jurisdiction to entertain this appeal, and we

ORDER this appeal DISMISSED.³


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Jerome Polaha, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

³We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.