

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES ROGERS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40675

FILED

APR 09 2003

ORDER DISMISSING APPEAL

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

Our preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the order denying appellant's petition on October 31, 2002, and served notice of entry of that order on appellant by mail on November 6, 2002. Appellant's notice of appeal was due on December 9, 2002.¹ Appellant did not file the notice of appeal, however, until December 16, 2002, seven days late. An untimely notice of appeal fails to vest jurisdiction in this court.²

Appellant dated his notice of appeal on December 4, 2002. If appellant delivered his notice of appeal to a prison official for mailing on

¹NRS 34.575; NRAP 26(c).

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

December 4, 2002, his notice of appeal would be timely filed.³ Accordingly, we directed the attorney general to provide this court with copies of any available prison records indicating the actual date upon which appellant delivered his notice of appeal to a prison official.

In response, the attorney general indicated that appellant used the outgoing legal mail log on December 11, 2002. The attorney general further stated that the prison records did not indicate that appellant mailed any legal mail between December 3 and December 10, 2002. The attorney general attached a copy of the outgoing legal mail log for December 11, 2002. Appellant also filed a response to this court's order. Appellant claimed that he did not receive a copy of the district court's order until December 4, 2002.

Even assuming that appellant did not receive a copy of the district court's order until December 4, 2002, appellant had until December 9, 2002 to deliver his notice of appeal to prison officials in order for the notice of appeal to be deemed timely filed. This appellant failed to do. This court's decision in Kellogg contemplates that the date of delivery of the notice of appeal to a prison official will be determined by the date recorded in the prison mail log. Here, the prison outgoing legal mail log reveals that appellant delivered his notice of appeal to prison officials after the time had expired for filing a timely notice of appeal. Therefore, the


³See Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992).

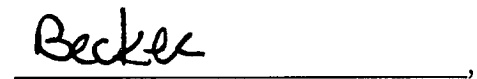
December 16, 2002 filing date of the notice of appeal in the district court controls.

Because appellant's notice of appeal was untimely filed, we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. John S. McGroarty, District Judge
James Rogers Jr.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk