

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD CURTIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41422

FILED

SEP 19 2003

ORDER DISMISSING APPEAL

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

This is an appeal from a judgment of conviction, pursuant to a plea of guilty, of attempted sexual assault. The appeal is subject to the criminal fast track provisions of NRAP 3C. Our preliminary review of the documents before this court revealed that appellant's proper person notice of appeal appeared to have been untimely filed and that this court therefore apparently lacked jurisdiction to consider this appeal.<sup>1</sup>

The judgment of conviction was entered by the district court on March 26, 2003. Appellant's proper person notice of appeal was filed in the district court on May 12, 2003, beyond the thirty-day appeal period prescribed by NRAP 4(b). Because it appeared possible that appellant delivered the notice of appeal to prison officials within the thirty-day appeal period, and that the appeal could be considered timely pursuant to this court's holding in Kellogg v. Journal Communications,<sup>2</sup> this court

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<sup>1</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (an untimely notice of appeal fails to vest jurisdiction in this court).


<sup>2</sup>108 Nev. 474, 835 P.2d 12 (1992) (a proper person notice of appeal filed by a prisoner shall be deemed filed on the date it is delivered to a prison official).

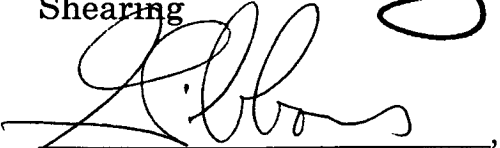
ordered appellant's counsel to show cause why this appeal should not be dismissed for lack of jurisdiction.

On August 29, 2003, appellant's counsel filed a response to this court's order.<sup>3</sup> In the response, counsel informs this court that his investigation has revealed that the notice of appeal was not delivered to prison officials until May 6, 2003. We therefore conclude that we lack jurisdiction to entertain this appeal and we

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Donald M. Mosley, District Judge  
Clark County Public Defender  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>3</sup>Counsel also requested that the time for the response be extended to August 27, 2003. Cause appearing, the motion is granted.