

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41481

FILED

JUL 30 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 dismissing appellant's post-conviction petition for a writ of habeas corpus.

This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the order dismissing appellant's petition on February 20, 2003, and service of notice of entry was performed by the clerk of the district court on February 21, 2003. Appellant's notice of appeal was due on March 26, 2003.¹ Appellant's notice of appeal, however, was not filed in the district court until May 23, 2003, well beyond the relevant appeal period. An untimely notice of appeal fails to vest jurisdiction in this court.²

¹NRS 34.575 (providing that an appeal may be filed from an order denying a petition for a writ of habeas corpus within 30 days after service by the district court of written notice of entry of the order); NRAP 26(c) ("Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, three (3) days shall be added to the prescribed period.").

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

Appellant stated on the face of the notice of appeal that he had previously submitted an earlier notice of appeal. Appellant attached a copy of document dated March 19, 2003, purporting to be the first notice of appeal. The clerk of the district court submitted an affidavit with the notice of appeal packet. The clerk stated that there is no record of a letter written by appellant dated March 19, 2003, ever being received in the Nye County Clerk's Office.

Because a notice of appeal properly delivered to prison officials in a timely fashion is sufficient to invoke this court's jurisdiction, this court directed the attorney general to obtain and transmit to this court a copy of any documents in the prison indicating the date upon which appellant delivered his notice of appeal to prison officials.³ The attorney general filed a timely response to this court's June 17, 2003 order. The attorney general indicates that appellant used the legal mail log on numerous occasions from March through May 2003. Only three of the legal mail log entries fall within the time for filing a timely notice of appeal—appellant used the legal mail log on March 3, 12 and 18, 2003.


The legal mail log does not indicate that appellant delivered the purported March 19, 2003 notice of appeal to prison officials in a timely fashion. The legal mail log entries for March 3 and March 12 indicate that legal mail was sent to Judge Maddox in the First Judicial District. Appellant's post-conviction proceedings, however, arose from the Fifth Judicial District Court. Thus, neither of these log entries provide proof of delivery to a prison official. The March 12, 2003 log entry


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

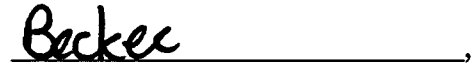
indicates that appellant mailed documents to the Fifth Judicial District Court. However, this log entry predates appellant's March 19, 2003 notice of appeal by a week. Thus, this log entry does not provide proof of delivery to prison officials.

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.⁴ Here, there is no record of the date appellant delivered his notice of appeal to a prison official pursuant to Kellogg. Therefore, the May 23, 2003 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.⁵


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

⁴Id. at 476-77, 835 P.2d at 13.

⁵We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. John P. Davis, District Judge
Matthew White
Attorney General Brian Sandoval/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk