

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRAVERS A. GREENE,  
Petitioner,

vs.

THE SEVENTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF WHITE  
PINE, AND DONNA M. BATH, CLERK  
OF THE SEVENTH JUDICIAL  
DISTRICT COURT, WHITE PINE  
COUNTY,  
Respondents.

No. 42329

**FILED**

**JAN 24 2006**

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

ORDER GRANTING PETITION  
FOR WRIT OF MANDAMUS

This original proper person petition for a writ of mandamus challenges White Pine County Clerk Donna M. Bath's alleged refusal to file petitioner's notice of appeal from a district court order granting a motion to dismiss and a district court order denying petitioner's motion for a preliminary injunction.

Petitioner, an inmate at Ely State Prison, asks this court to issue a writ of mandamus directing respondent Bath to file and forward to this court his notice of appeal from the district court's order granting a motion to dismiss and its order denying a second motion for the issuance of a temporary restraining order and/or preliminary injunction in district court Case No. CF-9910013. According to the certificate of service attached to the copy of the notice of appeal provided by petitioner, the notice of appeal was served via U.S. Mail on July 3, 2003. However, this court's records indicate that petitioner's appeal has still not been docketed in this court. At this court's direction, Bath filed an answer to this

petition, in which she maintains that the district court never received petitioner's notice of appeal. Bath indicates that there is no record that a notice of appeal was received in district court Case No. CF-9910013 anytime during or after July 2003. We note, however, that the copy of the notice of appeal provided by petitioner indicates that it was received by the Attorney General's office on July 8, 2003.

Under this court's holding in Kellogg v. Journal Communications,<sup>1</sup> if petitioner delivered his notice of appeal to a prison official for mailing on July 3, 2003, his notice of appeal would be deemed filed on that date. Accordingly, we directed the Attorney General's office to obtain and provide this court with the documents necessary to establish whether, under Kellogg, petitioner filed a notice of appeal by delivering the notice to prison officials and to indicate whether these documents in fact demonstrate that petitioner delivered his notice of appeal to a prison official. Based on the documents provided by the Attorney General's office, it appears that petitioner did, in fact, deliver his notice of appeal to prison officials for mailing on July 3, 2003, including a copy that was supposed to be mailed to respondent Bath. Based on Bath's response, however, it appears that the copy of petitioner's notice of appeal mailed to Bath never actually reached her.

Because petitioner did everything within his power to file the notice of appeal, the fact that the copy of his notice of appeal sent to Bath never reached her will not preclude petitioner from having his notice of appeal filed. As noted above, under Kellogg, because petitioner delivered his notice of appeal to a prison official for mailing on July 3, 2003, his

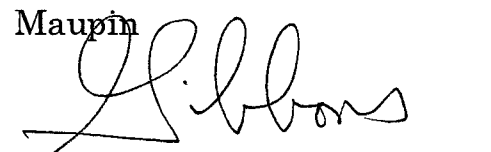
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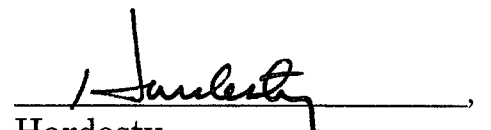
<sup>1</sup>108 Nev. 474, 477, 835 P.2d 12, 13 (1992).

notice of appeal is deemed filed on that date.<sup>2</sup> Accordingly, we grant the petition. The clerk of this court shall issue a writ of mandamus directing respondent Donna M. Bath to file petitioner's notice of appeal from the order granting the motion to dismiss and the order denying a second motion for the issuance of a temporary restraining order and/or preliminary injunction in district court Case No. CF-9910013. The writ of mandamus shall further direct respondent Bath to indicate that petitioner's notice of appeal was filed in the district court on July 3, 2003. Finally, the writ shall direct respondent Bath that, once the notice of appeal is filed in the district court, she shall transmit the notice of appeal and all necessary documentation to this court as required by NRAP 3(e).

It is so ORDERED.<sup>3</sup>

 J.

Maupin  
 J.  
Gibbons

 J.  
Hardesty

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<sup>2</sup>108 Nev. at 477, 835 P.2d at 13.

<sup>3</sup>As neither an award of costs nor sanctions is warranted in this case, we deny petitioner's request for costs and sanctions.

cc: Hon. Steve L. Dobrescu, District Judge  
Travers A. Greene  
Attorney General George Chanos/Carson City  
Attorney General George Chanos/Las Vegas  
White Pine County District Attorney  
White Pine County Clerk