

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUSTAVO ANGUIANO GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47990

FILED

NOV 28 2006

ORDER DISMISSING APPEAL

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of three counts of robbery with the use of a deadly weapon and one count of second-degree kidnapping. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

This court's preliminary review of this appeal revealed a jurisdictional defect. Specifically, the judgment of conviction was entered by the district court on July 21, 2006. The notice of appeal was filed on August 25, 2006, after the thirty-day appeal period prescribed by NRAP 4(b). An untimely notice of appeal fails to vest jurisdiction in this court.¹

The notice of appeal was dated July 7, 2006, which was before the expiration of the appeal period. It therefore 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 September 25,

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

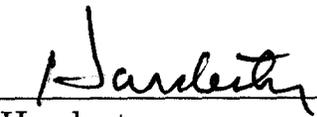
²Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992) (notice of appeal shall be deemed filed on the date it is delivered to a prison official).

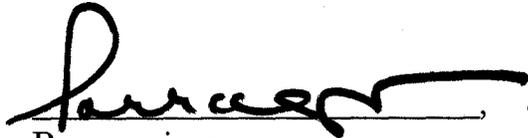
2006, this court ordered appellant's counsel to show cause why this appeal should not be dismissed for lack of jurisdiction.

On October 6, 2006, counsel filed a response in which he informs this court that he spoke to the prison official in charge of the prison log, and there is no entry for appellant. There is also no record of any mail being sent by appellant during the appeal period. We conclude that we lack jurisdiction to entertain this appeal, and we

ORDER this appeal DISMISSED.


_____, J.
Becker


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Steven R. Kosach, District Judge
Gustavo Anguiano Garcia
Van Ry Law Offices, LLP
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk