

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS EARL BRAGG, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52148

**FILED**

OCT 03 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a plea of nolo contendere, of burglary. Second Judicial District Court, Washoe County; Deborah A. Agosti, Judge.

This court's preliminary review of this appeal revealed a potential jurisdictional defect. The judgment of conviction was entered on June 19, 2008. However, the notice of appeal was not filed until July 28, 2008, 7 days after the expiration of the 30-day appeal period prescribed by NRAP 4(b). "[A]n untimely notice of appeal fails to vest jurisdiction in this court."<sup>1</sup>

Under this court's holding in Kellogg v. Journal Communications, if appellant delivered his notice of appeal to a prison official for mailing on or before July 21, 2008, his notice of appeal would be deemed timely filed.<sup>2</sup> Because appellant signed his notice of appeal on

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<sup>1</sup>See Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994).

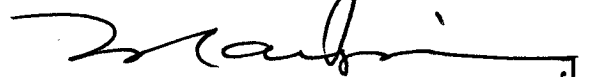
<sup>2</sup>Kellogg v. Journal Communications, 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that the notice of appeal shall be deemed "filed" on the date it is delivered to a prison official).


July 17, 2008, this court directed counsel for appellant to obtain and transmit a copy of the notice of appeal log. If appellant did not use the notice of appeal log, counsel for appellant was to inform this court whether appellant used any other prison logs. On September 5, 2008, counsel for appellant submitted a timely response. Counsel for appellant indicates that there is no record of when appellant mailed his notice of appeal.

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.<sup>3</sup> Here, there is no record of the date appellant delivered his notice of appeal to a prison official pursuant to Kellogg. Therefore, the July 28, 2008, filing date of the notice of appeal in the district court controls. Because appellant's notice of appeal was untimely filed, we

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Saitta

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<sup>3</sup>Id. at 476-77, 835 P.2d at 13.

cc: Chief Judge, Second Judicial District  
Hon. Deborah A. Agosti, Senior Justice  
Washoe County Public Defender  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk  
Thomas Earl Bragg, Jr.