

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WAYNE KREIDEL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69407

**FILED**

**MAR 04 2016**

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

**ORDER DISMISSING APPEAL**

This is a pro se appeal from a district court order denying a motion to vacate judgment. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

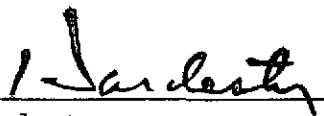
This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the order denying appellant's motion to vacate judgment on November 4, 2015. Appellant's notice of appeal was due on December 4, 2015. See NRAP 4(b); *Edwards v. State*, 112 Nev. 704, 918 P.2d 321 (1996). Appellant's notice of appeal, however, was not filed in the district court until December 11, 2015, seven days beyond the relevant appeal period. "[A]n untimely notice of appeal fails to vest jurisdiction in this court." *Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994).

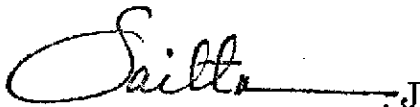
Under this court's holding in *Kellogg v. Journal Communications*, if appellant delivered his notice of appeal to a prison official for mailing on or before December 4, 2015, his notice of appeal would be deemed timely filed. 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that a notice of appeal is deemed "filed" when it is delivered to a prison official). Because appellant signed his notice of appeal on December 3, 2015, this court directed the attorney general to obtain and

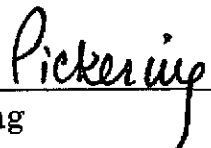
transmit a copy of the notice of appeal. If appellant did not use the notice of appeal log, the attorney general was to inform this court whether appellant used any other logs. On February 19, 2016, the attorney general submitted a timely response. The attorney general indicates that there is no record of when appellant mailed his notice of appeal.<sup>1</sup>

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. *Id.* at 476-77, 835 P.2d at 13. Here, there is no clear record of the date appellant delivered his notice of appeal to a prison official pursuant to *Kellogg*. Therefore, the December 11, 2015, 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.<sup>2</sup>

, J.  
Hardesty

, J.  
Saitta

, J.  
Pickering

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<sup>1</sup>As noted by the Attorney General in his response, appellant has filed a letter in this court indicating that on December 7, 2015, he mailed an unknown document to the Eighth Judicial District Court. Regardless of what that document might have been, it was still filed outside the time period for filing a notice of appeal.

<sup>2</sup>In light of this order, the pro se motions filed on February 8, 2016, and February 17, 2016, are denied as moot. The clerk of this court shall return, unfiled, the pro se motion for emergency review for a preliminary injunction.

cc: Hon. Carolyn Ellsworth, District Judge  
Michael Wayne Kreidel  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk