

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUBEN GUZMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72026

FILED

APR 13 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a judgment of conviction. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

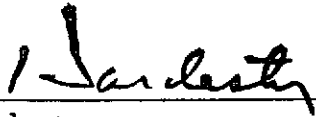
This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the judgment of conviction on September 29, 2016. Appellant's notice of appeal was due on October 31, 2016. See NRAP 4(b); *Edwards v. State*, 112 Nev. 704, 918 P.2d 321 (1996). Appellant's notice of appeal, however, was not filed in the district court until December 21, 2016, well 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 October 31, 2016, 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 September 29, 2016, 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 March 8, 2017, the attorney general submitted a timely response. In his response, the attorney general states that the mail log indicated that appellant delivered legal mail to a prison official on November 17, 2016, which is consistent with the certificate of service attached to appellant's 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. *Id.* at 476-77, 835 P.2d at 13. Here, the mail log indicates that appellant delivered legal mail to a prison official on November 17, 2016. Therefore, the November 17, 2016, date in the outgoing mail logs is the controlling date, and thus, the notice of appeal was untimely filed. NRAP 4(b); NRS 34.575(1); NRAP 26(a); NRAP 26(c). Because an untimely notice of appeal fails to vest jurisdiction in this court, *Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994), we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Stiglich

cc: Hon. Connie J. Steinheimer, District Judge
Ruben Guzman
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk