

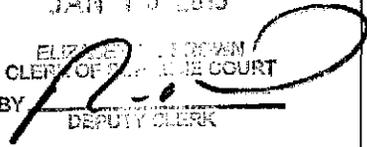
IN THE SUPREME COURT OF THE STATE OF NEVADA

KWAUYSHAUN WILLIAMS,
Appellant,
vs.
TIMOTHY FILSON, WARDEN,
Respondent.

No. 77423

FILED

JAN 13 2019

ELIZABETH J. DOWD
CLERK OF THE SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court order denying appellant's postconviction petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

The district court entered the order denying appellant's petition on September 24, 2018, and the district court clerk served notice of entry of that order on the same date. Appellant's notice of appeal was due on October 29, 2018. See NRS 34.575 (providing that an appeal may be filed from an order denying a petition for a writ of habeas corpus within 30 days after service by the district court of written notice of entry of the order); NRAP 26(a); NRAP 26(c). Appellant's notice of appeal was in fact filed on November 13, 2018, 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).

Because appellant signed his notice of appeal on October 10, 2018, which is within the prescribed appeal period, this court entered an order directing the attorney general to obtain and transmit to the clerk of this court a certified copy of the notice of appeal log maintained at the prison indicating the actual date upon which appellant delivered to a prison official his notice of appeal. See NRAP 4(d) (a notice of appeal filed by an inmate confined in an institution is deemed timely filed "if it is delivered to a prison

official for mailing on or before the last day for filing."); *Kellogg v. Journal Communications*, 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).

Having considered the attorney general's response, there is no record that appellant timely delivered his notice of appeal to a prison official or used or attempted to use the notice of appeal log or the outgoing mail log. Neither log contains any entries from appellant during the relevant time period. Because there is no record that appellant timely delivered his notice of appeal to a prison official, the November 13, 2018, date controls. *See id.* (The inmate must use the notice of appeal log or other system designed for legal mail to receive the benefit of the rule). Appellant's notice of appeal was untimely filed, this court lacks jurisdiction, and this court

ORDERS this appeal DISMISSED.

Hardesty, J.
Hardesty

Stiglich, J.
Stiglich

Silver, J.
Silver

cc: Hon. Steve L. Dobrescu, District Judge
Kwauyshaun Williams
Attorney General/Ely
White Pine County Clerk