

IN THE SUPREME COURT OF THE STATE OF NEVADA

GABRIEL STEVEN DEVALLE,
Appellant,

vs.

OFFENDER MANAGEMENT
DIVISION,

Respondent.

No. 72149

FILED

JUN 06 2017

ORDER DISMISSING APPEAL

BRUCE M. BROWN
CLERK OF THE SUPREME COURT
A. Wilcap
DEPUTY CLERK

This is a pro se appeal from an order of the district court denying appellant's postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the order denying appellant's petition on November 9, 2016, and the clerk of the district court served notice of entry of that order on November 16, 2016. Appellant's notice of appeal was due on December 19, 2016. 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) (providing that if the last day of the designated time period falls on a Saturday, Sunday, or nonjudicial day, the period shall be extended until the end of the next day which is not a Saturday, Sunday, or nonjudicial day); NRAP 26(c) ("Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, three (3) days shall be added to the prescribed period."). Appellant's notice of appeal, however, was not filed in the district court until January 4, 2017, 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).

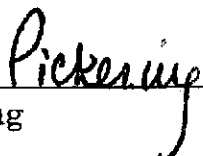
Under this court’s holding in *Kellogg v. Journal Communications*, if appellant delivered his notice of appeal to a prison official for mailing on or before December 19, 2016, his notice of appeal would be deemed timely filed. 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that a notice of appeal is deemed “filed” when it is delivered to a prison official). Because appellant signed his notice of appeal on December 9, 2016, this court directed the attorney general to obtain and transmit a copy of the notice of appeal log. 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 May 3, 2017, the attorney general submitted a timely response. The attorney general 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. *Id.* at 476-77, 835 P.2d at 13. Here, there is no record of the date appellant delivered his notice of appeal to a prison official pursuant to *Kellogg*. Therefore, the January 4, 2017, 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.
Douglas


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Linda Marie Bell, District Judge
Gabriel Steven Devalle
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk