

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA LEWIS SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79334

JOSHUA LEWIS SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79337

JOSHUA LEWIS SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79339 ✓

**FILED**

OCT 15 2019

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

*ORDER DISMISSING APPEALS*

These are pro se appeals from a single district court order denying motions to correct an illegal sentence. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

The district court entered the order denying appellant's motions on June 28, 2019. The notices of appeal were therefore due by July 29, 2019. See NRAP 4(b). The notice of appeal was filed in the district court August 2, 2019, four days after the expiration of the relevant appeal period. See NRAP 4(b)(1)(A).

Because appellant signed his notices of appeal on July 29, 2019, within the prescribed appeal period, this court entered an order directing

the attorney general to provide this court with a copy of the notice of appeal log or other mail log maintained by the prison indicating the actual date upon which appellant delivered his notice of appeal to a prison official. See NRAP 4(d) (a notice of appeal filed by an inmate confined in an institution is timely "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) (providing that a notice of appeal is deemed "filed" when it is delivered to a prison official).

Having considered the attorney general's response, the prison's outgoing legal mail log indicates that appellant sent unidentified legal mail on July 31, 2019, to the Second Judicial District Court, and appellant did not use the prison's notice of appeal log within the relevant time period. Even assuming the mail sent on July 31, 2019, was appellant's notices of appeal, they were sent beyond the relevant appeal period.<sup>1</sup>

Because there is no record that appellant timely delivered his notices of appeal to a prison official, the August 2, 2019, date controls. See NRAP 4(d) (an inmate must use the notice of appeal log or other system designed for legal mail to receive the benefit of the rule). Appellant's notices of appeal were untimely filed. Accordingly, this court lacks jurisdiction, *see*

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<sup>1</sup>Appellant points out in his response filed October 10, 2019, that the notice of entry of the appealed orders states that a notice of appeal must be filed within 33 days of the date the notice was mailed to appellant. He asserts that the notices of appeal were timely filed within 33 days, i.e., before August 5, 2019. However, the statement in the notice of entry of order regarding the time to appeal is incorrect. A notice of appeal from an order denying a motion to correct an illegal sentence must be filed within 30 days of entry of the order. NRAP 4(b)(1)(A); *Edwards*, 112 Nev. at 709, 918 P.2d at 325.

*Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994) ("[A]n untimely notice of appeal fails to vest jurisdiction in this court"), and

ORDERS these appeals DISMISSED.

Pickering, J.  
Pickering

Parraguirre, J.  
Parraguirre

Cadish, J.  
Cadish

cc: Hon. Connie J. Steinheimer, District Judge  
Karla K. Butko  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk