

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOYLON NESBY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 37763

**FILED**

**JUL 31 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted possession of stolen property. The judgment of conviction was entered by the district court on March 13, 2001. The notice of appeal was filed on April 19, 2001, after the thirty-day appeal period prescribed by NRAP 4(b). An untimely notice of appeal fails to vest jurisdiction in this court.<sup>1</sup> Accordingly, on May 22, 2001, this court ordered counsel for appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.

On July 2, 2001, counsel for appellant filed a response to this court's order. Attached to the response is a letter from the law library supervisor at Northern Nevada Correction Center. In the letter, the supervisor informs counsel for appellant that the supervisor has carefully checked both the outgoing legal mail log and the notice of appeal log, and that there are no entries from appellant at any time.

Also attached to the response is an unsworn document entitled, "Affidavit." In the document, appellant states that he gave his notice of appeal to a prison official on April 11,

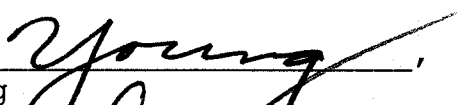
<sup>1</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

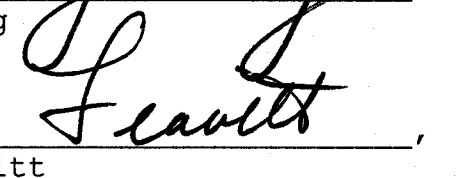
2001. Based on the document from appellant, counsel for appellant argues that the notice of appeal was timely filed. We disagree.

Appellant's notice of appeal is not recorded in the notice of appeal log. Presumably, appellant did not present his notice of appeal to the appropriate prison official for recording in the notice of appeal log. Appellant has not argued that he did not have access to the log. 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.<sup>2</sup> Here, there is no record of the date appellant delivered his notice of appeal to a prison official pursuant to Kellogg. Therefore, the April 19, 2001, filing date of the notice of appeal in the district court controls.

Because appellant's notice of appeal was untimely filed, we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.

  
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Young J.

  
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Leavitt J.

  
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Becker J.

cc: Hon. Steven P. Elliott, District Judge  
Attorney General  
Washoe County District Attorney  
Washoe County Public Defender  
Washoe County Clerk

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<sup>2</sup>Kellogg v. Journal Communications, 108 Nev. 474, 476-77, 835 P.2d 12, 13 (1992).