

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86865

FILED

OCT 17 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order denying a motion to modify sentence. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

The district court entered the order denying appellant's motion on May 24, 2023. Appellant's notice of appeal was therefore due by June 23, 2023. 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 June 27, 2023, beyond the relevant appeal period. Because it appeared that the notice of appeal was untimely filed, this court directed the attorney general, on behalf of respondent, to investigate and provide this court a certified copy of the notice of appeal log maintained at the prison indicating the actual date upon which appellant delivered his notice of appeal to a prison official. See NRAP 4(d); *Kellogg v. Journal Commc'ns*, 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).

The attorney general has responded and provides this court with a copy of the applicable notice of appeal log from May and June of 2023, and a declaration from the law librarian who maintains the notice of appeal log at the prison where appellant is housed and who communicated with the prison mail room for the same month. These documents evidence that there

are no entries for appellant in the prison mail logs that would support a finding that the notices of appeal were timely delivered to a prison official or timely mailed from the prison. *See* NRAP 4(d) (providing that when the institution has a notice-of-appeal log or another system designed for legal mail, the inmate must use that log or system to receive the benefit of the rule).

“[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). Appellant has not demonstrated that he timely submitted his notice of appeal. The June 27, 2023, filing date controls. This court lacks jurisdiction and therefore we

ORDER this appeal DISMISSED.



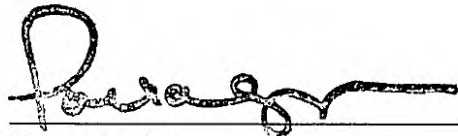
Herndon

J.



Lee

J.



Parraguirre

J.

cc: Hon. Robert W. Lane, District Judge
Eric Garcia
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk