

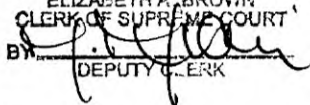
IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGAR SAMANIEGO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87469

FILED

MAR 06 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court order denying a motion to correct illegal sentence. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

The district court entered the order denying appellant's motion on August 30, 2023. Appellant's notice of appeal was therefore due by September 29, 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 October 16, 2023, well after the expiration of the 30-day appeal period prescribed by NRAP 4(b). 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 provided this court with a copy of the applicable notice of appeal log from August 31, 2023, to October 15, 2023, and a declaration from the law librarian who maintains

the notice of appeal log at the prison where appellant is incarcerated. These documents evidence that there are no entries for appellant in the prison notice of appeal log that would support a finding that the notice of appeal was 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 October 16, 2023, filing date controls. This court lacks jurisdiction, and therefore we

ORDER this appeal DISMISSED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. Carli Lynn Kierny, District Judge
Edgar Samaniego
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk