

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH ALEXANDER HENDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62629

FILED

JAN 15 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Malone
DEPUTY CLERK

ORDER DENYING MOTION

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Respondent has filed a motion to dismiss the appeal, arguing that the notice of appeal was not timely filed. The motion is opposed.

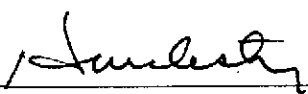
The notice of appeal was filed in proper person with the district court on February 12, 2013, more than 30 days after the district court clerk served appellant and counsel with notice of entry of the district court's order. On this basis, respondent argues that the notice of appeal was not timely filed. *See* NRS 34.575(1). Appellant, however, argues that he sent a proper person notice of appeal to the clerk of this court, which was received on December 5, 2012, and that based on that clear intent to appeal from the district court's order, this court should deny the motion to dismiss. Respondent disagrees.

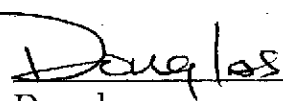
Neither party acknowledges NRAP 4(e). That rule specifies that when a notice of appeal "is mistakenly filed in the Supreme Court rather than the district court, the clerk of the Supreme Court must note on the notice the date when it was received and send it to the district court clerk. The notice is then considered filed in the district court on the date

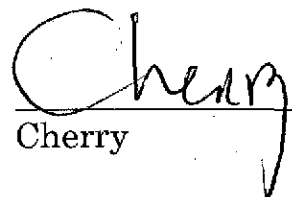
so noted.” The letter from this court returning documents unfiled to appellant indicates that the document received from appellant expressed the intent to appeal—it provides direction that a notice of appeal must be filed with the district court and directs appellant to NRAP 3. Although not entirely clear, it further appears that the letter received by this court asked the court to “except [sic] this missive as a ‘notice of appeal’” and referred to a habeas corpus hearing in district court on September 22, 2012. While we agree with the State that the document was not a good example of a notice of appeal, *see* NRAP 3(c), we are unwilling to ignore appellant’s effort to file a notice of appeal or our failure to follow NRAP 4(e). Had NRAP 4(e) been followed, the notice of appeal would have been considered filed in the district court on December 5, 2012, within the 30-day appeal period. Given these unique circumstances, we deny the motion to dismiss.

Respondent shall have 30 days from the date of this order to file and serve the answering brief. Failure to timely file the answering brief may result in the imposition of sanctions. *See* NRAP 31(d).

It is so ORDERED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Cherry

cc: Law Office of Gabriel L. Grasso, P.C.
Attorney General/Carson City
Clark County District Attorney