

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY SCOTT HERMANSKI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 65616

**FILED**

**JUN 04 2014**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER DIRECTING ATTORNEY GENERAL TO OBTAIN AND  
TRANSMIT CERTIFIED COPY OF NOTICE OF APPEAL LOG OR  
OTHER LOG MAINTAINED BY THE PRISON*

This is a proper person appeal from an order of the district court denying appellant's motion to vacate sentence.

This court's preliminary review of this appeal reveals a potential jurisdictional defect. Specifically, the district court entered the order denying appellant's motion on March 31, 2014. Appellant's notice of appeal was due on April 30, 2014. *See* NRAP 4(b), *Edwards v. State*, 112 Nev. 704, 709, 918 P.2d 321, 325 (1996). Appellant's notice of appeal, however, was not filed in the district court until May 6, 2014, six days beyond the relevant appeal period. "[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 signed his notice of appeal on April 29, 2014. Under this court's holding in *Kellogg v. Journal Communications*, if appellant delivered his notice of appeal to a prison official for mailing on or before

April 30, 2014, his notice of appeal would be deemed timely filed. 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); *see also* NRAP 4(d). Because appellant has not submitted documentation verifying the actual date he may have delivered his notice of appeal to a prison official, this court is unable to determine at this time whether his notice of appeal should be deemed timely pursuant to *Kellogg*. Any documents verifying the actual date of delivery are in the sole custody and control of State prison officials. In addition, appellant is not represented by counsel in this matter and is proceeding in proper person. Therefore, counsel for the State is in the best position to obtain and transmit to this court the documents necessary to establish whether appellant timely invoked this court's jurisdiction to consider this appeal.

Accordingly, the attorney general shall have thirty (30) days from the date of this order within which to obtain and transmit to the clerk of this court a certified copy of the notice of appeal log maintained at the prison indicating the actual date upon which appellant delivered to a prison official his notice of appeal.<sup>1</sup> If the notice of appeal log does not indicate that appellant delivered this notice of appeal to a prison official, the attorney general shall so inform this court. If appellant used any other log maintained by the prison during the relevant time period, the

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<sup>1</sup>Nevada Department of Corrections Administrative Regulation 722.07(1) provides that "[e]ach institution and facility will maintain a permanent Notice of Appeals Log."

attorney general shall inform the court of this fact and provide this court with a certified copy of the log used by appellant.

It is so ORDERED.

\_\_\_\_\_, C.J.

cc: Gregory Scott Hermanski  
Attorney General/Carson City  
Clark County District Attorney