

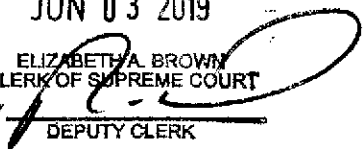
IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCUS CAMPBELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78726

FILED

JUN 03 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
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 pro se appeal from an order of the district court denying appellant's motion to correct/modify an illegal sentence.

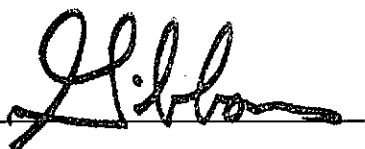
This court's preliminary review of this appeal reveals a potential jurisdictional defect. Specifically, the district court entered the order denying appellant's motion on March 21, 2019. Appellant's notice of appeal was due on April 22, 2019. See NRAP 4(b), *Edwards v. State*, 112 Nev. 704, 709, 918 P.2d 321, 325 (1996). Appellant's notice of appeal, however, was not filed in the district court until May 1, 2019, well 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 March 25, 2019. 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 22, 2019, 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 pro se. 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 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.¹ 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 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.

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

cc: Marcus Campbell
Attorney General/Carson City
Clark County District Attorney