


IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 78726

FILED

JUL 29 2019

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 appellant's motion to correct/modify an illegal sentence. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

The district court entered the order challenged in this appeal on March 21, 2019. Appellant's notice of appeal was due to be filed in the district court by April 22, 2019. See NRAP 4(b)(1)(A); NRAP 26(a); *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, 2019.¹

Because appellant dated his notice of appeal March 25, 2019, within the prescribed appeal period, this court entered an order directing the attorney general 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 his notice of appeal to a prison official. See NRAP 4(d) (a notice of appeal filed by an inmate confined in an institution is timely "if it is delivered to a prison official for mailing on

¹Included with appellant's notice of appeal is a letter from appellant dated April 26, 2019, indicating that appellant previously sent out the notice of appeal but it was returned by the prison.

or before the last day for filing.”); *see also Kellogg v. Journal Commc’ns*, 108 Nev. 474, 477, 835 P.2d 12, 13 (1992). If appellant used any other log maintained by the prison during the relevant time frame, the attorney general was to inform this court of that fact and provide a copy of the log.

The attorney general has now filed a response stating that no entry appears in the notice of appeal log for appellant’s notice of appeal and there are no transactions for postage for appellant during the relevant time period. Attached to the response is a copy of the notice of appeal log from the relevant time period—no entries appear for appellant. Also attached to the response is a copy of appellant’s daily transaction summary. The summary does not indicate that appellant purchased any postage from March 22, 2019, to June 7, 2019.

Because there is no record that appellant timely delivered his notice of appeal to a prison official, the May 1, 2019, date controls. *See* NRAP 4(d) (an inmate must use the notice of appeal log or other system designed for legal mail to receive the benefit of the rule). Appellant’s notice of appeal was untimely filed. Accordingly, this court lacks jurisdiction, *see Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994) (“[A]n untimely notice of appeal fails to vest jurisdiction in this court.”), and

ORDERS this appeal DISMISSED.

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Cadish, J.
Cadish

cc: Hon. Valerie Adair, District Judge
Marcus Campbell
Attorney General/Carson City
Attorney General/Las Vegas
Clark County District Attorney
Eighth District Court Clerk