

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
APPLICATION OF, BRECK WARDEN
SMITH FOR A WRIT OF HABEAS
CORPUS.

THE STATE OF NEVADA,
Appellant,
vs.
BRECK WARDEN SMITH,
Respondent.

No. 82696

FILED

JUL 15 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING MOTION TO DISMISS

This is an appeal from a district court order granting a postconviction petition for a writ of habeas corpus. Respondent has filed a motion to dismiss this appeal as untimely. He contends that the time to file the notice of appeal began on February 17, 2021, when appellant was served with the challenged order and/or the notice of entry of the order. Respondent argues that appellant untimely filed the notice of appeal on March 26, 2021, more than 30 days after service of the order or the notice of entry of order, and the notice of appeal is thus untimely under NRAP 4(a)(1). Appellant opposes the motion and respondent has replied.

It is not clear that NRAP 4(a)(1) governs appealability in this matter. *See Klein v. Warden*, 118 Nev. 305, 310, 43 P.3d 1029, 1033 (2002) (“[T]his court has consistently and repeatedly held that rules of civil appellate procedure are not applicable to appeals from statutory post-conviction habeas corpus proceedings.”). Assuming, without deciding, that NRAP 4(a)(1) does apply, respondent’s contention lacks merit. Under NRAP 4(a)(1), the time to file the notice of appeal begins to run upon service of the notice of entry of the challenged order, not upon service of the

challenged order. The notice of entry of order, which is a separate document from the certificate of service of the order, *see generally* NRCP 58(e), was not served until February 24, 2021. Appellant filed the notice of appeal in the district court on March 26, 2021, within 30 days thereafter. Accordingly, the motion to dismiss is denied.

It is so ORDERED.


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Herndon

cc: Attorney General/Carson City
Attorney General/Las Vegas
McAvoyamaya & Revero