

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN TOSH HARTZELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84820

FILED

JUL 19 2022

ELIZABETH A. BROWN
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***

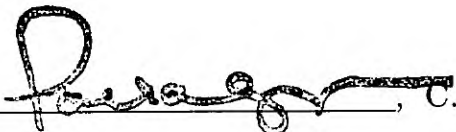
This is a pro se appeal from a judgment of conviction. This court's preliminary review of this appeal reveals a potential jurisdictional defect. Specifically, the district court entered the judgment of conviction on April 7, 2022. Appellant's notice of appeal was due on May 9, 2022. *See* NRAP 4(b), *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 June 2, 2022, after the expiration of the 30-day 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 May 5, 2022. Under NRAP 4(d), if appellant delivered his notice of appeal to a prison official for mailing on or before May 9, 2022, his notice of appeal would be deemed timely filed. *See also Kellogg v. Journal Communications*, 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). 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. 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 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 system designed for legal mail, the attorney general shall inform the court of this fact and provide confirmation of its use.

It is so ORDERED.

 C.J.

cc: Hon. Thomas L. Stockard, District Judge
Shawn Tosh Hartzell
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk

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