

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID ROY ABBOTT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84872

DAVID ROY ABBOTT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84873 ✓  
**FILED**  
JUN 20 2022

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

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

These are pro se appeals from district court orders dismissing appellant's postconviction petitions for writs of habeas corpus.

This court's preliminary review of these appeals reveals potential jurisdictional defects. Specifically, the district court entered the orders dismissing appellant's petitions on April 19, 2022, and the clerk of the district court served notices of entry of orders on April 20, 2022. Appellant's notices of appeal were due on May 23, 2022. See NRS 34.575 (providing that an appeal may be filed from an order denying a petition for a writ of habeas corpus within 30 days after service by the district court of written notice of entry of the order); NRAP 26(a); NRAP 26(c). Appellant's notices of appeal, however, were not filed in the district court until June 10, 2022, 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 notices of appeal on May 18, 2022. Under NRAP 4(d), if appellant delivered his notices of appeal to a prison official for mailing on or before May 23, 2022, his notices of appeal would be deemed timely filed. *See also Kellogg v. Journal Commc’ns*, 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 notices of appeal to a prison official, this court is unable to determine at this time whether his notices of appeal should be deemed timely pursuant to NRAP 4(d). 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 these matters 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 these appeals.

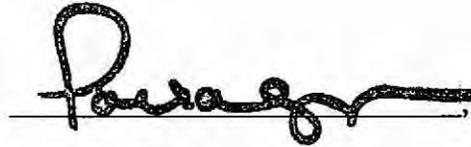
Accordingly, the attorney general shall have 30 days from the date of this order within which to obtain and transmit to the clerk of this court certified copies of the notice of appeal log maintained at the prison indicating the actual date upon which appellant delivered to a prison official his notices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

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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.”

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.

cc: David Roy Abbott  
Attorney General/Carson City  
Washoe County District Attorney