

SUPREME COURT OF NEVADA

David Roy Abbott v. State

Abbott · No. Nos. 84872 and 84873 · Decided August 8, 2022

SUMMARY

The Nevada Supreme Court dismissed two pro se appeals from orders dismissing David Roy Abbott’s postconviction habeas corpus petitions. The court held that the notices of appeal were untimely because the prison mail logs did not show timely delivery to a prison official under NRAP 4(d), leaving the court without jurisdiction.

CASE DETAILS

COURT	Supreme Court of Nevada
JURISDICTION	Nevada
DECIDED	August 8, 2022
DOCKET	Nos. 84872 and 84873
DISPOSITION	dismissed
PROCEDURAL POSTURE	Pro se appeals from district court orders dismissing postconviction petitions for writs of habeas corpus.
STANDARD OF REVIEW	The court reviewed its appellate jurisdiction based on the timeliness of the notices of appeal.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion
PARTIES	David Roy Abbott v. The State of Nevada

TOPICS

- appellate jurisdiction
- appellate procedure
- state post-conviction relief
- habeas corpus

PRACTICE AREAS

- Appellate procedure
- Post-conviction relief
- Criminal procedure

QUESTIONS PRESENTED

- Whether the notices of appeal were timely under NRS 34.575 and NRAP 4(d) based on Abbott's alleged delivery of the notices to prison officials.
- Whether the Supreme Court of Nevada had jurisdiction over the appeals.

HOLDINGS

1. An inmate cannot receive the benefit of NRAP 4(d) where the institution maintains a notice-of-appeal log or comparable legal-mail system but the record does not show that the inmate used that system to timely deliver the notice of appeal.
2. An untimely notice of appeal does not vest jurisdiction in the Supreme Court of Nevada, requiring dismissal of the appeals.

KEY QUOTATIONS

“An untimely notice of appeal fails to vest jurisdiction in this court.” (at 2)

FACTUAL BACKGROUND

The district court entered orders dismissing Abbott's postconviction habeas petitions on April 19, 2022, and notices of entry were served the next day. Although Abbott dated his notices of appeal May 18, 2022, the notices were not filed in the district court until June 10, 2022. The prison notice-of-appeal logs and related declaration contained no entries showing that Abbott delivered the notices to prison officials by the May 23 deadline.

PROCEDURAL HISTORY

The Second Judicial District Court in Washoe County dismissed Abbott's postconviction habeas petitions on April 19, 2022, and notices of entry were served on April 20, 2022. Abbott's notices of appeal were filed in the district court on June 10, 2022. After ordering the attorney general to investigate whether Abbott had timely delivered the notices to prison officials under NRAP 4(d), the Supreme Court of Nevada concluded that the prison logs did not establish timely delivery and dismissed both appeals for lack of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- *Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994)

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