

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)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF NEVADA DAVID ROY ABBOTT, No. 84872 Appellant, FILE vs. AUG 08 2022 THE STATE OF NEVADA, ELIZABETH A. BROiNN Respondent. CLERK OF §UPRENIE COURT BY z DEPUTY CLERN DAVID ROY ABBOTT, / No. 84873 Appellant, vs. THE STATE OF NEVADA, Respondent • ORDER DISMISSING APPEALS These are pro se appeals from district court orders dismissing appellant's postconviction petitions for writs of habeas corpus.

Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge. Preliminary review of these appeals revealed a potential jurisdictional defect. 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 therefore due by May 23, 2022.

See NRS 34.575. Appellant's notices of appeal, however, were not filed in the district court until June 10, 2022, well beyond the relevant appeal period. Appellant dated his notices of appeal May 18, 2022. Pursuant to NRAP 4(d), if appellant delivered his notices of appeal to a prison official for mailing on or before May 23, 2022, and utilized the notice of appeal log or other system designed for legal mail, his notices of appeal would be deemed timely filed.

Because this court could not SUPREME COURT OF NEVADA (0) 1947A 00191. determine from the documents before it whether the notice of appeal should be deemed timely, this court ordered the attorney general 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.

The attorney general has responded and provides this court with a copy of the applicable notice of appeal log from April and May of 2022 and a declaration from the law librarian who maintains the notice of appeal log at the prison where appellant is housed and who communicated with the prison mail room for the same months. These documents evidence that there are no entries for appellant in the prison mail logs that would support a finding that the notices of appeal were timely delivered to a prison official or timely mailed from the prison.

See NRAP 4(d) (providing that when the institution has a notice-of-appeal log or another system designed for legal mail, the inmate must use that log or system to receive the benefit of the rule). Accordingly, the June 10, 2022, date controls. "[Nil 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 has not demonstrated that he timely submitted his notices of appeal. This court lacks jurisdiction and therefore ORDERS these appeals DISMISSED. J Silver o Cadish SUPREME COURT OF NEVADA (0) 1947A 2;7: cc: Hon. Kathleen M. Drakulich, District Judge David Roy Abbott Attorney General/Carson City Washoe County District Attorney Washoe District Court Clerk SUPREME COURT OF NEVADA (0) 1947A 3