

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.

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 SUPREME COURT BY z DEPUTY CLERK 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. "[N]il 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) 1 947A 3