

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Appellant,  
vs.  
WAYNE MICHAEL SMITH,  
Respondent.

No. 42998

FILED

MAY 10 2004

ORDER DISMISSING APPEAL

JANEITE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court granting respondent's pre-trial challenge to the constitutional validity of a prior conviction for driving under the influence. The district court's order further remanded respondent's case to the justice's court for sentencing for misdemeanor second-offense driving under the influence.


Our preliminary review of this appeal revealed a potential jurisdictional defect. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.<sup>1</sup> No statute or court rule provides for an appeal from an order granting a challenge to the validity of a prior conviction. Accordingly, on April 1, 2004, this court ordered the State to show cause why this appeal should not be dismissed for lack of jurisdiction. The State has failed to respond to the order to show cause, and we conclude that the State has abandoned this appeal.


---

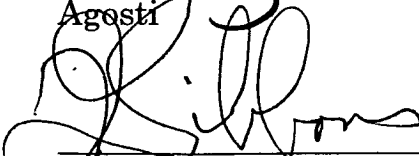
<sup>1</sup>Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

In any event, we conclude that we lack jurisdiction to entertain this appeal, and we

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. William A. Maddox, District Judge  
Attorney General Brian Sandoval/Carson City  
Carson City District Attorney  
Robert B. Walker  
Carson City Clerk