

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES D. KATASSE A/K/A MARK
REID,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43238

FILED

AUG 30 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL IN PART AND AFFIRMING IN PART

This is a proper person appeal from an order of the district court denying a motion for transcripts, motion for the appointment of counsel and an order denying a motion for a new trial. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On July 20, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of possession of a credit card without the cardholder's consent. The district court sentenced appellant to serve a term of twelve to forty-eight months in the Nevada State Prison. No direct appeal was taken.

On June 20, 2003, appellant filed a proper person petition for a writ of habeas corpus. The State opposed the petition. On October 14, 2003, the district court denied the petition. This court dismissed appellant's subsequent appeal because it was untimely filed.¹

¹Katasse v. State, Docket No. 42830 (Order Dismissing Appeal, May 6, 2004).

On January 26, 2004, appellant filed a proper person motion for a new trial in the district court. The State opposed the motion. On February 18, 2004, the district court denied appellant's motion. On March 10, 2004, appellant filed a document labeled, "appeal of order denying motion for new trial." On March 10, 2004, appellant also filed a proper person motion for the appointment of counsel and motion for transcripts. On April 12, 2004, the district court denied the proper person motion for the appointment of counsel and motion for transcripts. The district court further concluded that it did not have jurisdiction to hear an appeal from its order denying the motion for a new trial. This appeal followed.

We conclude that the clerk of the district court mistakenly failed to treat appellant's "appeal of order denying motion for new trial" as a notice of appeal; the document was labeled "appeal," designated an appealable order, and was timely from that order.² Thus, the March 10, 2004 document labeled "appeal" should have been transmitted to this court as a notice of appeal.³ Because the March 10, 2004 "appeal" was timely, and in the interests of judicial economy, we conclude that the instant appeal encompasses the denial of the motion for a new trial.

In his motion for a new trial, appellant claimed that he did not receive a fair hearing on a motion to withdraw a guilty plea, the presentence report contained false information, the public defender lied about post-conviction relief, and the district court knew he received poor

²See NRAP 3(a), (c); NRAP 4(b)(1).

³See NRAP 3(e).

representation yet did nothing. Appellant sought a reduction of his crime or a new trial.

Having reviewed the record on appeal, we conclude that the district court did not err in denying appellant's motion for a new trial. To the extent that appellant's motion can be construed to be a motion for a new trial, appellant's motion was improper because appellant was convicted pursuant to a guilty plea.⁴ To the extent that appellant's motion can be construed to be a motion to withdraw a guilty plea, we conclude that appellant failed to carry his burden of demonstrating that his guilty plea was involuntarily or unknowingly entered.⁵ Thus, we conclude that the district court did not err in denying appellant's motion, and we affirm the order of the district court.

Next, we conclude that we lack jurisdiction to consider appellant's appeal from the denial of his motion for the appointment of counsel and motion for transcripts.⁶ Thus, we dismiss this portion of the appeal.


⁴See Hargrove v. State, 100 Nev. 498, 501-02, 686 P.2d 222, 224-25 (1984) (recognizing that a defendant whose guilt is predicated upon a guilty plea may challenge the validity of the guilty plea by way of a motion to withdraw a guilty plea and that a defendant whose guilt is predicated upon a verdict may challenge the validity of the verdict by way of a motion for a new trial).


⁵See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986) (holding that it is the defendant's burden to prove that his guilty plea was involuntarily or unknowingly entered).


⁶See Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990) (holding that where no statute or court rule provided for an appeal, no right to appeal exists).

Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER this appeal DISMISSED in part and AFFIRMED in part.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Joseph T. Bonaventure, District Judge
James D. Katasse
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).