

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES ROBERT PURPURA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43713

FILED

OCT 07 2004

ORDER DISMISSING APPEAL

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

This is an appeal from an order of the district court denying appellant's motion to dismiss criminal charges. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

Our 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.¹ No statute or court rule provides for an appeal from an order denying a motion to dismiss. Accordingly, on August 27, 2004, this court ordered appellant's counsel to show cause why this appeal should not be dismissed.

On September 20, 2004, counsel filed a response. In the response, counsel does not identify a statute or court rule that allows for an appeal from an order denying a motion to dismiss. Although NRS 177.015(1)(b) provides for an appeal from an order of the district court granting a motion to dismiss, there is no provision for such an appeal from an order denying a motion to dismiss.

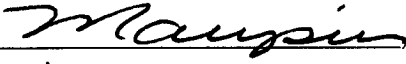
We note that the motion to dismiss was orally denied by the district court prior to sentencing. The judgment of conviction was entered on April 7, 2004. Any claim of error with regard to the denial of the


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

motion to dismiss could have been raised in a timely appeal from the judgment of conviction.² We therefore conclude that the district court's written order of July 9, 2004, in this case is not independently appealable. Accordingly, we lack jurisdiction to entertain this appeal and we

ORDER this appeal DISMISSED.

 _____, J.
Rose

 _____, J.
Maupin

 _____, J.
Douglas

cc: Hon. Andrew J. Puccinelli, District Judge
David D. Loreman
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk

²See NRS 177.045 (“Upon the appeal, any decision of the court in an intermediate order or proceeding, forming a part of the record, may be reviewed.”).