

IN THE SUPREME COURT OF THE STATE OF NEVADA

BYRON ELROY CRUTCHER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43791

FILED

NOV 24 2004

ORDER DISMISSING APPEAL

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

This is an appeal from the district court's denial of appellant's motion to be put to death.¹ Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On September 14, 2004, this court issued an order directing appellant's counsel of record, Marvin L. Longabaugh, to show cause why this appeal should not be dismissed for lack of an appealable determination. Instead of addressing this jurisdictional question as directed by this court, on October 14, 2004, Mr. Longabaugh filed "a notice of withdrawal" of the appeal. Counsel represents in that document that he has:

advised and informed [appellant] of the legal effects and consequences of this voluntary withdrawal of this appeal, including that [appellant] cannot hereafter seek to reinstate this appeal and that any issues that were or could have been brought in this appeal are forever waived. Having been so informed, [appellant] hereby consents to a voluntary dismissal of this appeal.

¹As of the date of this order, it appears that the district court has yet to enter a written order denying appellant's motion to be put to death.


On October 12, 2004, however, appellant submitted to this court a proper person document in which appellant requests this court to resolve the merits of his appeal from the district court's denial of his motion to be put to death.² Thus, under these circumstances, we cannot conclude that appellant presently consents to a voluntary dismissal of this appeal. Accordingly, we deny the motion filed by Mr. Longabaugh on October 14, 2004, to voluntarily dismiss this appeal.

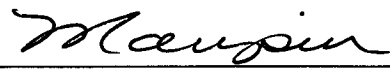
Nonetheless, we conclude that this court lacks jurisdiction to consider this appeal. Regardless of whether the district court has entered a written order denying appellant's motion to be put to death, no statute or rule of court permits an appeal from such a determination. The right to appeal is statutory; where no statute or court rule provides for an appeal,


²Appellant attached to his proper person motion a copy of a letter from Mr. Longabaugh dated September 29, 2004. That letter incorrectly advised appellant that "the Nevada Supreme Court has dismissed your appeal in the above referenced matter" and "has found that there are no statutes or court rules that permit an appeal from an order denying a motion to be put to death." As of September 29, 2004, this court had not yet dismissed the appeal, nor had we resolved the jurisdictional issue. This court had merely directed counsel to show cause why the appeal should not be dismissed. This court assumes that to the extent Mr. Longabaugh may have advised appellant of the consequences of a voluntary dismissal, as counsel has now represented to this court, that advisement must have been made in a separate communication.

no right to appeal exists.⁴ Accordingly, we

ORDER this appeal DISMISSED.⁵


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Nancy M. Saitta, District Judge
Longabaugh Law Offices
Byron E. Crutcher
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁴Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

⁵We grant Mr. Longabaugh's separate motion of October 14, 2004, to withdraw as counsel on record in this appeal. We deny the relief requested in the proper person motion received in this court on October 12, 2004.