

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTOR ALBERTO LOPEZ A/K/A
VICTOR A. LOPEZ-GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44169

FILED

NOV 23 2004

ORDER DISMISSING APPEAL

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

This is a proper person appeal from an order of the district court denying appellant's motion for disclosure of sentence and motion for resolution or dismissal of case. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Our review of this appeal reveals a 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 the afore-mentioned orders. Accordingly, we lack jurisdiction to consider this appeal.

It appears that the afore-mentioned motions relate to appellant's desire to be sentenced in his Nevada case while he is in federal custody. We note that pursuant to NRS 178.388(2)(b) appellant may waive his presence at the sentencing proceedings and agree to be sentenced in this state in his absence. However, a waiver of appellant's presence for sentencing is valid only if the waiver is:

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


(1) Made knowingly, intelligently and voluntarily after consulting with an attorney licensed to practice in this state;

(2) Signed and dated by the defendant and notarized by a notary public or judicial officer; and

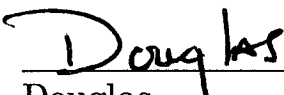
(3) Signed and dated by his attorney after it has been signed by the defendant and notarized.

Because it appears that appellant is not represented by counsel at this time, appellant should move the district court to appoint counsel to assist him with filing a written waiver to be sentenced in absentia, if that is appellant's wish.² Accordingly, we

ORDER this appeal DISMISSED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

²See NRS 178.397 ("Every defendant accused of a gross misdemeanor or felony who is financially unable to obtain counsel is entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance before a magistrate or the court through appeal, unless he waives such appointment.").

cc: Hon. Michelle Leavitt, District Judge
Victor Alberto Lopez
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk