

IN THE SUPREME COURT OF THE STATE OF NEVADA

WALTER JAMES TRIPP A/K/A
ROBERT G. BONE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45239

FILED

SEP 20 2005

ORDER DISMISSING APPEAL

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

This is an appeal from orders of the district court denying appellant's "Motion(s) to Correct Judgment(s) of Conviction, to Correct and/or Set Aside Illegal Judgment of Conviction, to Correct Pre-Sentence Report, to Re-Sentence (If Necessary), and Other Relief" and appellant's "Motion(s) to Amend, Make Additional Findings, Reconsider, and for Other Post-Order Relief." Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On March 16, 2004, appellant filed in the district court "Motion(s) to Correct Judgment(s) of Conviction, to Correct and/or Set Aside Illegal Judgment of Conviction, to Correct Pre-Sentence Report, to Re-Sentence (If Necessary), and Other Relief" ("motion to correct"). On November 29, 2004, after conducting hearings on the motion, the district court entered an amended judgment of conviction. On January 6, 2005, the district court struck the November 29, 2004, amended judgment of conviction and entered a second amended judgment of conviction. On January 21, 2005, the district court entered an order that granted in part and denied in part appellant's motion to correct.

On February 4, 2005, appellant filed in the district court "Motion(s) to Amend, Make Additional Findings, Reconsider, and for

Other Post-Order Relief" ("motion for reconsideration"). On April 14, 2005, the district court entered an order denying the motion for reconsideration. On May 6, 2005, appellant filed a notice of appeal from the orders of January 21, 2005, and April 14, 2005.

It appeared from this court's preliminary review of this appeal that the appeal from the January 21, 2005, order denying appellant's motion to correct was untimely¹ and the appeal from the April 14, 2005, order denying appellant's motion for reconsideration was substantively unappealable.² Accordingly, on July 12, 2005, this court ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. On August 3, 2005, appellant filed his response.

Appellant first argues that his motions were functionally equivalent to a request for a new trial or a motion to withdraw his guilty plea and are therefore appealable. This argument does not address the untimeliness of the appeal from the order of January 21, 2005. Further, the motion for reconsideration strictly argued for reconsideration of the order of January 21, 2005, and cannot be construed as a motion for new trial or a motion to withdraw guilty plea. Accordingly, this argument fails to demonstrate that this court has jurisdiction to consider either order on appeal.

Second, appellant argues that the time for appealing from the second amended judgment of conviction, filed on January 6, 2005, did not

¹See NRAP 4(b)(1) (a notice of appeal must be filed within 30 days after entry of the judgment or order appealed from).

²See *Phelps v. State*, 111 Nev. 1021, 900 P.2d 344 (1995) (holding that no court rule or statute provides for an appeal from a motion for reconsideration).

start to run until after January 21, 2005, when the order authorizing and directing the filing of the second amended judgment of conviction was filed. This argument fails to address the appealability of the orders designated on appeal. Appellant did not designate the January 6, 2005, judgment of conviction in the notice of appeal.³ We note, however, that appellant indicated in the docketing statement that he wished to challenge the January 6, 2005, judgment of conviction. Even if this court were to construe this appeal to include an appeal from the second amended judgment of conviction of January 6, 2005, appellant's notice of appeal would have been untimely.⁴

Third, appellant argues that the filing of the second amended judgment of conviction should restart the time period for filing appeals or filing for post-conviction relief. In Sullivan v. State, this court held that "the entry of an amended judgment may in and of itself provide the good cause required . . . to present appropriate post-conviction claims relating to the amendment at issue."⁵ Although the entry of the second amended judgment of conviction may have provided good cause for appellant to file a petition seeking post-conviction relief,⁶ appellant failed to file a timely notice of appeal from the second amended judgment of conviction.

³See NRAP 3(c) (the notice of appeal shall designate the judgment or order being appealed).

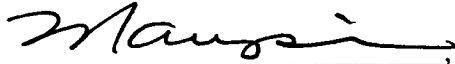
⁴See NRAP 4(b)(1).

⁵120 Nev. 537, 541, 96 P.3d 761, 764 (2004).


⁶We express no opinion as to whether the entry of the January 6, 2005, second amended judgment of conviction would provide good cause for any claims appellant might hereafter assert in a petition seeking post-conviction relief.

For the reasons set forth above, we conclude that this court lacks jurisdiction to entertain this appeal, and we,

ORDER this appeal DISMISSED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Michelle Leavitt, District Judge
Alan R. Johns
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk