

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY SCOTT HERMANSKI A/K/A  
ROBERT JAMES DAY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47963

**FILED**

**OCT 03 2006**

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

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying a second amended judgment of conviction and an order denying a motion for stay and appointment of counsel. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

Appellant was prosecuted, sentenced, and convicted under the name Robert James Day. However, appellant's real name is Gregory Scott Hermanski. On March 15, 2001, a jury convicted appellant of robbery with the use of a deadly weapon and burglary while in possession of a deadly weapon. The district court entered a judgment of conviction on May 18, 2001. Based on the prior convictions of the true Robert James Day, the district court adjudicated appellant a habitual criminal and sentenced him to a maximum of 300 months and a minimum of 120 months in the Nevada State Prison.

On June 8, 2001, appellant filed a timely notice of appeal, and on November 15, 2001, this court affirmed the judgment of conviction in

part and remanded in part. Although we affirmed the conviction, we remanded for corrections to the sentence and judgment of conviction.<sup>1</sup>

Subsequent to our order of remand, it was discovered that appellant was not Robert James Day, but rather Gregory Scott Hermanski. The district court vacated appellant's sentence and conducted another sentencing hearing. On December 26, 2002, the State filed a notice of intent to seek punishment of appellant as a habitual felon pursuant to NRS 207.012, based on appellant's prior convictions. On April 30, 2003, the district court adjudicated appellant a habitual felon and sentenced him to serve two concurrent life sentences in the Nevada State Prison without the possibility of parole. The amended judgment of conviction was entered on May 16, 2003. This court affirmed the amended judgment of conviction on appeal.<sup>2</sup> The remittitur issued on July 27, 2004.

Appellant next pursued a post-conviction petition for a writ of habeas corpus challenging the validity of his judgment of conviction and sentence. The district court denied the petition. On appeal, this court affirmed the decision of the district court to deny the petition, but remanded the matter for the limited purpose of correcting a clerical error in the judgment of conviction—the amended judgment of conviction

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<sup>1</sup>Day v. State, Docket No. 38028 (Order of Affirmance in Part and Remand in Part, November 15, 2001).

<sup>2</sup>Hermanski v. State, Docket No. 41405 (Order of Affirmance, July 1, 2004).

mistakenly stated that appellant was adjudicated a habitual criminal pursuant to NRS 207.010 for the burglary count, when in fact a review of the record revealed that he was adjudicated a habitual felon pursuant to NRS 207.012.<sup>3</sup> On July 27, 2006, the district court entered a second amended judgment of conviction correcting the clerical error in the judgment of conviction.

Appellant has filed the instant appeal from the second amended judgment of conviction and from a subsequent order of the district court denying a motion for stay and appointment of counsel. This court's review of this appeal reveals defects. First, there is no basis for an appeal from the second amended judgment of conviction because the district court fully complied with this court's order; the district court only corrected the clerical error identified by this court in the post-conviction appeal proceedings.<sup>4</sup>

Further, this appeal contains a jurisdictional defect. The right to appeal is statutory; where no statute or court rule provides for an

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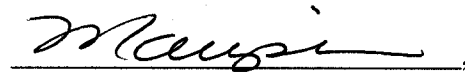
<sup>3</sup>Hermanski v. State, Docket No. 47011 (Order of Affirmance and Limited Remand to Correct Judgment of Conviction, July 13, 2006).

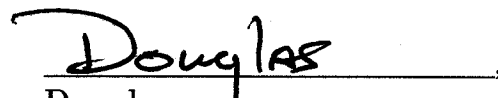
<sup>4</sup>The issue of whether there was a clerical error was decided in the post-conviction appeal. The doctrine of the law of the case prevents revisitation of this issue. See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

appeal, no right to appeal exists.<sup>5</sup> No statute or court rule provides for an appeal from an order of the district court denying a motion for stay and appointment of counsel. Accordingly, we

ORDER this appeal DISMISSED.

  
Gibbons, J.

  
Maupin, J.

  
Douglas, J.

cc: Hon. Jennifer Togliatti, District Judge  
Gregory Scott Hermanski  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>5</sup>Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).