

IN THE SUPREME COURT OF THE STATE OF NEVADA

CURTIS L. DOWNING,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48175

FILED

FEB 07 2007

ORDER DISMISSING APPEAL

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

This is a proper person appeal from a purported final decision of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.


On October 2, 2006, appellant filed a proper person notice of appeal in the district court. In his notice of appeal, appellant indicated that he was appealing from the August 24, 2006 decision denying his "petition for a writ of habeas corpus (post-conviction) successive petition and separate petition filed same date for a separate matter." Because a written order had not been transmitted to this court, on November 3, 2006, this court directed the district court to enter a written order denying the petition and the clerk of the district court to transmit the written order or inform this court that the district court was reconsidering its decision. This court further ordered the transmission of the record on appeal. On January 19, 2007, the clerk of the district court filed a letter explaining that neither the written order nor the record on appeal had been transmitted because the petition had been taken off calendar on August 24, 2006, and the matter had not been decided.

Having reviewed the documents before this court, we conclude that the appeal is premature in the instant case. The August 24, 2006 minutes state:

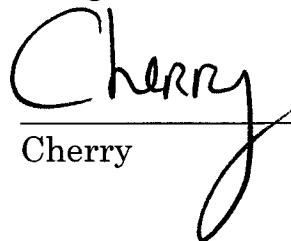
[State] advised deft. filed two petitions one of which is being handled by the State but deft. didn't put the correct case number on the second petition so the County Clerk didn't file it; therefore, [State] believes deft. needs to refile it. COURT ORDERED, matter OFF CALENDAR; the Court's law clerk is directed to notify deft. of the status of the case.

It thus appears that a final decision had not been reached on the petitions on August 24, 2006. It appears that the prosecution of the petitions is waiting upon appellant's re-filing of one of his petitions with a correct number. Appellant may appeal from a final decision denying his petitions.<sup>1</sup> Accordingly, we rescind our order of November 3, 2006 directing the entry of a written order and transmission of the record on appeal, and we

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

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<sup>1</sup>See NRS 34.575.

cc: Hon. Jackie Glass, District Judge  
Curtis L. Downing  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk