

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH L. MIZZONI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48388

FILED

APR 06 2007

ORDER OF AFFIRMANCE AND
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 dismissing a post-conviction petition for a writ of habeas corpus without prejudice and an appeal from a purported decision denying a second post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

October 20, 2006 Petition

On October 20, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the Fifth Judicial District Court, the county in which he was convicted. On October 20, 2006, the district court dismissed the petition without prejudice noting that the petition was filed in the wrong district court. On November 3, 2006, appellant filed a notice of appeal from that decision, and that notice of appeal was docketed in this court in Docket No. 48388.

In his petition, appellant challenged the conditions of his confinement. This court has "repeatedly held that a petition for [a] writ of habeas corpus may challenge the validity of current confinement, but not

the conditions thereof."¹ Thus, we conclude that the district court reached the proper result in dismissing the petition and affirm the decision.

January 22, 2007 Petition

It appears that on January 22, 2007, appellant filed a second post-conviction petition for a writ of habeas corpus in the district court. On January 26, 2007, the district court ordered the State to file a response to the petition and denied a motion for the appointment of counsel without prejudice. The district court further stated that it was unclear if the petition was filed in the correct county. On February 13, 2007, appellant filed a notice of appeal, which was also docketed in this court in Docket No. 48388.

The district court had not made a decision, oral or written, on appellant's second petition at the time he filed his notice of appeal. Thus, appellant's notice of appeal was premature. Appellant may file a timely appeal from a final, written order denying his petition.² Accordingly, we conclude that we lack jurisdiction to consider this appeal, and we dismiss this portion of the appeal.

Conclusion

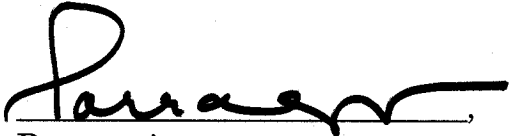
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.³ Accordingly, we

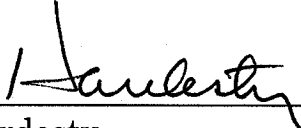
¹Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).


²See NRS 34.575(1).

³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

ORDER the October 20, 2006 judgment of the district court
AFFIRMED and DISMISS the appeal from the purported decision on the
January 26, 2007 petition.


Parraguirre, J.


Hardesty, J.


Saitta, J.

cc: Hon. John P. Davis, District Judge
Joseph L. Mizzoni
Attorney General Catherine Cortez Masto/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk