

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM BRYON LEONARD,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL AND DIRECTOR, NEVADA
DEPARTMENT OF CORRECTIONS,
GLEN WHORTON,
Respondents.

No. 48468

FILED

FEB 14 2007

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

ORDER OF REMAND

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus in a death penalty case. First Judicial District Court, Carson City; Michael R. Griffin, Judge. Appellant William Leonard has moved this court for an order appointing counsel and for a remand. As discussed below, we grant the motion for a remand.

On October 18, 2006, Leonard filed a post-conviction petition for a writ of habeas corpus in the district court. On October 26, 2006, the district court entered an order denying the petition on the ground that it did not contain proof of service on the named respondents. Although Leonard sought reconsideration of that order in the district court, to protect his right to appeal he also filed a timely notice of appeal to this court on November 27, 2006.

Thereafter, on December 12, 2006, the district court entered an order granting the motion for reconsideration. The district court concluded that Leonard had cured the procedurally deficient petition by properly serving the respondents. Further, the district court directed the State to "answer or otherwise respond to the petition and file a return in

accordance with the provisions of NRS 34.360 to 34.830, inclusive." The district court also concluded that counsel should be appointed to represent Leonard in the proceedings below.

Generally, "[a] timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this court."¹ If the district court is inclined to modify a decision from which an appeal has been taken, after jurisdiction has vested in this court, the preferable course of action is for the district court to certify to this court its inclination to modify its decision and to request a remand.²

Nevertheless, it is apparent from our review of the documents before this court that the district court has reconsidered and is inclined to modify its prior decision denying appellant's petition and that the district court has legitimate reasons for doing so. We have concluded that requiring the district court to certify its inclination to this court under these circumstances would only serve to further delay a final resolution of this matter. Accordingly, we have elected to dispense with the requirement that the district court certify to this court its inclination to modify its prior decision, and we remand this matter to the district court for further proceedings. We note that because the district court was technically without jurisdiction to enter its order of December 12, 2006, it

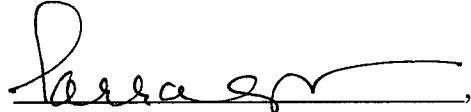
¹Robertson v. State, 109 Nev. 1086, 1089, 863 P.2d 1040, 1042 (1993), overruled on other grounds by Krauss v. State, 116 Nev. 307, 998 P.2d 163 (2000); see also Miller v. Hayes, 95 Nev. 927, 604 P.2d 117 (1979).

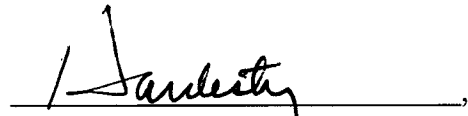
²See generally Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978); Layton v. State, 89 Nev. 252, 510 P.2d 864 (1973).


may wish to re-enter the order to avoid any unnecessary procedural confusion.

In light of the foregoing, we remand this matter to the district court for further proceedings. We deny Leonard's motion for the appointment of counsel as moot.³

It is so ORDERED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: First Judicial District Court Dept. 1, District Judge
William Bryon Leonard
Richard F. Cornell
Attorney General Catherine Cortez Masto/Las Vegas
Carson City Clerk

³This order constitutes our final resolution in this proceeding. Any further proceedings in this court in this matter shall be docketed as a new and separate proceeding.