

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICARDO JOSE LOPEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48583

FILED

FEB 13 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an amended judgment of conviction. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

Appellant Ricardo Jose Lopez was originally convicted, pursuant to a jury verdict, of one count of first-degree murder with use of a deadly weapon and one count of attempted murder with use of a deadly weapon. Attorney Robert Lucherini represented appellant during sentencing. The judgment of conviction was entered on August 18, 2006. No appeal was taken from the judgment of conviction.

Subsequent to the entry of the judgment of conviction, the Clark County Public Defender moved on Lopez' behalf for the filing of an amended judgment of conviction and the appointment of the public defender's office as appellate counsel or, alternatively, for appointment of post-conviction counsel. In the motion, the Clark County Public Defender stated that no notice of appeal was filed with respect to the August 18, 2006, judgment of conviction and that "Mr. Lopez may not appeal his conviction because no notice was timely filed." The Clark County Public Defender proposed that one "remedy" for this situation was for the district court to "sign and file an Amended Judgment of Conviction . . . that corrects spelling errors in the first document." Respondent State of

Nevada opposed the motion. The district court orally granted the motion on November 30, 2006, and an amended judgment of conviction was entered on the same date. The Clark County Public Defender filed a timely notice of appeal from the amended judgment of conviction.

This court's review of this appeal revealed a potential jurisdictional defect. Specifically, the Clark County Public Defender's motion to amend the judgment of conviction was granted and merely corrected the spelling of a single word in the judgment of conviction; the substance of the original judgment of conviction was not modified by the amended judgment of conviction. Because the district court granted the motion, it did not appear that Lopez was an aggrieved party who could appeal the amended judgment.¹ Accordingly, we ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.

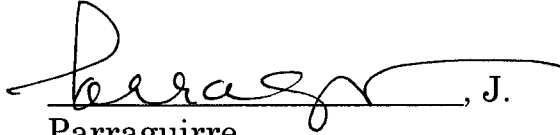
Appellant has filed a response to our order to show cause. In the response, appellant's counsel states that "[t]hrough no fault of his own, [appellant's] case fell through the cracks and his private lawyer did not file a Notice of Appeal." Counsel points out that in granting the motion to amend the judgment of conviction, the district court's stated intent was to ensure that appellant could pursue a direct appeal. Appellant argues that dismissing this appeal would defeat the district court's intent.

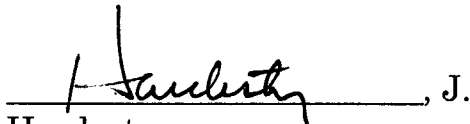
The district court's intention alone cannot confer jurisdiction in this court. The right to appeal is statutory; where no statute or court

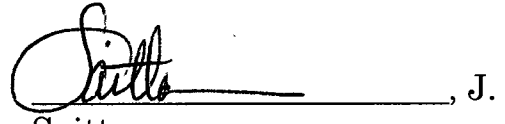
¹See NRS 177.015 (setting forth the orders from which a "party aggrieved in a criminal action may appeal").

rule authorizes an appeal, no right to an appeal exists.² By statute, only the “party aggrieved” in a criminal action has the right to appeal.³ Appellant was not aggrieved by the order granting his motion to correct a spelling error and this court therefore lacks jurisdiction to entertain this appeal. Accordingly, we dismiss this appeal.⁴

It is so ORDERED.


Parraguirre


Hardesty


Saitta

cc: Eighth Judicial District Court Dept. 17, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

²Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990).

³NRS 177.015.

⁴We note that the proper remedy for a criminal defendant who asserts he was denied his right to a direct appeal by the ineffective assistance of counsel is to file a timely post-conviction habeas corpus petition pursuant to Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994). We further note that the one-year period for filing a post-conviction habeas corpus petition begins to run from the issuance of the remittitur from a *timely* direct appeal or the entry of the judgment of conviction if no timely direct appeal is taken. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).