

IN THE SUPREME COURT OF THE STATE OF NEVADA

DELL MARVIN ROBERTS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49685

DELL MARVIN ROBERTS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49742

FILED

AUG 16 2007

WETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEALS

These are appeals, filed in proper person, from an order of the district court partially resolving the claims presented in appellant's post-conviction petitions for writs of habeas corpus in District Court Case Nos. CR02P2249 and CR03P0380. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On May 30, 2007, the district court entered an order in the above-noted matters dismissing all but two of the grounds for relief raised in appellant's petitions. The district court granted a hearing, however, on the two remaining claims and directed counsel for the parties "to meet and set the hearing without undue delay." On June 15, 2007, appellant filed a proper person notice of appeal challenging the district court's order as it pertained to his petition in District Court Case No. CR02P2249. Thereafter, on June 27, 2007, appellant filed a second proper person notice of appeal challenging the order as it applied to District Court Case No. CR03P0380. On July 16, 2007, this court entered an order directing

appellant's counsel in the proceedings below to show cause why these appeals should not be dismissed for lack of a final, appealable order.

In response to that order, counsel for appellant acknowledges that the district court's order of May 30, 2007, did not resolve all of the claims presented in appellant's petitions and that the district court has scheduled a hearing on the remaining unresolved claims for October 5, 2007. Nonetheless, citing to NRAP 4(b)(1),¹ counsel argues that this court should hold the appeals "in abeyance" and treat them "as though they were filed after" the district court's entry at some unspecified future date of an order resolving the remaining claims pending below. Counsel asserts that this would "minimize confusion that may be caused by the issuing of two separate orders in the [district court] and will protect [appellant's] right to appeal from a final order resolving all of the claims presented in his post-conviction petition[s]." For the reasons stated below, we reject counsel's contentions.

NRAP 4(b)(1) must be read in conjunction with other applicable statutory appeal provisions. When it is considered in that context, it is clear that the rule neither contemplates nor authorizes an appeal from the non-final, interlocutory order at issue in this case. See, e.g., NRS 34.575(1) (authorizing a petitioner in a post-conviction habeas proceeding to appeal to this court when the "application for the writ is denied"); NRS 34.830 (setting forth required contents and procedure for

¹NRAP 4(b)(1) provides in pertinent part that "[a] notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof."

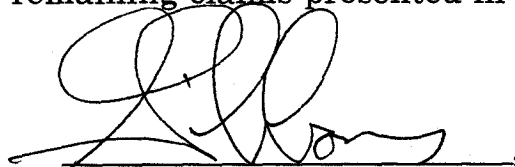
providing notice when an order is entered that "finally disposes of a petition"); see also NRS 177.015 (designating various appealable determinations in a criminal case); NRS 177.045 (on appeal from a final, appealable determination "any decision of the court in an intermediate order or proceedings, forming a part of the record, may be reviewed"). As appellant's counsel concedes, the post-conviction applications for writs of habeas corpus remain pending below, and the district court has yet to enter a final order resolving those applications. Thus, the instant appeals are not statutorily authorized under NRS 34.575(1).

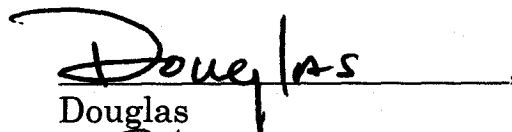
Because the order at issue here is not designated by statute as an appealable determination, NRAP 4(b)(1) cannot be read to permit the appeal. Rather, when read in context with the applicable appeal provisions, the rule merely provides that a notice of appeal that is filed after the district court's announcement of a final, appealable decision, but prior to the entry of the written decision, may be treated as having been filed on the date of entry of the written decision, but only when such a decision is statutorily designated as an appealable determination.

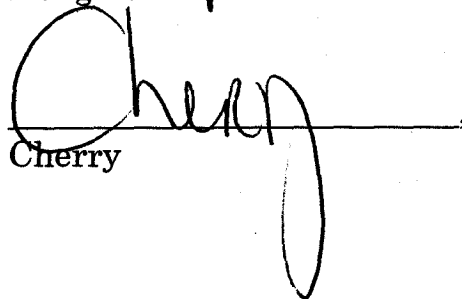
Appellant's remaining contentions are without merit. Our dismissal of these appeals will not prejudice appellant's appeal rights, and the abeyance procedure suggested by counsel is legally and jurisdictionally untenable. Even if it was jurisdictionally feasible for this court to hold these appeals in abeyance pending the district court's final resolution of the petitions below, this court's past experience has proven that such a procedure is impracticable and has served only to impose unnecessary administrative burdens on the limited resources of this court. See Varwig v. State, 104 Nev. 40, 752 P.2d 760 (1988).

In sum, no rule or statute authorizes the instant appeals from the interlocutory order at issue. Therefore, this court lacks jurisdiction to consider the appeals. See Kokkos v. Tsalikis, 91 Nev. 24, 530 P.2d 756 (1975). Accordingly, we

ORDER these appeals DISMISSED without prejudice to appellant's right to file a timely appeal from any forthcoming final order of the district court resolving the remaining claims presented in his pending petitions below.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Jerome Polaha, District Judge
O'Mara Law Firm, P.C.
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk