

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAVIER ANGEL SALDANA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50038

**FILED**

JUN 20 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying appellant Javier Saldana's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

On January 12, 2005, Saldana filed a proper person post-conviction petition for a writ of habeas corpus in the district court. In his petition, Saldana claimed that he was improperly denied his right to a direct appeal due to ineffective assistance of counsel.<sup>1</sup> The district court appointed Karla Butko to represent Saldana and counsel filed a supplement to the petition. In the supplemental petition, counsel raised, among other things, the same appeal deprivation claim. The State filed an opposition and motion to dismiss Saldana's petition. Several months later, the district court granted Butko's motion to withdraw as counsel of record and appointed Mary Lou Wilson to represent Saldana. Wilson filed several additional documents and an amended supplemental petition in

<sup>1</sup>See generally Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

support of Saldana's initial pleadings. The district court conducted two evidentiary hearings and, on August 3, 2007, entered an order denying Saldana's petition.

From our review of the record on appeal, it appeared that the district court's decision was not a final appealable determination. Specifically, the district court's order did not address Saldana's claim that he was improperly denied his right to a direct appeal, and there is no indication in the record that he waived this claim. Thus, because there was an issue pending and unresolved in the district court, it appeared that this court lacked jurisdiction to consider this appeal.<sup>2</sup> Accordingly, on May 2, 2008, this court ordered appellant's counsel, Mary Lou Wilson, to show cause why this appeal should not be dismissed for lack of jurisdiction.

On May 13, 2008, Wilson filed a response to this court's order to show cause. In her response, counsel states that "it is clear that the Lozada issue was not decided" by the district court and "concedes that this Court does not have jurisdiction" over this appeal.<sup>3</sup> In its reply to appellant's response, filed on May 19, 2008, the State agrees that this appeal should be dismissed due to a lack of jurisdiction. Therefore, we conclude that the district court's order denying appellant's habeas petition

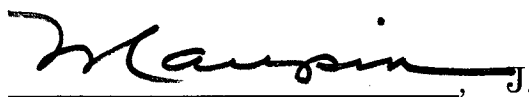
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<sup>2</sup>See Franklin v. District Court, 85 Nev. 401, 455 P.2d 919 (1969) (holding that this court is reluctant to engage in piecemeal review of criminal proceedings, except in narrowly defined circumstances, because of the disruptive effect on the orderly processing of the case).

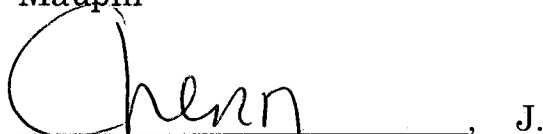
<sup>3</sup>Counsel for appellant further states that she "will file a Motion to Consider the Lozada issue relating back to the original petition."

was not a final appealable determination. Accordingly, this court lacks jurisdiction to consider this appeal, and we

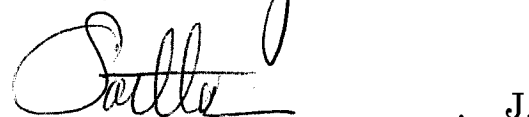
ORDER this appeal DISMISSED.

 J.

Maupin

 J.

Cherry

 J.

Saitta

cc: Hon. Robert H. Perry, District Judge  
Mary Lou Wilson  
Javier Angel Saldana  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk