

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSCAR PEREZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50878

**FILED**

MAR 28 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court denying appellant's pretrial petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Our preliminary review of this appeal revealed a potential jurisdictional defect. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.<sup>1</sup> No statute or court rule provides for an appeal from the denial of a pretrial habeas petition. Accordingly, on January 28, 2008, this court ordered appellant's counsel Kevin Speed to show cause why this appeal should not be dismissed.

On February 22, 2008, Speed filed a response to this court's order to show cause. In the response, Speed first details the procedural

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<sup>1</sup>Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990).

history of this case. Specifically, Speed notes that appellant was sixteen years old at the time of the charged crimes and his case was transferred to justice court without an adult certification proceeding pursuant to NRS 62A.030 and NRS 62B.330(3)(c).<sup>2</sup> Appellant did not file an appeal challenging the adult certification order, but instead filed a motion to transfer his case back to juvenile court. In the motion to transfer, appellant argued that he was entitled to an adult certification hearing because the BB gun allegedly used in the robberies is not a firearm, pursuant to NRS 62B.330(3)(c), as a matter of law. The district court denied appellant's motion to transfer and a preliminary hearing was conducted. After appellant was bound over on two counts of robbery with the use of a deadly weapon, appellant filed a pretrial petition for a writ of habeas corpus. In the writ petition, appellant again argued that he was entitled to an adult certification hearing because the State presented no evidence that he used a "firearm" pursuant to NRS 62B.330(3)(c). The district court denied the pretrial writ petition, and appellant filed this timely appeal.

In the response to the order to show cause, Speed argues that this court should consider the merits of this appeal because the juvenile

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<sup>2</sup>NRS 62B.330(3)(c) provides for adult certification without a hearing if the charged offense involved "the use or threatened use of a firearm," the defendant was at least 16 years of age, and had previously been adjudicated delinquent for a felony offense.

court erred in certifying him as an adult without a proper hearing pursuant to NRS 62B.390. In the alternative, Speed argues that this court should treat this appeal as a petition for a writ of mandamus. Speed alleges that a writ should issue because he has no adequate remedy at law. Specifically, Speed argues that “there would be no possible way to compensate him for a single day of his childhood lost in an adult prison facility.”

We conclude that we lack jurisdiction to consider this appeal. The order denying appellant’s pretrial petition is an intermediate order, which is reviewable on direct appeal from the final judgment of conviction.<sup>3</sup> We note that, although the original order certifying appellant as an adult was a final, appealable determination, appellant failed to avail himself of the right to appeal that order.<sup>4</sup> And we conclude that appellant will have an adequate remedy at law by way of an appeal from any judgment of conviction entered following his trial in the district court.<sup>5</sup> If counsel wishes to file a writ petition, he may certainly do so, but we decline to construe his notice of appeal as a petition for a writ of mandamus.

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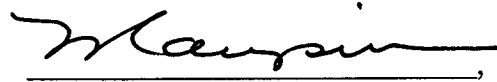
<sup>3</sup>See NRS 177.045.

<sup>4</sup>See Castillo, 106 Nev. at 352, 792 P.2d at 1134 (“the order of [adult] certification is properly appealable as a final judgment in a civil matter”).

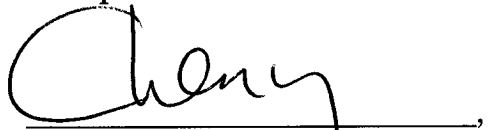
<sup>5</sup>See NRS 177.045.

Having reviewed the record and concluded that the we lack jurisdiction over this appeal, we

ORDER this appeal DISMISSED.

 J.

Maupin

 J.

Cherry

 J.

Saitta

cc: Hon. Jackie Glass, 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  
Oscar Perez