

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEROME MAURICE BOTIZ A/K/A
JEREME MAURICE BOTIZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51109

FILED

OCT 06 2008

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting in part and denying in part a post conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Our review of the record revealed a potential jurisdictional defect. Specifically, it appeared that the district court's decision entered January 14, 2008, was not a final appealable determination because the district court's order granted appellant's appeal deprivation claim.¹ It appeared that appellant was proceeding with the Lozada² remedy, and any direct appeal claims appellant may have raised pursuant to the Lozada remedy have not been resolved. Because the order did not appear

¹See NRS 177.015(3) ("The defendant only may appeal from a final judgment . . . in a criminal case.") (emphasis added).

²Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

to be a final order and because this court prefers not to proceed in a piecemeal fashion,³ we directed appellant's counsel to show cause why this appeal should not be dismissed for lack of jurisdiction.

In response to the order to show cause, appellant's counsel agrees that this appeal should be dismissed to avoid piecemeal litigation. However, appellant's counsel is concerned that dismissal of this appeal may procedurally default appellant from raising a conflict of counsel issue because the issue was resolved in the January 14, 2008, order. We remind the parties that the purpose of the Lozada remedy is to allow a defendant who was denied a direct appeal "an opportunity to raise in a petition for a writ of habeas corpus any issues which he could have raised on direct appeal."⁴ Thus, in his Lozada petition, appellant may raise any claim that was appropriate for direct appeal. If the district court denies appellant relief, appellant may appeal from the denial of any claim that was raised in either appellant's post conviction petition for a writ of habeas corpus or appellant's Lozada petition.⁵

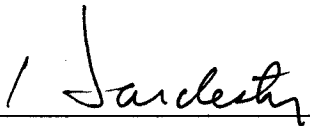
³See Franklin v. District Court, 85 Nev. 401, 404, 455 P.2d 919, 921 (1969) (holding that this court is reluctant to engage in piecemeal review of criminal proceedings, except in narrowly defined circumstances, because of the disruptive effect on the orderly processing of the case).

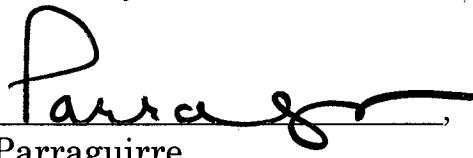
⁴Lozada, 110 Nev. at 359, 871 P.2d at 950.

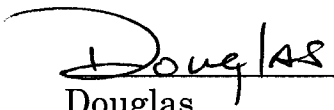
⁵Id.

Having reviewed the documents filed in this court and determined that this appeal is premature, we conclude that we lack jurisdiction to consider this appeal and we

ORDER this appeal DISMISSED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Patricia Erickson
Jerome Maurice Botiz
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk