

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN PITTS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51588

FILED

JUL 15 2008

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

ORDER DISMISSING APPEAL

On May 2, 2008, appellant filed a proper person notice of appeal in which he purported to appeal from the judgment of conviction entered February 13, 2007. The notice of appeal further states that “[t]his is a Lozada appeal filed pursuant to the Court’s Order entered on the 9th day of April, 2008.” Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

Our initial review of this appeal revealed potential jurisdictional defects. To the extent that appellant is attempting to appeal from the judgment of conviction entered on February 13, 2007, the notice of appeal was untimely because it was filed well after the 30-day appeal period prescribed by NRAP 4(b). “[A]n untimely notice of appeal fails to vest jurisdiction in this court.”¹ To the extent that appellant is attempting to pursue his Lozada remedy in this court, appellant may not do so. Under the Lozada remedy, a defendant who has been deprived of a direct appeal may, with the assistance of counsel, file a petition for a writ of


¹See Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994).

habeas corpus in the district court raising any issues which he could have raised on direct appeal.² If the district court denies the relief sought in the Lozada petition, the defendant may then appeal the denial of relief to this court.³

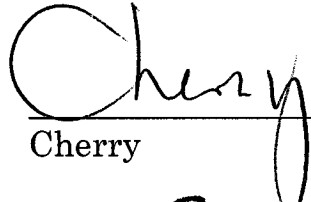
Because it appeared that an appeal from the judgment of conviction entered February 13, 2007, is untimely, and because it appeared that appellant is improperly attempting to pursue his Lozada remedy in this court, this court ordered appellant's counsel to show cause why this appeal should not be dismissed for lack of jurisdiction. In response, counsel states that appellant's Lozada remedies have not been addressed in the district court and this appeal is not properly before this court.

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

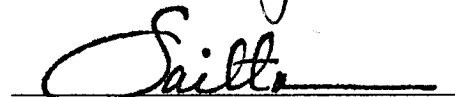
ORDER this appeal DISMISSED.


_____ J.

Maupin


_____ J.

Cherry


_____ J.

Saitta

²Id. at 359, 871 P.2d at 950.

³Id.

cc: Hon. Stewart L. Bell, District Judge
Keith C. Brower
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk
Kevin Pitts