

IN THE SUPREME COURT OF THE STATE OF NEVADA

AMID REZA GHANEI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52052

**FILED**

NOV 25 2008

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Our initial review of this appeal revealed a potential jurisdictional defect. Specifically, it appeared that the appeal was premature because it appeared that the district court had granted appellant's appeal deprivation claim, appellant's counsel, Robert M. Draskovich, had not yet filed a petition pursuant to Lozada v. State<sup>1</sup> raising direct appeal claims, and the district court had not entered a written order resolving appellant's petition. Accordingly, on August 21, 2008, we ordered Mr. Draskovich to inform this court of the status of appellant's petition below.

In response, Mr. Draskovich informs this court that the district court granted appellant's appeal deprivation claim. Because appellant's claims dealt with the withdrawal of his guilty plea, Mr.

---

<sup>1</sup>110 Nev. 349, 871 P.2d 944 (1994).

Draskovich filed a motion to withdraw the guilty plea, rather than a Lozada petition. Mr. Draskovich further informs this court that although the district court has not issued a ruling on appellant's petition, the issues appear to have been resolved because the issues raised and resolved in the motion to withdraw the guilty plea were the exact same issues that were raised in the petition. Finally, Mr. Draskovich asserts that "because the issues underlying the necessity for an appeal were re-examined from the pre-conviction standpoint, [he] did not need to file a Lozada petition."

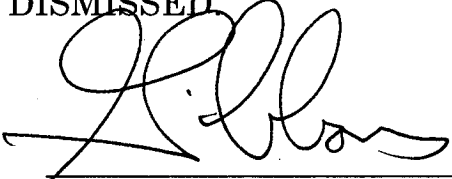
Having reviewed the documents filed in this appeal, we conclude that this appeal is premature. The district court has not entered a written order finally resolving all claims raised in appellant's petition, and the order resolving the motion to withdraw the guilty plea is not sufficient to address the claims raised in the petition. Additionally, appellant's petition remains pending before the district court because the district court found that appellant had been deprived of a direct appeal and no Lozada petition has been filed. The motion to withdraw a guilty plea cannot substitute for the Lozada remedy because such a motion may not be used to challenge the validity of a guilty plea.<sup>2</sup> Thus, before the district court can finally resolve appellant's petition, appellant, with the assistance of counsel, must be permitted an opportunity to raise all claims

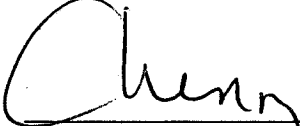
---


<sup>2</sup>Franklin v. State, 110 Nev. 750, 751-52, 877 P.2d 1058, 1059 (1994) overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999); see also Hart v. State, 116 Nev. 558, 562, 1 P.3d 969, 971 (2000) (holding that a motion to withdraw a guilty plea is incident to the proceedings in the trial court).

appropriate for direct appeal.<sup>3</sup> Accordingly, we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED

  
\_\_\_\_\_, C. J.  
Gibbons

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Kenneth C. Cory, District Judge  
Draskovich & Oronoz, P.C.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk  
Amid Ghanei

---

<sup>3</sup>Lozada, 110 Nev. at 359, 871 P.2d at 950; see also Franklin, 110 Nev. at 752, 877 P.2d at 1059 (providing a noninclusive list of the types of direct appeal claims that may be raised when the conviction was entered pursuant to a guilty plea).