

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC DALE HULL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52362

FILED

NOV 24 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY Tracie K. Lindeman
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a motion to set aside a dishonorable discharge from probation. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

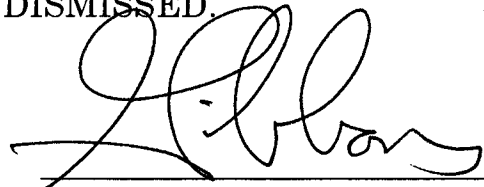
Our initial review of this appeal revealed a potential jurisdictional defect. Specifically, it appeared that the order was not substantively appealable. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.¹ No statute or court rule provides for an appeal from an order denying a motion to set aside a dishonorable discharge from probation. Accordingly, on September 17, 2008, we directed appellant's counsel to show cause why this appeal should not be dismissed for lack of jurisdiction.

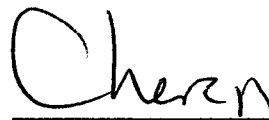
In response, appellant's counsel argues that the motion filed below was "essentially, a motion to correct an illegal sentence," and the order denying the motion is appealable as an order denying a motion to correct an illegal sentence. We disagree.


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

A motion to correct an illegal sentence challenges the facial validity of the sentence imposed.² Here, however, it appears that the motion filed by appellant did not challenge the facial validity of the sentence imposed. Rather, the motion sought to set aside a dishonorable discharge from probation. Because the motion to set aside the dishonorable discharge from probation did not challenge the facial validity of the sentence imposed, we conclude that the motion is not appealable as a motion to correct an illegal sentence. Further, no statute or court rule provides for an appeal from an order denying a motion to set aside a dishonorable discharge from probation. Accordingly, we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.


_____, C. J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

²See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

cc: Hon. Jennifer Togliatti, 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
Eric Dale Hull