

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTOR GONCHAROFF,  
Appellant,  
vs.  
WARDEN, SHERYL FOSTER,  
Respondent.

No. 53005

**FILED**

JAN 15 2009

TRACIE N. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DISMISSING APPEAL

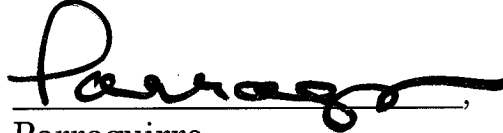
This is a proper person appeal from an order of the district court determining that an opening brief was a fugitive pleading and that no action was required. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

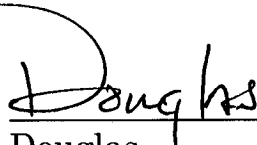
On May 1, 2008, appellant filed a proper person opening brief in the district court. On December 15, 2008, the district court entered an order determining that the opening brief was a fugitive pleading as there was no pending litigation and concluding that no action was required on the pleading.

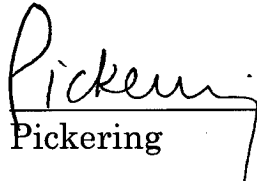
Our review of this appeal reveals a jurisdictional defect. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). No statute or court rule provides for an appeal from an order rejecting a fugitive pleading. Notably, a challenge to the validity of the judgment of conviction and sentence must be filed in a post-

conviction petition for a writ of habeas corpus filed in the district court in the first instance.<sup>1</sup> NRS 34.724(2)(b); NRS 34.738. Accordingly, we

ORDER this appeal DISMISSED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Hon. Brent T. Adams, District Judge  
Victor Goncharoff  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>1</sup>We express no opinion as to whether petitioner could satisfy the procedural requirements of NRS chapter 34.