

IN THE SUPREME COURT OF THE STATE OF NEVADA

PEDRO RAFAEL DUARTE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53087

FILED

JAN 30 2009

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

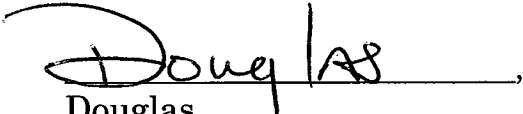
ORDER DISMISSING APPEAL

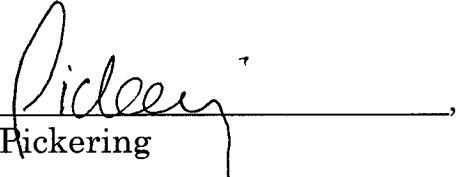
This is a proper person appeal from an order of the district court denying a motion for DNA testing. Eighth Judicial District Court, Clark County; James A. Brennan, Judge.

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). The motion was filed during the pendency of proceedings on a post-conviction petition for a writ of habeas corpus. No statute or court rule provides for an independent appeal from an order denying a motion for DNA testing. See NRS 177.015; NRS 177.045. Accordingly, we

ORDER this appeal DISMISSED.

 J.
Parraguirre

 J.
Douglas

 J.
Rickering

cc: Chief Judge, Eighth Judicial District
Hon. James A. Brennan, Senior Judge
Pedro Rafael Duarte
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk