

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO MERCADO-LEAL,

No. 34865

Appellant,

FILED

vs.

OCT 21 1999

THE STATE OF NEVADA,

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
CHIEF DEPUTY CLERK

Respondent.

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court granting in part appellant's post-conviction petition for a writ of habeas corpus, and vacating the restitution portion of appellant's sentence.

On December 10, 1996, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. In the petition, appellant contended that his plea was involuntary and that his trial counsel was ineffective because he was not advised about the restitution requirement or the parole consequences of his plea, prior to pleading guilty.

On appeal, this court remanded the matter to the district court to conduct an evidentiary hearing on the issue of whether appellant was advised about the restitution requirement.¹ This court rejected appellant's other claim regarding the parole consequences of the plea. *Leal v. State*, Docket No. 30532 (Order of Remand, May 27, 1999).


On remand, the district court conducted an evidentiary hearing and determined that appellant was not advised about the


¹As part of the sentence, the district court ordered appellant to pay restitution to the victim in the amount of \$9,077.90.


restitution requirement prior to entry of his guilty plea. Thus, the district court entered an order granting appellant's habeas corpus petition in part, and vacating the restitution portion of appellant's sentence. Appellant filed the instant proper person notice of appeal from the district court's order.

Our review of this appeal reveals a jurisdictional defect. Appellant cannot appeal from an order granting his habeas corpus petition. See NRS 34.575 (providing that a petitioner may appeal from the denial of a writ of habeas corpus). Further, because the district court granted appellant the relief he requested, he is not an aggrieved party. See generally NRS 177.015 (setting forth the orders from which a "party aggrieved in a criminal action may appeal"); see also *Beury v. State*, 107 Nev. 363, 812 P.2d 774 (1991). Accordingly, we lack jurisdiction to consider this appeal, and we

ORDER this appeal dismissed.


Maupin J.


Shearing J.


Becker J.

cc: Hon. Jerome M. Polaha, District Judge
Attorney General
Washoe County District Attorney
Francisco Mercado-Leal
Washoe County Clerk