

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN RODNEY ORTH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53769

FILED

MAR 10 2010

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a “motion to set aside verdict/motion for new trial and request for hearing,” a “motion to dismiss charges (post-trial) or in the alternative motion for new trial,” and a “request to have a hearing calendared for defendant’s pending motion for new trial.”¹ Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

Appellant’s motions, filed on January 26, 2007, and April 26, 2007, were untimely because they were filed more than seven days after the verdict was entered on January 17, 2007. See NRS 175.381(2) and NRS 176.515(4). Therefore, to the extent the motions did not contain claims of newly discovered evidence, the district court did not err in denying the motions as untimely filed.²

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²Further, we conclude that the district court did not abuse its discretion in denying appellant’s “request to have hearing calendared for defendant’s pending motion for new trial.”

It appears that appellant may have raised one ground of newly discovered evidence in his motion to set aside verdict. See NRS 176.515(1),(3). Specifically, appellant claimed that the State withheld a tape recorded interview with a witness in which she claimed that she did not drive an acquaintance of appellant home from the victim's house after the robbery contrary to the acquaintance's testimony. Appellant claimed that this evidence could have been used to impeach the acquaintance but he failed to demonstrate that the evidence was material or that the newly discovered evidence would not have only been used to "attempt to contradict, impeach or discredit a former witness." Mortensen v. State, 115 Nev. 273, 286, 986 P.2d 1105, 1114 (1999) (quoting Sanford v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284-85 (1991)). Therefore, the district court did not err in denying the motions, and we

ORDER the judgment of the district court AFFIRMED.³

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Robert H. Perry, District Judge
Sean Rodney Orth
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk