

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN THORPE CHRISTIE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54148

FILED

AUG 21 2009

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

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from an order of the district court granting the State's motion to strike a post-sentence motion to withdraw a guilty plea. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On February 20, 2008, the district court convicted appellant, pursuant to a guilty plea, of two counts of grand larceny. The district court adjudicated appellant a habitual criminal and sentenced him to serve two concurrent terms of life with the possibility of parole in the Nevada State Prison. Appellant filed a notice of appeal from his judgment of conviction and sentence, and the notice of appeal was docketed in this court in Christie v. State, Docket No. 51317. On April 29, 2008, and on June 30, 2008, this court entered an order of limited remand for the purpose of securing representation on appeal. In July 2008, Mr. Thomas Qualls was appointed to represent appellant for the purposes of the direct appeal. Subsequently, this court affirmed the judgment of conviction and sentence on appeal. Christie v. State, Docket No. 51317 (Order of Affirmance, March 4, 2009). On March 31, 2009, the remittitur issued.

While the appeal was pending, on September 3, 2008, appellant filed a proper person post-sentence motion to withdraw a guilty plea. The State filed an opposition to the motion on October 7, 2008, to which appellant filed a reply. The district court then held the motion in abeyance pending a decision on the direct appeal. After the direct appeal was resolved, the district court entered an order granting the State's motion to strike the motion. This appeal followed.

In granting the State's motion to strike, the district court stated the motion to withdraw a guilty plea was a fugitive document because appellant was represented by Mr. Qualls at the time he filed the motion to withdraw a guilty plea in the district court.

Based upon our review of the documents before this court, we cannot affirm the order of the district court striking the motion as a fugitive document. Although appellant was represented by Mr. Qualls at the time he filed his motion, Mr. Qualls' representation was for the purpose of representing appellant in the direct appeal pending in this court, and that representation would not prevent appellant from filing a proper person motion to withdraw his guilty plea. See Hart v. State, 116 Nev. 558, 561, 1 P.3d 969, 971 (2000) (recognizing that NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea before and after imposition of sentence). The direct appeal has been resolved and the remittitur issued.<sup>1</sup> See Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (holding that this court is vested with sole jurisdiction

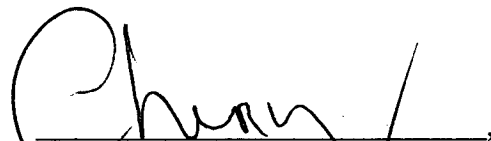
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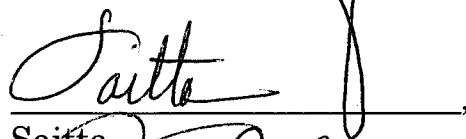
<sup>1</sup>We note, however, that the district court did not abuse its discretion in holding the motion in abeyance for resolution of the direct appeal.

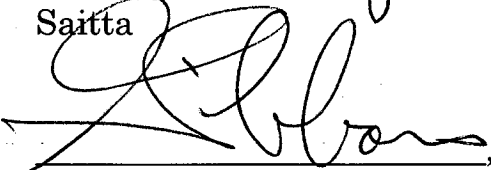
until the remittitur is issued to the district court). Thus, we reverse the order of the district court striking the motion as a fugitive document, and we remand this matter to the district court for consideration of the merits of the motion.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>2</sup>

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

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<sup>2</sup>We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.

cc: Hon. Connie J. Steinheimer, District Judge  
John Thorpe Christie  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Thomas Qualls, Esq.  
Washoe District Court Clerk