

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTESE DANDRE SLACK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56275

**FILED**

SEP 10 2010

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

ORDER VACATING JUDGMENT AND REMANDING

This is a proper person appeal from the district court's entry of further findings of fact and conclusions of law denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

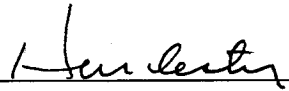
On September 4, 2008, appellant filed a post-conviction petition for a writ of habeas corpus, claiming, among other things, that he was deprived of a direct appeal due to the ineffective assistance of counsel. After conducting an evidentiary hearing, the district court denied the petition. On appeal, this court affirmed the district court's decision to deny several of the claims raised but reversed the district court's decision to deny the appeal-deprivation claim. Slack v. State, Docket No. 53270 (Order Affirming in Part, Reversing in Part and Remanding, May 10, 2010). Reviewing the record, including the transcript of the evidentiary hearing, this court determined that appellant had demonstrated by a preponderance of the evidence that he requested that trial counsel file an appeal and that counsel failed to do so. This court remanded the matter with instructions for the district court to enter findings of fact and conclusions of law that appellant was deprived of a direct appeal, to

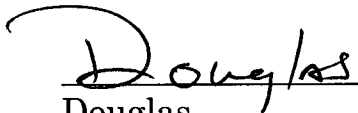
appoint counsel if appellant were indigent, and to direct the clerk of the district court to prepare and file a notice of appeal from the judgment of conviction within 5 days. See NRAP 4(c). On June 17, 2010, the district court entered an order containing further findings of fact and conclusions of law denying the petition and specifically concluding that counsel was not ineffective and appellant was not deprived of a direct appeal.

Having reviewed the documents before this court, we vacate the district court's June 17, 2010 order because it purports to resolve an issue already resolved by this court in the prior appeal. When this court remanded this matter to the district court on May 10, 2010, this court upon review of the record on appeal determined that appellant had demonstrated by a preponderance of the evidence that he had been deprived of a direct appeal due to the ineffective assistance of counsel. No further fact finding or proceedings regarding the merits of the appeal-deprivation claim was necessary. Rather, pursuant to the remedy set forth in NRAP 4(c) for an appeal-deprivation claim, the district court was directed to enter an order containing a specific finding of fact and conclusion of law that appellant had been deprived of a direct appeal due to the ineffective assistance of counsel. The district court's June 17, 2010 order fails to do this. Therefore, we remand this matter to the district court with instructions for the district court to apply the remedy set forth in NRAP 4(c) by entering a written order: (1) containing specific findings of fact and conclusions of law that appellant established a valid appeal-deprivation claim and is entitled to a direct appeal with the assistance of retained or appointed counsel; (2) directing the appointment of appellate counsel, if appellant is indigent; and (3) directing the district court clerk to prepare and file a notice of appeal from the judgment of conviction on

appellant's behalf within 5 days from the date of the district court's order. Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>1</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Valorie Vega, District Judge  
Martese Dandre Slack  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>In his notice of appeal, appellant designated the judgment of conviction. Without the district court's entry of an order in compliance with NRAP 4(c), appellant's notice of appeal is untimely from the judgment of conviction. NRAP 4(b).