

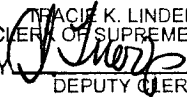
IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID MICHAEL JAA,
Appellant,
vs.
WARDEN, N.D.O.P.; AND THE STATE
OF NEVADA,
Respondents.

No. 57329

FILED

FEB 09 2011

FRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

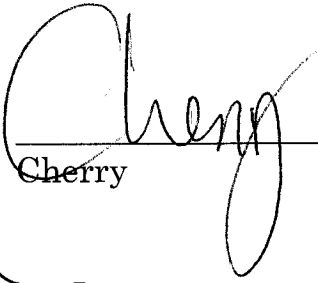
ORDER DISMISSING APPEAL


This is an appeal from a district court “Order to Withdraw Supplemental Petition for Writ of Habeas Corpus (Post Conviction).” Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

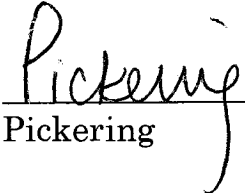
Because it appeared that appellant was not aggrieved by the order, no court rule or statute authorized an appeal from such an order, and it appeared that the original petition remained pending in the district court, we ordered appellant’s counsel to show cause why this appeal should not be dismissed for lack of jurisdiction. In response, counsel informs this court that appellant “never agreed to the motion to withdraw his petition because appointed counsel filed the motion based upon the representation that [appellant] had expired his underlying sentence.” Counsel also informs this court that the motion and supplemental petition did not specifically reference the original petition. Because it appears that the original petition remains pending in the district court, we conclude that the order identified in the notice of appeal is not a final order resolving appellant’s petition and we lack jurisdiction to consider this

appeal.¹ See NRS 34.575 (setting forth time limits for appealing from a final order resolving petition for a writ of habeas corpus). Therefore, we

ORDER this appeal DISMISSED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Steven P. Elliott, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk
David Michael Jaa

¹We are confident that the district court will resolve the original petition as expeditiously as its calendar permits. See, e.g., NRS 34.740. We express no opinion as to whether appellant's expiration of his sentence rendered his original petition moot. Compare Jackson v. State, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999) (district court may not issue a writ of habeas corpus if the petition was filed after the expiration of the sentence) (emphasis added), with Johnson v. Director, Dep't Prisons, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989) (when a defendant expires his sentence, any question as to the method of computing the sentence is rendered moot).