

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL T. ECHEVARRIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57607

**FILED**

SEP 14 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Ingels*  
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a purported order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

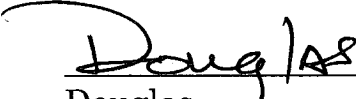
On September 28, 2010, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On November 29, 2010, the district court vacated a hearing on appellant's petition, and removed the petition from the calendar. Appellant filed a notice of appeal on January 11, 2011.

As the district court has not made a final decision on appellant's petition, the notice of appeal was premature, and we lack jurisdiction to consider the appeal. In this, we note that the district court may not resolve a post-conviction petition for a writ of habeas corpus by simply taking the petition off calendar. A decision taking the petition off calendar is not a final decision as the district court retains the jurisdiction to place the petition back on calendar for review. There is no authority in NRS chapter 34 allowing the district court to take a petition off calendar in lieu of resolving the petition on the merits or other procedural grounds. NRS 34.740 requires the district court to provide an expeditious

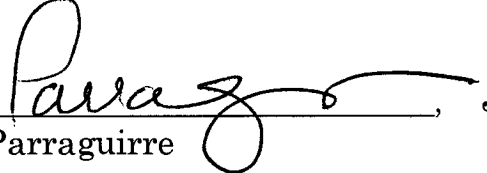
examination of a post-conviction petition for a writ of habeas corpus. NRS 34.830 provides that any final order that disposes of a post-conviction petition for a writ of habeas corpus must contain specific findings of fact and conclusions of law and that service of notice of entry of the order be performed by the clerk of the district court.

When the district court has entered a final order as contemplated by NRS chapter 34, appellant may then file an appeal. See NRS 34.575. We are confident that the district court will resolve all pending matters as expeditiously as its calendar permits. Accordingly, we

ORDER this appeal DISMISSED.

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

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

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Doug Smith, District Judge  
Michael T. Echevarria  
Attorney General/Las Vegas  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk