

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RAY HUGHES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57822

**FILED**

**JUL 13 2011**

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

ORDER DISMISSING APPEAL AND REMANDING WITH  
INSTRUCTIONS

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

On August 11, 2010, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On March 3, 2011, the district court entered an order denying the petition, determining that the petition lacked merit. Although appellant filed a motion for reconsideration and motion to restore half of the credits forfeited in the district court, he also filed a timely notice of appeal to this court from the district court's order denying the petition. Thereafter, on May 23, 2011, the district court entered an order granting the motion for

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<sup>1</sup>This 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).

reconsideration.<sup>2</sup> The district court determined that the results of the March 3, 2009 prison disciplinary hearing should be vacated.<sup>3</sup>

Generally, “[a] timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this court.” Robertson v. State, 109 Nev. 1086, 1089, 863 P.2d 1040, 1042 (1993), overruled on other grounds by Krauss v. State, 116 Nev. 307, 998 P.2d 163 (2000). If the district court is inclined to modify a decision from which an appeal has been taken, after jurisdiction has vested in this court, the preferable course of action is for the district court to certify to this court its inclination to modify its decision and to request a remand. See Foster v. Dingwall, 126 Nev. \_\_\_, \_\_\_, 228 P.3d 453, 455-56 (2010); Mack-Manley v. Manley, 122 Nev. 849, 855-56, 138 P.3d 525, 530 (2006); Huneycutt v. Huneycutt, 94 Nev. 79, 80-81, 575 P.2d 585, 585-86 (1978).

It is apparent from our review of the documents before this court that the district court has reconsidered its decision and is inclined to modify its prior decision denying appellant’s petition. We conclude that requiring the district court to certify its inclination to this court under these circumstances would only serve to further delay a final resolution of this matter. Accordingly, we have elected to dispense with the requirement that the district court certify to this court its inclination to modify its prior decision. The district court’s decision granting the motion for reconsideration rendered this appeal moot, and consequently, we

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<sup>2</sup>The district court denied the motion to restore half of the credits forfeited. Such a motion was moot in light of the district court’s decision to grant the motion for reconsideration.

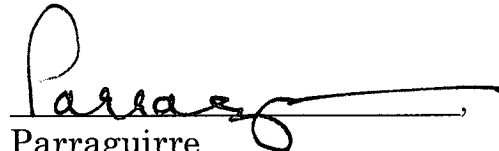
<sup>3</sup>The district court indicated that the Nevada Department of Corrections could initiate new prison disciplinary proceedings.

dismiss this appeal. We note that because the district court was technically without jurisdiction to enter its order on May 23, 2011, the district court should re-enter the order to avoid any unnecessary procedural confusion. In light of the foregoing, we

ORDER this matter DISMISSED AND REMANDED to the district court for proceedings consistent with this order.<sup>4</sup>

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

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

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

cc: Hon. Douglas W. Herndon, District Judge  
Michael Ray Hughes  
Attorney General/Carson City  
Attorney General/Las Vegas  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>4</sup>We 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.