

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD ALLEN WILKINSON A/K/A
NOLAN EDWARD KLEIN,
Appellants,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58789

FILED

NOV 28 2011

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a petition for exoneration. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

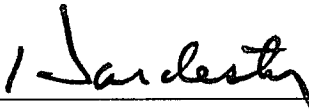
We previously noted a potential jurisdictional defect, that no statute or court rule appears to provide for an appeal from the district court's order, and directed appellant¹ to show cause why this appeal should not be dismissed. See Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990) (right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists). In response, appellant asserts that this is an appeal from a final judgment, relying on NRAP 3A(b). Appellant's reliance on NRAP 3A(b) is misplaced; that rule governs appeals in civil actions and appellant's petition for exoneration was filed in a criminal action. Here, the final appealable judgment in the underlying criminal case was the judgment of conviction. See NRS

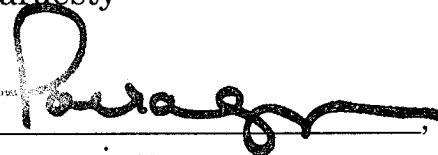
¹We note that appellant passed away while incarcerated and that the petition for exoneration was filed by his sister.

177.015(3) (“The defendant only may appeal from a final judgment or verdict in a criminal case.”); Sandstrom v. Dist. Ct., 121 Nev. 657, 660, 119 P.3d 1250, 1253 (2005) (explaining that NRS 177.015(3) “applies only to final judgments of conviction or verdicts in criminal cases”). Alternatively, appellant suggests that as the highest court in Nevada, we should recognize a petition for exoneration even where the defendant is deceased and, presumably, recognize that an order denying such a petition is appealable. We cannot do that. Contrary to appellant’s suggestion that “[t]his Court is the only body in the State of Nevada that can set the course for petitions for exoneration after death,” it is for the Legislature to create a cause of action or remedy and provide for an appeal. See Halverson v. Hardcastle, 123 Nev. 245, 260-61, 163 P.3d 428, 440 (2007) (legislative power “refers to the broad authority to enact, amend, and repeal laws” and judicial branch cannot exercise legislative power); Castillo, 106 Nev. at 352, 792 P.2d at 1135 (right to appeal is statutory). See generally Samuel Wiseman, Innocence after Death, 60 Case W. Res. L. Rev. 687, 735, 741 (2010) (suggesting that “legislatures should create an avenue for judicial posthumous exoneration proceedings” and that, among the several possible means of addressing posthumous exonerations, “perhaps” the most “preferable[] means of ensuring that courts may consider posthumous exoneration claims is for the legislature to create a new cause of action”). Because no statute or court rule provides for an

appeal in this matter, we lack jurisdiction. Accordingly, we
ORDER this appeal DISMISSED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Hager & Hearne
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk