

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO JAVIER JIMENEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58787

FRANCISCO JAVIER JIMENEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59602

FILED

FEB 27 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER DISMISSING APPEAL IN DOCKET NO. 59602 AND DENYING
MOTION TO CONSOLIDATE

Docket No. 58787 is an appeal from a judgment of conviction. Docket No. 59602 is an appeal from an amended judgment of conviction in the same district court case. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

The appeal in Docket No. 58787 was docketed in this court on July 14, 2011. After the docketing of that appeal, the district court entered an amended judgment of conviction in the same district court case number that reduced the amount of restitution owed by appellant. Because it had come to this court's attention that the amended judgment of conviction had been entered while the appeal in Docket No. 58787 was pending, on October 24, 2011, we entered an order in Docket No. 58787 that granted an extension of time and noted that the district court had no jurisdiction to enter an amended judgment of conviction after the notice of appeal in Docket No. 58787 had been filed and before the remittitur had

issued in that appeal. See NRS 177.155, NRS 177.035; Foster v. Dingwall, 126 Nev. ___, ___, 228 P.3d 453, 454-55 (2010); Buffington v. State, 110 Nev. 124, 868 P.2d 643 (1994). That order further directed the parties and the district court that if the court was inclined to grant relief and amend the amount of restitution, the district court should certify its inclination and seek a limited remand pursuant to the procedure outlined in Foster. See 126 Nev. at ___, 228 P.3d at 455-56. Shortly thereafter, appellant filed a notice of appeal from the amended judgment of conviction, and that appeal was docketed in this court as Docket No 59602.

On December 13, 2011, we entered an order granting appellant's motion to remand the appeal in Docket No. 58787 for the limited purpose of having the district court enter an amended judgment of conviction. That order noted that the district court lacked jurisdiction to enter the amended judgment of conviction that was filed in the district court on October 3, 2011, and, therefore, that judgment was void. On January 11, 2012, the district court entered a second amended judgment of conviction, which was transmitted to this court in Docket No. 58787.

On January 23, 2012, appellant filed a motion for clarification in Docket No. 59602 seeking clarification of whether the appeal in Docket No. 59602 was going to be dismissed because it was initiated from a void amended judgment of conviction. Appellant informed this court that if the appeal in Docket No. 59602 was not going to be dismissed, appellant wished to have that appeal consolidated with the appeal in Docket No. 58787. On February 6, 2012, appellant filed a motion in Docket No. 58787 to consolidate that appeal with the appeal in Docket No. 59602.

We construe the appeal in Docket No. 58787 to be an appeal from the judgment of conviction and the second amended judgment of

conviction entered after limited remand by this court, and we dismiss the appeal in Docket No. 59602. Accordingly, we deny the motion to consolidate.

Appellant shall have 30 days from the date of this order to file and serve a fast track statement and appendix in Docket No. 58787 raising all claims relating to the judgment of conviction and second amended judgment of conviction. See NRAP 3C(e)(1), (2). Thereafter, briefing shall proceed in accordance with the provisions in NRAP 3C.

It is so ORDERED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Doug Smith, District Judge
Wendy D. Leik
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk
Francisco Javier Jimenez