

IN THE SUPREME COURT OF THE STATE OF NEVADA

CURTIS LUNDY DOWNING,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59885

FILED

APR 11 2012

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

ORDER DISMISSING APPEAL

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

On April 13, 2010, appellant filed a post-conviction petition for a writ of habeas corpus challenging a disciplinary hearing where he lost 65 statutory good time credits. The district court granted the petition on January 25, 2011. This was a final order disposing of the petition.

Thereafter, on October 3, 2011, appellant filed a "notice of motion and motion to supplement the order granting petition for writ of habeas corpus and granting the supplement to the petition for writ of habeas corpus." At no time did appellant file a new post-conviction petition for a writ of habeas corpus challenging the new disciplinary hearing that was held pursuant to the order granting his April 13, 2010, petition. On December 29, 2011, the district court denied a post-conviction petition for a writ of habeas corpus regarding the new disciplinary hearing. Appellant filed a notice of appeal from this decision. Because there was no pending petition, the district court erred in entering an order

denying a non-existent petition. Therefore, this court lacks jurisdiction over this appeal.

Further, to the extent that the order could be construed as an order denying appellant's motion filed on October 3, 2011, this court lacks jurisdiction. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). No statute or court rule provides for an appeal from an order disposing of appellant's October 3, 2011, motion. Accordingly, we

ORDER this appeal DISMISSED.

Cherry, J.  
Cherry

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

cc: Hon. Elissa F. Cadish, District Judge  
Curtis Lundy Downing  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk