

IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY LEE HOBSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69981

FILED

MAY 03 2016

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 pretrial petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

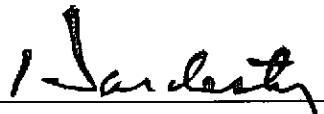
Our review of this appeal revealed a potential jurisdictional defect. Specifically, an order denying a pretrial petition for writ of habeas corpus is not an appealable order. *See Gary v. Sheriff*, 96 Nev. 78, 605 P.2d 212 (1980) (an order denying pretrial habeas relief is an intermediate order that may be challenged in a timely appeal from the judgment of conviction); *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990) (the right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists). Accordingly, we ordered appellant's counsel to show cause why this appeal should not be dismissed for lack of jurisdiction.

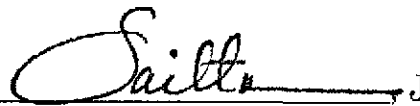
Appellant's counsel has now filed his response. Counsel relies on this court's decision in *Nix v. State*, 91 Nev. 613, 541 P.2d 1 (1975), for the proposition that his proper course of action, in order to avoid waiving his challenge to the district court order, is to appeal that order pursuant to NRS 34.380. *See id.* at 614, 541 P.2d 1-2. However, NRS 34.380, the statute upon which the court in *Nix* relied, was amended in 1979 to remove this court's jurisdiction "to entertain an appeal from an order

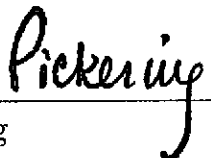
denying a pretrial petition for a writ of habeas corpus”¹ *Gary*, 96 Nev. at 79, 605 P.2d at 213. The court in *Gary* went on to state that “the preclusion of appellate review of the denial of a habeas petition . . . is a reasonable legislative regulation of the writ.” *Id.* at 80, 605 P.2d at 214.

NRS 34.575(1) provides that “[a]n applicant who, *after conviction or while no criminal action is pending against the applicant*, has petitioned the district court for a writ of habeas corpus and whose application for the writ is denied, may appeal to the” supreme court from the order and judgment of the district court. (Emphasis added). A petitioner who faces a criminal action, like appellant here, is not permitted to appeal from an order denying his pretrial habeas petition. Accordingly, we

ORDER this appeal DISMISSED.²


_____, J.
Hardesty


_____, J.
Saitta


_____, J.
Pickering

cc: Hon. William D. Kephart, District Judge
Tanasi Law Offices
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹NRS 34.380 was subsequently replaced in 1985 by NRS 34.710.

²Appellant’s motion for stay is denied.