

IN THE SUPREME COURT OF THE STATE OF NEVADA

KARISMA GARCIA,
Appellant,
vs.
BRUCE STROUD, WARDEN,
Respondent.

No. 71468

FILED

JAN 30 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL


This is a pro se appeal from a purported order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.


Appellant filed a pro se petition for writ of habeas corpus in the district court on February 4, 2016. The district court removed the petition from the calendar on September 22, 2016. Appellant filed a notice of appeal on October 3, 2016.

As the district court has not made a final decision on appellant's petition, the notice of appeal is premature, and we lack jurisdiction to consider the appeal. The district court may not resolve a post-conviction petition for a writ of habeas corpus by simply taking the petition off calendar. A decision taking the petition off calendar is not a final decision as the district court retains the jurisdiction to place the petition back on calendar for review. There is no authority in NRS chapter 34 allowing the district court to take a petition off calendar in lieu of resolving the petition on the merits or other procedural grounds. NRS 34.740 requires the district court to provide an expeditious examination of a post-conviction petition for a writ of habeas corpus. NRS 34.830

provides that any final order that disposes of a post-conviction petition for a writ of habeas corpus must contain specific findings of fact and conclusions of law and that service of notice of entry of the order be performed by the clerk of the district court. NRAP 4(b)(5)(B) requires the district court to enter any order finally resolving a post-conviction petition for a writ of habeas corpus within 20 days of the district court's oral pronouncement of a final decision. Appellant may not file an appeal to this court until the district court has entered a final decision on the petition. See NRS 34.575; NRAP 4(b)(1). We are confident that the district court will place the petition back on calendar and resolve the matter as expeditiously as its calendar permits. Accordingly, we

ORDER this appeal DISMISSED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Stiglich

cc: Hon. Linda Marie Bell, District Judge
Hon. Kathy A. Hardcastle, Senior Judge
Karisma Garcia
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk