

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK DONAVIN QUINTERO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77329-COA

FILED

DEC 27 2019

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

ORDER DISMISSING APPEAL

Frank Donavin Quintero appeals from an order of the district court denying a postsentence motion to withdraw guilty plea filed on August 13, 2018. Eighth Judicial District Court, Clark County; David Barker, Judge.

The district court did not appear to construe Quintero's motion as a postconviction petition for a writ of habeas corpus, and this court was unaware of any statute or court rule that would have permitted an appeal in this case. Accordingly, this court ordered Quintero to show cause why his appeal should not be dismissed. Quintero filed a timely response.

Quintero first cites to NRS 34.724(3), which sets out the limited circumstances under which a postsentence motion to withdraw guilty plea may be considered a remedy incident to the proceedings. Quintero does not argue that he meets the criteria of NRS 34.724(3). Further, based on the record before this court, it does not appear that he meets the criteria.


Quintero next argues the district court should have construed his motion as a postconviction petition for a writ of habeas corpus as required by *Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014). Quintero is mistaken. The Nevada Supreme Court urged district courts to

construe postsentence motions to withdraw a guilty plea as postconviction habeas petitions, but it stopped short of mandating such action. *See id.* (“[T]he district court *should* construe the motion to be a post-conviction petition for a writ of habeas corpus. . . .” (emphasis added)). And we cannot conclude the district court erred by failing to construe Quintero’s pleading—which was prepared and filed by counsel—as something other than as it was styled.

Quintero has failed to demonstrate that any statute or court rule permits an appeal from an order denying a postsentence motion to withdraw guilty plea. We therefore conclude we lack jurisdiction to entertain this appeal. *See Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Accordingly, we

ORDER this appeal DISMISSED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Hon. David Barker, Senior Judge
Mueller & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk