

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN JOSEPH SEKA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37907

FILED

NOV 20 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

JOHN JOSEPH SEKA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37937

ORDER DISMISSING APPEAL

Docket No. 37907 is an appeal from a judgment of conviction. Docket No. 37937 is a proper person appeal from a decision of the district court denying appellant's proper person petition for a writ of habeas corpus. Our preliminary review of the appeal in Docket No. 37937 revealed a potential jurisdictional defect.

On April 24, 2001, prior to sentencing and entry of the written judgment of conviction, appellant filed a proper person petition for a writ of habeas corpus in the district court. Two days later, on April 26, 2001, the district court conducted a sentencing hearing in the underlying case. The minutes of the district court proceedings of April 26, 2001, contain an additional entry dated May 1, 2001, relating to the proper person habeas petition filed on April 24, 2001. That entry states that the petition was not properly brought before the district court for two reasons: (1) the issue had been entertained and denied on two previous occasions, and (2) appellant could not file proper person documents while he was being represented by counsel. A written judgment of conviction was filed in the district court on May 9, 2001, and a timely appeal from the written judgment of conviction was filed and docketed in this court in Docket No.

01-19478

37907. Appellant's counsel in the direct appeal in Docket No. 37907 is attorney Peter Christiansen.

On May 24, 2001, appellant filed a proper person notice of appeal from district court's decision of May 1, 2001, denying his proper person habeas corpus petition. The proper person appeal from that decision is docketed in this court as Docket No. 37937.

The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.¹ Appellant's proper person petition for a writ of habeas corpus was filed prior to sentencing and denied prior to the entry of the final judgment. Therefore, it appears that appellant is attempting to perfect a proper person appeal from an interlocutory decision of the district court. No statute or court rule provides for such an appeal.² Thus, from our review of the documents before this court, it appears that this court lacks jurisdiction to consider the appeal in Docket No. 37937.

Notably, however, NRS 177.045 permits this court to review in the context of an appeal from a final judgment of conviction any decision of the district court made in an intermediate order or proceeding forming part of the record. It appears that these appeals potentially involve related assignments of error pertaining to several habeas corpus petitions that were filed and resolved by intermediate orders of the district court prior to the entry of the final judgment of conviction. Thus, pursuant to NRS 177.045, it appears that any assignments of error relating to the district court's denial of appellant's proper person habeas petition may be properly raised and considered in the context of the direct appeal from the judgment of conviction.

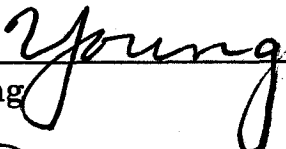
Accordingly, on September 17, 2001, this court ordered Mr. Christiansen to show cause why the proper person appeal in Docket No. 37937 should not be dismissed for lack of jurisdiction and why any assignments of error arising out of the district court's interlocutory denial of the proper person petition for a writ of habeas corpus could not be


¹Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).


²See, e.g., Gary v. Sheriff, 96 Nev. 78, 605 P.2d 212 (1980) (no appeal lies from a order denying a pretrial petition for a writ of habeas corpus); see also NRS 34.575 (defining appealable determinations involving petitions for writ of habeas corpus).

presented and resolved in the context of the direct appeal from the judgment of conviction. On October 10, 2001, Mr. Christiansen filed a response. Mr. Christiansen has offered no explanation for why the appeal in Docket No. 37937 should not be dismissed for lack of jurisdiction.³ Because no statute or court rule provides for an independent appeal from an interlocutory order of the court and because any issues relating to the denial of an interlocutory order may be raised in the context of a direct appeal, we dismiss the appeal. Further, we reinstate the briefing schedule in Docket No. 37907. Appellant shall file and serve the opening brief on or before December 3, 2001. Thereafter, briefing shall proceed in accordance with the schedule set forth in NRAP 31.

It is so ORDERED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Kajioka, Christiansen & Toti
John Joseph Seka
Clark County Clerk

³Although the response and attached authorization submitted by Mr. Christiansen and appellant are not entirely clear because these documents speak of withdrawing the petition rather than dismissing the appeal, it appears from this court's review of the documents before it that Mr. Christiansen and appellant are in agreement that the appeal in Docket No. 37937 should not proceed further.