

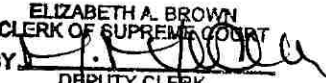
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCISCO SUAREZ ARCIBAL, A/K/A
FRANCISCO SUAREZ ARCIBAL, V,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86983-COA

FILED

MAY 31 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Francisco Suarez Arcibal appeals from a district court order denying a petition to establish factual innocence. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

First, Arcibal contends the district court erred by denying his “Preemptory Challenge of Judge.” Arcibal filed this pleading on May 17, 2023, and the district court denied it on June 7, 2023—prior to the filing of Arcibal’s petition to establish factual innocence on June 14, 2023. Thus, the denial of Arcibal’s pleading was not an interlocutory ruling this court can consider from an appeal of the district court’s order denying Arcibal’s petition to establish factual innocence.¹ Therefore, we conclude Arcibal is not entitled to relief based on this claim.

¹We note the supreme court has already dismissed Arcibal’s appeal from the denial of his preemptory challenge of judge. *See Arcibal v State*,

Second, Arcibal raises contentions that challenge the district court's denial of his petition to establish factual innocence. To address those contentions, we must first address a jurisdictional question. The district court denied the petition on the grounds that Arcibal's then-pending appeals of district court orders denying the "Preemptory Challenge of Judge" and a motion for modification of sentence divested the district court of jurisdiction. *See Arcibal v State*, No. 86797, 2023 WL 4442273 (Nev. July 10, 2023) (Order Dismissing Appeal); *Arcibal v State*, No. 86506-COA, 2023 WL 6543192 (Nev. Ct. App. Oct. 6, 2023) (Order of Affirmance). Arcibal's appeals from these prior orders did not divest the district court of jurisdiction to consider a petition to establish factual innocence. *See* NRS 34.960(1) (providing that a person convicted of a felony may petition for a hearing to establish factual innocence based on newly discovered evidence "[a]t any time after the expiration of the period during which a motion for a new trial based on newly discovered evidence may be made pursuant to NRS 176.515"); *see also Foster v. Dingwall*, 126 Nev. 49, 52-53, 228 P.3d 453, 454-55 (2010) (recognizing that a timely notice of appeal does not divest the district court of jurisdiction over matters independent from the appealed order). Therefore, we conclude the district court erred by denying Arcibal's

No. 86797, 2023 WL 4442273 (Nev. July 10, 2023) (Order Dismissing Appeal).

petition on jurisdictional grounds, and we reverse and remand this matter for the district court to consider Arcibal's petition. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Tierra Danielle Jones, District Judge
Francisco Suarez Arcibal
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk