

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE KIM MITCHELL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38150

FILED

OCT 02 2001

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

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court dismissing the charges against appellant and releasing appellant from custody. This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.¹ To the extent that appellant is appealing from the part of the district court's order releasing him, no statute or court rule appears to provide for such an appeal. To the extent that appellant is appealing from the part of the district court's order dismissing the charges against appellant, appellant does not appear to be an "aggrieved" party as required by NRS 177.015.


Accordingly, on July 23, 2001, this court ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. On September 6, 2001, appellant filed a response. This appeal is from an order entered in district court case no. C-168744. In the response, appellant informs this court that after the district court entered its order that is the basis for the instant appeal, the State sought and obtained a grand jury indictment "arising from this identical incident." The indictment was filed in the district court in case no. C-176391.

Appellant argues that he is an aggrieved party in this case because the district court did not make a finding that there was good

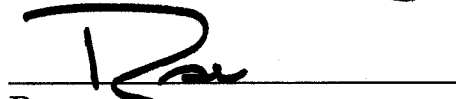
¹Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

cause for the State to file a subsequent indictment.² However, if appellant wishes to argue that prosecution in case no. C-176391 is precluded by NRS 174.085(7) or by the principle of double jeopardy, appellant may file a motion to dismiss in that case.³ We conclude that appellant has not shown that he is an aggrieved party in this case. We therefore lack jurisdiction to entertain this appeal, and we

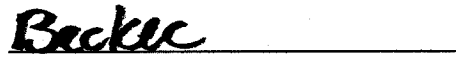
ORDER this appeal DISMISSED.



Shearing J.



Rose J.



Becker J.

cc: Hon. Lee A. Gates, District Judge
Attorney General
Clark County District Attorney
Hinds & Morey
Clark County Clerk

²See NRS 174.085(7) ("[T]he prosecuting attorney may voluntarily dismiss an indictment or information without prejudice to the right to bring another indictment or information only upon good cause shown to the court and upon written findings and a court order to that effect.")

³See, e.g., State v. Connery, 100 Nev. 256, 679 P.2d 1266 (1984) (an appeal by the State from an order dismissing an information because of the purportedly improper granting of a mistrial in a previous case).