


IN THE SUPREME COURT OF THE STATE OF NEVADA

GERALD LEE WHATLEY, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 88198

**FILED**

JUL 22 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER DISMISSING APPEAL*

This is an appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

When preliminary review of this appeal revealed a jurisdictional defect, this court ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. In particular, the judgment of conviction was entered on June 1, 2022. However, the notice of appeal was not filed in the district court until February 23, 2024, well after expiration of the 30-day appeal period prescribed by NRAP 4(b). See *Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994) (“[A]n untimely notice of appeal fails to vest jurisdiction in this court.”). To the extent appellant attempted to appeal from the judgment of conviction under the provisions of NRAP 4(c)(1), it did not appear that the district court had entered a written order certifying that appellant established a valid appeal deprivation claim and is entitled to a direct appeal.

In response, appellant contends that this appeal should be permitted to proceed. Appellant does not dispute that the district court has not entered a written order as contemplated by NRAP 4(c)(1). He asserts, however, that the failure is a non-jurisdictional defect because appellant’s right to an untimely appeal was established in an order entered by the

Court of Appeals and now constitutes the law of the case. We disagree with this, and the other arguments offered by appellant.

Appellant's notice of appeal was indisputably untimely filed. NRAP 4(c)(1) provides that an untimely notice of appeal may only be filed if one of two specific sets of circumstances are met. As relevant to the instant matter,<sup>1</sup> an appellant must first file a timely postconviction petition for a writ of habeas corpus asserting a viable appeal-deprivation claim. NRAP 4(c)(1)(A). The district court must then enter a written order containing specific findings of fact and conclusions of law that appellant was deprived of a direct appeal and is entitled to a direct appeal with the assistance of counsel. NRAP 4(c)(1)(B)(i). If appellant is indigent, the district court must appoint appellate counsel. NRAP 4(c)(1)(B)(ii). The district court must also direct the clerk of the district court to prepare and file within 7 days of entry of the district court's order a notice of appeal from the judgment of conviction and sentence. NRAP 4(c)(1)(B)(iii).

Here, appellant filed a timely postconviction habeas petition asserting an appeal-deprivation claim. The Court of Appeals entered an order reversing the district court's denial of the claim and remanding the matter to the district court to comply with NRAP 4(c). However, the district court did not comply with the provisions of NRAP 4(c) as directed. Instead, it appears that the district court simply appointed counsel and counsel then filed an untimely notice of appeal. This procedure does not comply with the requirements of NRAP 4(c)(1).

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<sup>1</sup>The other set of circumstances apply when a federal court has issued an order directing that a direct appeal be provided to a federal habeas corpus petitioner. NRAP 4(c)(1)(C). It does not appear, and appellant does not contend, that this provision is applicable to appellant.

An untimely notice of appeal is only permitted if the requirements of NRAP 4(c) are met. Because those requirements have not been met here, this court lacks jurisdiction over the untimely-filed notice of appeal and we

ORDER this appeal DISMISSED.

          *Stiglich*          , J.  
Stiglich

          *Pickering*          , J.  
Pickering

          *Parraguirre*          , J.  
Parraguirre

cc: Hon. Eric Johnson, District Judge  
Steven S. Owens  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk