

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN CHRISTOPHER CRAIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88339

FILED

MAR 03 2025

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a petition to establish factual innocence. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

Respondent has filed a motion to dismiss this appeal on the basis that it was untimely filed more than 30 days after entry of the challenged order. Appellant opposes the motion. He contends that the district court order was never served on appellant or his counsel and suggests the notice of appeal was timely filed because no notice of entry of order was entered or served. Respondent replies that no notice of entry of order was required in this matter. However, we need not resolve the parties' dispute regarding the timeliness of the notice of appeal because we conclude the challenged order is not substantively appealable. *See Sanchez v. State*, 140 Nev. Adv. Op. 78, ___, 561 P.3d 35, 38 (2024) (sua sponte addressing jurisdiction over an appeal from an order dismissing a factual-innocence petition).

The burden to demonstrate that this court has jurisdiction lies with appellant. *Id.* at ___, 561 P.3d at 39. Within his docketing statement, appellant asserts jurisdiction under NRS 34.560(2). That statute allows an appeal from an order committing a party to the custody or restraint of an

officer from a jurisdiction outside of Nevada. It does not allow an appeal from an order denying a factual-innocence petition.

Appellant's opening brief identifies NRAP 4(b) and NRS 34.970(9) as granting jurisdiction over this appeal. NRAP 4(b) governs the time to appeal in criminal cases. It "does not specifically identify any appealable orders or judgments," *id.* at ___, 561 P.3d at 40, and does not provide this court with jurisdiction over this appeal.

NRS 34.970(9) also fails to confer this court with jurisdiction. NRS 34.970(9) "provides a right to appeal only from orders granting or denying a hearing under NRS 34.970." *Id.* at ___, 561 P.3d at 39. The district court's order denied appellant's petition pursuant to NRS 34.960(2). NRS 34.970(9) does not provide for an appeal from an order denying a petition pursuant to NRS 34.960(2).

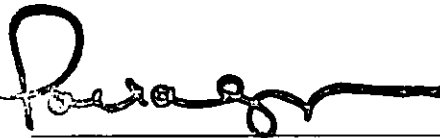
When a court determines that a petition does not meet the requirements of NRS 34.960(2), the court is required to dismiss the petition without prejudice. NRS 34.960(4)(a); *Sanchez* at ___, 561 P.3d at 38. The district court here denied appellant's petition pursuant to NRS 34.960(2) instead of dismissing it, apparently concluding that the petition did not satisfy the requirements of NRS 34.960(2)(b)(2) . However, even if we were to construe the order as dismissing the petition without prejudice under NRS 34.960, it would remain substantively unappealable.¹ *Sanchez* at ___, 561 P.3d at 41 (holding that there is no right to an appeal from an order

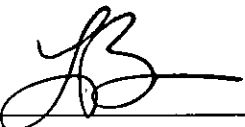
¹The order cannot reasonably be construed as denying the petition or denying a hearing on the petition under NRS 34.970(3) because NRS 34.970 comes into play only after the district court determines that a petition meets the pleading requirements of NRS 34.360. *Id.* at ___. 561 P.3d at 39.

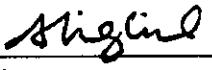
dismissing a factual-innocence petition without prejudice under NRS 34.960).

Appellant fails to demonstrate that any court rule or statute authorizes this appeal. *See id.* at ___, 561 P.3d at 39 (explaining that this court has jurisdiction over an appeal only when the appeal is authorized by court rule or statute). Respondent's motion to dismiss is denied. As this court lacks jurisdiction over this appeal, we

ORDER this appeal DISMISSED.


_____, J.
Parraguirre


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Nadia Krall, District Judge
McLetchie Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk