



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HENRY BIDERMAN APARICIO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90843-COA

HENRY APARICIO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90957-COA

*ORDER DISMISSING APPEAL IN DOCKET NO. 90843-COA AND
ORDER OF REVERSAL AND REMAND IN DOCKET NO. 90957-COA*

Henry Biderman Aparicio appeals from an amended judgment of conviction, entered pursuant to a guilty plea, of two counts of driving under the influence (intoxicating liquor) resulting in death and one count of felony reckless driving in district court case no. CR18-332496 (Docket No. 90843-COA). Aparicio also appeals from a district court order granting in part, and denying in part, a postconviction petition for a writ of habeas corpus filed on April 13, 2024, in district court case no. A24-891435 (Docket No. 90957-COA). These cases were consolidated on appeal.¹ Eighth Judicial District Court, Clark County; Jerry A. Wiese, Chief Judge; Eighth

¹The Honorable Deborah L. Westbrook did not participate in the decision in this matter.

Judicial District Court, Clark County; Nadia Krall, Judge. ²

Docket No. 90843

The amended judgment of conviction was filed on January 26, 2022. The notice of appeal was filed on June 20, 2025, more than three years after the 30-day period for filing a timely notice of appeal. See NRAP 4(b)(1)(A). Further, Aparicio already appealed from the amended judgment of conviction. See *Aparicio v. State*, No. 84300, 2023 WL 2576442 (Nev. Mar. 20, 2023) (Order of Affirmance). To the extent the district court “reinstate[d] the time for filing a direct appeal” from the amended judgment of conviction based on ineffective assistance of appellate counsel, we conclude that was error. No statutory or court rule allows a district court to “reinstate the time for filing a direct appeal ” where the appellant had a timely direct appeal. See NRAP 4(c)(1) (stating that an untimely notice of appeal from a judgment of conviction can only be filed where: “[a] postconviction petition for a writ of habeas corpus has been timely and properly filed . . . asserting a viable claim that the petitioner was unlawfully *deprived of the right to a timely direct appeal* from a judgment of conviction and sentence” (emphasis added)). Therefore, we dismiss this appeal for lack jurisdiction.

Docket No. 90957

Aparicio alleges the district court erred by denying his claims that plea counsel were ineffective. When reviewing a claim of ineffective assistance of counsel, we give deference to the district court ’s factual findings if supported by substantial evidence and not clearly erroneous but

²Chief Judge Wiese entered the amended judgment of conviction. Judge Krall entered the order granting in part, and denying in part, the postconviction petition for a writ of habeas corpus.

review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Thus, to engage in this review, an "order that finally disposes of a petition . . . must contain specific findings of fact and conclusions of law supporting the decision of the court." NRS 34.830(1); NRAP 4(b)(6)(B) ("The judgment or order in any postconviction matter must contain specific findings of fact and conclusions of law supporting the district court's decision.").

Our review of the record reveals that the district court's final order does not contain specific findings of fact and conclusions of law as to all the claims raised in Aparicio's petition. Specifically, the order does not provide specific factual findings regarding Aparicio's claims that plea counsel were ineffective. Further, while the district court's order purported to grant a new appeal to address the claim of ineffective assistance of appellate counsel, as noted above, this was an improper remedy based on an improper analysis of the claim as the district court's order does not consider whether Aparicio identified a specific issue or argument that was omitted by appellate counsel. *See Nika v. State*, 124 Nev. 1272, 1293, 198 P.3d 839, 853 (2008) ("A successful claim of ineffective assistance of appellate counsel requires a showing that counsel's performance was deficient and that an omitted issue had 'a reasonable probability of success on appeal.'" (quoting *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996))); *Johnson v. State*, 133 Nev. 571, 576, 402 P.3d 1266, 1274 (2017) ("Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." (quotation marks omitted)). Accordingly, we reverse the decision of the district court and remand this case to the district court to

enter an order that resolves the petition with specific findings of fact and conclusions of law as to the claims raised in the petition. Therefore, we

ORDER the appeal in Docket No. 90843 DISMISSED and the appeal in Docket No. 90957 REVERSED and REMANDED to the district court for proceedings consistent with this order.



Bulla, C.J.



Gibbons, J.

cc: Hon. Jerry A. Wiese, Chief Judge
Hon. Nadia Krall, District Judge
Liberators Criminal Defense
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk