

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEREMIAH GREANEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39145

FILED

MAY 31 2002

JANEY W. M. B. COOK  
CLERK OF SUPREME COURT  
J. Richards  
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court denying appellant's pre-trial petition for a writ of habeas corpus. Our review of this appeal revealed a potential jurisdictional defect. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.<sup>1</sup> No statute or court rule provides for an appeal from an order denying a pre-trial petition for a writ of habeas corpus. Accordingly, on February 20, 2002, this court ordered counsel for appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.

On March 18, 2002, counsel for appellant filed a response to this court's order. Appellant concedes that an order of the district court denying a pre-trial petition for a writ of habeas corpus is not appealable when the petition challenges the probable cause finding at the preliminary hearing.<sup>2</sup> Appellant argues, however, that in this case, the order is appealable because he had not been bound over to the district court. Rather, appellant's petition challenged the justice court's granting of a motion to continue the preliminary hearing.

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

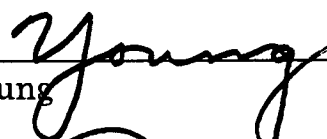
<sup>2</sup>See, e.g., Gary v. Sheriff, 96 Nev. 78, 605 P.2d 212 (1980).


Appellant cites NRS 34.575(1), which provides that a petitioner who files a habeas corpus petition "after conviction or while no criminal action is pending against him" may appeal an order of the district court denying the petition. Appellant argues that this provision allows him to appeal because there were no criminal charges pending against him in the district court when he filed his petition.

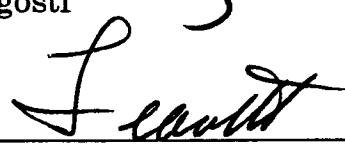
We conclude that appellant's reading of NRS 34.575(1) is too narrow. The provision of the statute cited by appellant applies to those against whom no criminal action is pending in any of the courts of this state. Moreover, this court has held there is no right to appeal from the denial of a pre-trial petition for a writ of habeas corpus, even where the issue raised in the petition is something other than probable cause or the sufficiency of the indictment.<sup>3</sup>

Based on the foregoing, we conclude that we lack jurisdiction to entertain this appeal and we

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

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<sup>3</sup>Clow v. Sheriff, 96 Nev. 605, 614 P.2d 535 (1980).

cc: Hon. Steven R. Kosach, District Judge  
Jack T. Bullock II  
Steven M. Hess  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk