

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY EDWARD THOMAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41040

**FILED**

APR 28 2003

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

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court setting forth findings of fact and conclusions of law regarding appellant's post-conviction petition for a writ of habeas corpus. Our review of this appeal reveals a jurisdictional defect.

Appellant filed a post-conviction petition for a writ of habeas corpus in the district court alleging that his trial counsel had unconstitutionally deprived him of his right to appeal from his judgment of conviction. The district court initially entered an order denying the petition without an evidentiary hearing. On appeal from that order, this court reversed and remanded the matter for an evidentiary hearing on appellant's claim. This court noted that appellant's claim was not belied by the record, and if true, it would entitle appellant to relief.<sup>1</sup>

On remand, the district court conducted an evidentiary hearing on November 5, 2002. On November 21, 2002, the district court entered findings of fact and conclusions of law. The district court found

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<sup>1</sup>Thomas v. State, No. 35303, Order of Reversal and Remand, filed June 5, 2002.

that although appellant had requested an appeal, his counsel had failed to perfect the appeal from his judgment of conviction and appellant was thereby prejudiced. Therefore, the district court concluded that, pursuant to Lozada v. State,<sup>2</sup> appellant is entitled to the assistance of counsel to raise direct appeal issues in a post-conviction petition for a writ of habeas corpus. This appeal from the district court's findings and conclusions followed.

The district court's findings and conclusions of November 21, 2002, do not finally resolve appellant's post-conviction petition. Moreover, appellant is not aggrieved by that order. NRS 34.575(1) only permits an appeal from an order denying a post-conviction petition. The order appealed from does not deny a post-conviction petition; in fact, it grants appellant relief on his appeal deprivation claim and directs that appellant will be entitled to assert direct appeal issues with the assistance of counsel in a supplemental post-conviction petition. Accordingly, the order appealed from is not an appealable determination, and this court lacks jurisdiction to consider this appeal.

We note, however, that the order contains a clerical error. It erroneously states that attorney John L. Duffy appeared and represented appellant on his post-conviction claims at the evidentiary hearing conducted by the district court on November 5, 2002. In fact, Mr. Duffy was one of appellant's trial counsel and one of the attorneys against whom appellant had asserted his claim of ineffective assistance of counsel in his post-conviction petition. We again caution the district

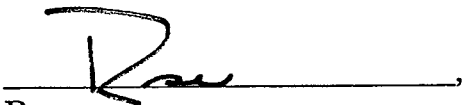
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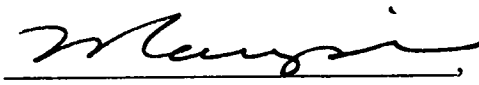
<sup>2</sup>110 Nev. 349, 871 P.2d 944 (1994).

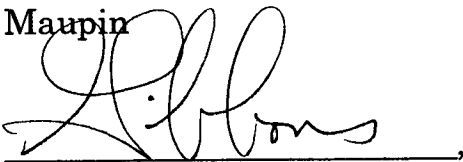
courts, as well as the district attorneys responsible for preparing written orders for the district courts, to review those written orders carefully before they are entered to assure that they contain accurate information.<sup>3</sup>

Accordingly, we direct the district court to correct the erroneous reference to attorney John L. Duffy in the district court's written order of November 21, 2002. Additionally, we hereby

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Donald M. Mosley, District Judge  
Anthony Edward Thomas  
John L. Duffy  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>3</sup>Because of the erroneous information contained the district court's order, the clerk of this court mailed a notice to attorney Duffy on March 5, 2003, advising him that he was obligated to comply with the fast track provisions of NRAP 3C. Mr. Duffy may disregard that notice.