

IN THE SUPREME COURT OF THE STATE OF NEVADA

BYRON ELROY CRUTCHER,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
NANCY M. SAITTA, DISTRICT JUDGE,
Respondents,
and
WARDEN, SOUTHERN DESERT
CORRECTIONAL CENTER, ROBERT
HILDRETH,
Real Party in Interest.

No. 41708

FILED

AUG 15 2003

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

ORDER DENYING PETITION

This is a proper person petition for a writ of habeas corpus. Petitioner argues that he has been deprived of a direct appeal without his consent and challenges the adequacy of the Lozada¹ remedy.

Petitioner filed a proper person post-conviction petition for a writ of habeas corpus in the district court, arguing, among other things, that he was deprived of a direct appeal without his consent. The district court denied the petition. On appeal, this court reversed the order of the district court denying the petition because the record on appeal revealed that petitioner had been deprived of a direct appeal without his consent. This court directed the district court to appoint counsel and to permit petitioner an opportunity to file a petition for a writ of habeas corpus

¹Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

raising direct appeal issues—the Lozada remedy.² The district court promptly complied with this court’s order and appointed counsel to represent petitioner in the proceedings in the district court. Petitioner is represented by Mr. David T. Brown in the proceedings pending in the district court. Documents before this court reveal that petitioner is presently pursuing the Lozada remedy in the district court.

Petitioner has filed two previous original petitions for extraordinary relief in this court challenging the Lozada remedy, and this court has determined that this court’s intervention by extraordinary writ was not warranted.³ Petitioner has filed the latest petition, his third petition, arguing that he was deprived of a direct appeal without his consent and challenging the adequacy of the Lozada remedy.


We have reviewed the documents on file with this court, and we conclude that our intervention by extraordinary writ is not warranted. This court has already determined that petitioner was deprived of a direct appeal without his consent. This court has further determined that petitioner may remedy this loss by way of a petition for a writ of habeas corpus, with the assistance of counsel, raising direct appeal issues. Because petitioner is represented by counsel in the proceedings in the district court, petitioner must seek relief by and through his appointed counsel, Mr. Brown. Petitioner may, by and through his counsel, raise any issues relating to the adequacy of the remedy on appeal to this court from


²Crutcher v. State, Docket No. 32140 (Order of Reversal and Remand, September 26, 2000).

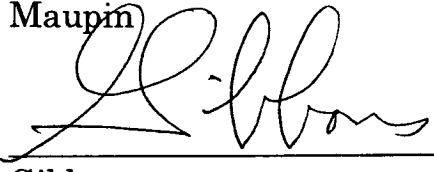
³Crutcher v. Warden, Docket No. 41250 (Order Denying Petition, May 7, 2003); Crutcher v. District Court, Docket No. 38451 (Order Denying Petition, October 30, 2001).

a final decision of the district court on the Lozada petition.⁴ Accordingly,
we

ORDER the petition DENIED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Nancy M. Saitta, District Judge
Byron Elroy Crutcher
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
David T. Brown, Esq.
Clark County Clerk

⁴Contrary to petitioner's assertions, petitioner may appeal to this court when and if the Lozada petition is denied. See Lozada, 110 Nev. at 359, 871 P.2d at 950 (recognizing that if the district court denies the Lozada petition that the petitioner may appeal the denial to this court); see also NRS 34.575; NRS 177.015(3).