

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID EARL REED,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41810

FILED

MAY 6 6 2004

ORDER DISMISSING APPEAL

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

This is a proper person appeal from an order of the district court denying a motion for amended judgment of conviction to include all presentence credits.

On August 15, 2002, the district court convicted appellant, pursuant to a guilty plea, of one count of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of thirty to one hundred and twenty months in the Nevada State Prison. The district court provided appellant with one hundred and twenty days of credits.

It appears that in June 2003, appellant served a copy of a motion for amended judgment of conviction to include all presentence credits on the State.¹ The State filed an opposition to the motion. On

¹The documents before this court indicate that the motion was mailed to the Clark County District Attorney's Office.

June 25, 2003, the district court entered an order denying appellant's motion. This appeal followed.

This court's review of the record on appeal reveals a fatal jurisdictional defect. Specifically, appellant never filed a copy of his motion in the district court.² It appears that the State did not check to see that the motion was filed in the district court before responding to the motion served on the State. Further, the district court denied the motion without the motion having ever been filed in the district court.³ Because the motion was never filed in the district court, the district court never acquired jurisdiction over the motion. Thus, the district court's June 25, 2003 order denying the motion is a nullity, and we direct the district court to vacate its June 25, 2003 order. This court lacks jurisdiction to consider an appeal from an order resolving a motion that was never filed in the

²On March 16, 2004, this court entered an order for transmission of a supplemental record on appeal. Because the motion for amended judgment of conviction was missing from the record on appeal, this court directed the clerk of the district court to transmit a copy of the motion filed in the district court. If the motion was not filed in the district court, the clerk of the district court was to inform this court of this fact. The clerk of the district court responded and transmitted an unstamped copy of the motion that the clerk was able to obtain from the district attorney's files. It is apparent from the clerk's response that the motion was never filed in the district court.

³It appears that the district court relied on the State to prepare the written order denying the motion. It is unclear how the district court was able to resolve the claims raised in the motion when the claims were never made a part of the record on appeal.

district court. Such an order is not a final, appealable determination. Accordingly, we

ORDER this appeal DISMISSED.⁴

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Joseph T. Bonaventure, District Judge
David Earl Reed
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁴We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.