

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. MILLER A/K/A GLENN  
LEROY CASS A/K/A MICHAEL L.  
MILLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42473

**FILED**

JAN 28 2004

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

ORDER DISMISSING APPEAL

On November 13, 2003, the clerk of the district court received a document labeled, "Notice of Appeal Motion to Withdraw a Guilty Plea." This document was filed in the district court on December 3, 2003, and transmitted to and docketed in this court as an appeal on December 11, 2003. Our review of the documents before this court reveals a jurisdictional defect.

To the extent that appellant intended this notice of appeal to serve as a notice of appeal from his judgment of conviction, the notice of appeal was untimely. The district court entered a judgment of conviction on September 16, 2003. Appellant did not date or send his notice of appeal to the district court, however, until November 11, 2003, after the expiration of the thirty-day appeal period prescribed by NRAP 4(b). An untimely notice of appeal fails to vest jurisdiction in this court.<sup>1</sup>

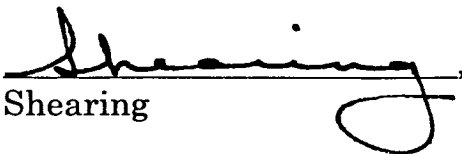
To the extent that appellant sought to file a motion to withdraw a guilty plea in this court, appellant's motion is improperly filed

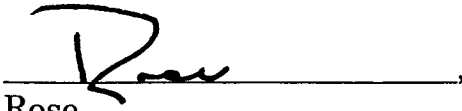
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<sup>1</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

in this court in the first instance. A post-conviction petition for a writ of habeas corpus (NRS chapter 34) and a motion to withdraw a guilty plea (NRS 176.165) must be filed in the district court in the first instance. Appellant may then appeal to this court from any final, adverse decision.<sup>2</sup> Accordingly, we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, C.J.  
Shearing

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

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

cc: Hon. Jackie Glass, District Judge  
Michael A. Miller  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>2</sup>NRS 34.575; NRS 177.015(3).