

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LEONETTI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42674

**FILED**

SEP 15 2004

ORDER DISMISSING APPEAL

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

This is an appeal from an order of the district court purportedly denying appellant's post-conviction motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On October 24, 2000, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted sexual assault of a minor under the age of 16. The district court sentenced appellant to a prison term of 96 to 240 months. This court dismissed appellant's direct appeal.<sup>1</sup>

Appellant filed a post-conviction petition for a writ of habeas corpus on February 19, 2002, and a supplemental petition on September 6, 2002. Appellant's counsel has not included copies of the petition and the supplemental petition in the appendix counsel has provided to this court.

On December 5, 2002, and July 14, 2003, appellant filed motions to withdraw his guilty plea. The appendix prepared by

---

<sup>1</sup>Leonetti v. State, Docket No. 36980 (Order Dismissing Appeal, January 2, 2002).

appellant's counsel contains only one motion to withdraw the plea, and that motion is not file-stamped, nor is it dated. We remind counsel for appellant that the appendix should contain all documents "essential to determination of issues raised in appellant's appeal."<sup>2</sup> Moreover, "true and correct copies" of papers filed in the district court and included in the appendix will contain the file stamp of the district court clerk.<sup>3</sup>

On September 3, 2003, the State filed a response to appellant's motion to withdraw his guilty plea. The district court conducted a hearing on January 8, 2004. Appellant's counsel has not requested the preparation or provided this court with a copy of the transcript of this hearing. But according to the district court minutes, the district court found that all of the claims raised by appellant were without merit except one. The remaining claim alleged that appellant's counsel at the time he entered his plea had a conflict of interest because the attorney was also representing appellant's wife in their divorce proceedings. As to that issue, the district court ordered an evidentiary hearing.

On January 14, 2004, appellant filed a proper person notice of appeal from the "District Court's Order denying his MOTION TO WITHDRAW GUILTY PLEA that was entered during the hearing on January 8, 2004." On January 20, 2004, the district court entered an order, prepared by the State, purporting to deny appellant's motion to withdraw his guilty plea. Counsel for appellant failed to include a copy of

---

<sup>2</sup>NRAP 30(b)(3).

<sup>3</sup>NRAP 30(g)(1); see also NRAP 3C(f)(2) (requiring appendices in fast track appeals to comply with the provisions of NRAP 30 and 32).

this document in the appendix, but a copy was provided by the State as an exhibit to a motion to strike portions of the fast track statement.

The order entered on January 20, 2004, makes no mention of the conflict issue from appellant's motion to withdraw his plea, nor does it mention that the district court had ordered, but not yet conducted an evidentiary hearing on that issue. Consequently, the order appears on its face to be a final, appealable determination resolving a motion to withdraw a guilty plea.

The order is replete with errors. Specifically, the order: (1) lists the wrong district court department number; (2) contains the wrong date for the hearing; (3) states that the hearing was before Judge Donald Mosley, when in fact, it was before Judge Glass; (4) states that appellant was not present and was acting in proper person, when in fact, appellant was present and was represented by counsel; and (5) is inexplicably stamped with Judge McGroarty's signature.

On April 2, 2004, the district court conducted an evidentiary hearing on the conflict of interest issue. At the conclusion of the hearing, the district court found that there was no conflict and that counsel was not ineffective. The district court entered an order on April 28, 2004, which was again prepared by the State. The order states that appellant was not present for the hearing, while the transcript clearly shows that he was present. The order contains findings of fact and conclusions of law, regarding whether appellant's counsel was ineffective because of the conflict of interest. The order ultimately purports to deny appellant's petition for a writ of habeas corpus, with no mention of appellant's motion to withdraw his plea.


Because appellant's counsel has not provided this court with a copy of the habeas petition filed below, this court is unable to determine what issues were contained in the petition, and cannot, therefore, verify that the order of April 28, 2004, resolved all of the claims presented in the petition. In any event, the order did resolve the remaining conflict issue from the motion to withdraw the guilty plea. However, no notice of appeal was filed from the order.

After a careful review of the documents before this court in this appeal, it is clear that the district court's order of January 20, 2004, was not a final appealable order because it left one issue pending and unresolved. Further, in light of the number of serious errors contained in the order entered on January 20, 2004, this court entertains serious doubt as to whether it constitutes a valid enforceable order.


As to the order entered on April 28, 2004, we are unable to determine whether that order was intended to resolve appellant's habeas petition or whether it was intended to resolve appellant's motions to withdraw his plea. Rather, it appears that the district court's orders of January 20, 2004, and April 28, 2004, do not finally resolve either the habeas petition or the motions to withdraw the guilty plea that appellant filed below. Under these circumstances, this court lacks jurisdiction to entertain this appeal. Moreover, this court expects the district court to enter an order or orders finally resolving appellant's habeas petition and the motions to withdraw his guilty plea. The orders should accurately describe the proceedings below and contain specific findings of fact and conclusions of law.

Because it appears that the district court has not yet entered a valid and final appealable order in this matter, we conclude that we lack jurisdiction to entertain this appeal. Accordingly, we

ORDER this appeal DISMISSED without prejudice to appellant's right to timely appeal from any future final appealable determination of the district court.<sup>4</sup>

  
\_\_\_\_\_, J.  
Becker

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

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

cc: Hon. Jackie Glass, District Judge  
Law Office of Betsy Allen  
Michael Leonetti  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

---

<sup>4</sup>Because appellant is represented by counsel in this matter, we decline to grant appellant permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to appellant unfiled all proper person documents appellant has submitted to this court in this matter.