

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENNETT GRIMES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67598

FILED

MAR 30 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *J. M. [Signature]*
DEPUTY CLERK

ORDER DENYING MOTION TO WITHDRAW

This is an appeal from a district court order denying a motion to correct an illegal sentence. Appellant's counsel has filed a motion to withdraw as counsel of record in this appeal. Counsel states that appellant has filed a post-conviction petition for a writ of habeas corpus asserting that counsel was ineffective at trial and the issues raised in the habeas petition overlap with the issue raised in the motion to correct an illegal sentence. Counsel also states that the district court granted her motion to withdraw due to the conflict of interest.

Initially, we note that a district court order allowing counsel to withdraw does not relieve counsel of her obligations under NRAP 3C(b)(2). See NRAP 3C(b)(3). Further, we are not convinced that counsel demonstrates an actual conflict of interest warranting withdrawal. A conflict of interest arises when counsel's loyalty to or efforts on behalf of a client are threatened by his responsibilities to another client or a third person or by his own interests. The mere threat or filing of a habeas petition asserting a claim of ineffective-assistance against counsel does not necessarily create an actual conflict of interest requiring counsel's removal. Cf. *Carter v. Armontrout*, 929 F.2d 1294, 1300 (8th Cir. 1991) (explaining that a pending lawsuit between a defendant and defense

counsel “may give rise to a conflict of interest,” but the defendant “does not necessarily create such a conflict” merely by filing the lawsuit); *People v. Horton*, 906 P.2d 478, 501 (Cal. 1995) (explaining that “[a]lthough being named as a defendant in a collateral lawsuit by one’s client may place an attorney in a situation in which his or her loyalties are divided, a criminal defendant’s decision to file such an action against appointed counsel does not require disqualification unless the circumstances demonstrate an actual conflict of interest”). Because nothing in the motion explains how counsel’s loyalty to or efforts on behalf of appellant are threatened by the filing of the habeas petition, counsel fails to demonstrate an actual conflict of interest. Accordingly, we deny the motion without prejudice.

It is so ORDERED.

1. J. S. S. S., C.J.

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk
Bennett Grimes