

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW DAVID FUGATE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69925

MATTHEW DAVID FUGATE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69926

FILED

MAR 30 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING MOTIONS

These are appeals from judgments of conviction subject to the fast track provisions of NRAP 3C. Appellant's counsel, John Ohlson, has filed motions to withdraw from representing appellant in these appeals. NRAP 3C(b)(3) does not permit trial counsel to withdraw until after he or she has filed the rough draft transcript request and the fast track statement. Once the necessary fast track documents are filed, this court will consider a motion by trial counsel to withdraw from representation for the remainder of the appeal. Accordingly, as the fast track statements have not been filed, we deny the motions to withdraw.

Counsel suggests that appellant's desire to raise claims of ineffective assistance of counsel creates an actual conflict, supporting the need for withdrawal. We disagree; the decision as to what issues to raise on appeal resides within counsel's professional judgment. *See Jones v. Barnes*, 463 U.S. 745, 751-54 (1983); *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1113-14 (1996). Appellant has no right to insist that counsel raise certain issues "if counsel, as a matter of professional

judgment, decides not to present those [issues],” *Jones* at 751. Moreover, claims of ineffective assistance of trial counsel cannot be raised for the first time on direct appeal from a judgment of conviction because such issues are not properly before this court. *See Pellegrini v. State*, 117 Nev. 860, 34 P.3d 519 (2001). We remind counsel that the fast track statements in these appeals remain due on or before April 18, 2016.

It is so ORDERED.

C.J.

cc: John Ohlson
Matthew Fugate
Attorney General/Carson City
Washoe County District Attorney