

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN RUSSELL HARTE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43877

**FILED**

OCT 26 2004

ORDER TO SHOW CAUSE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

This is an appeal from a post-conviction order entered in a death penalty proceeding. This court's review of the documents presently before this court reveals a potential jurisdictional defect.

Specifically, it appears that, on March 19, 2004, the district court entered a written order containing findings of fact and conclusions of law, denying appellant's post-conviction petition for a writ of habeas corpus. The district court's docket entries indicate that notice of entry of that order was served on the same date. Thereafter, it appears that appellant moved the district court for relief from that order and for reconsideration. On August 12, 2004, the district court entered an order denying appellant's motion to modify the prior findings of fact and conclusions of law of March 19, 2004. On August 25, 2004, appellant filed a notice of appeal from the order of August 12, 2004.

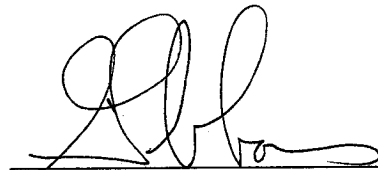
In Klein v. Warden, this court held that "the civil tolling provisions of NRAP 4(a)(2) are inconsistent with and inapplicable to the statutory procedures governing the litigation of post-conviction habeas

corpus petitions."<sup>1</sup> Moreover, an order denying a motion for reconsideration is not an appealable determination.<sup>2</sup>

In the instant case, it appears that, if notice of entry of the district court's order of March 19, 2004, denying appellant's post-conviction habeas petition, was properly served by the clerk of the district court on appellant and his counsel under NRS 34.575 and NRS 34.830, then appellant's notice of appeal filed on August 25, 2004, is untimely from the order of March 19, 2004, and otherwise fails to vest jurisdiction in this court to consider this appeal.

Accordingly, appellant's counsel shall have 20 days from the date of this order within which to show cause why this appeal should not be dismissed for lack of jurisdiction. This court expects counsel for appellant to document his response with certified file-stamped copies of: the notice of entry of the district court's order of March 19, 2004; the motion subsequently filed below for reconsideration or relief from that order; and any other notices of appeal, motions, oppositions, supplements, or other filings in the post-conviction proceeding below that will permit this court to render an informed determination regarding the jurisdictional issues stated above.<sup>3</sup>

It is so ORDERED.

 A.C.J.

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<sup>1</sup>118 Nev. 305, 310, 43 P.3d 1029, 1033 (2002).

<sup>2</sup>See Phelps v. State, 111 Nev. 1021, 900 P.2d 344 (1995).

<sup>3</sup>We suspend the briefing schedule in this appeal pending further order of this court.

cc: Hon. Connie J. Steinheimer, District Judge  
Donald York Evans  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk