

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 43877

**FILED**

JUL 13 2005

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

ORDER DIRECTING ANSWER TO PETITION FOR EN BANC  
RECONSIDERATION AND RECALLING REMITTITUR

Appellant has petitioned this court for en banc reconsideration of the order dismissing this appeal entered by a panel of this court on April 7, 2005. Having reviewed the petition, it appears that an answer will assist the court in resolving this matter. Accordingly, the Washoe County District Attorney shall have 15 days from the date of this order within which to file and serve an answer to the petition. See NRAP 40A. In addition to all other claims presented in the petition, we direct the district attorney to address specifically the following questions in its answer:

1. Whether the district court: (a) granted appellant's motion for reconsideration, (b) reconsidered its decision of March 19, 2004, and then (c) ultimately determined in its order of August 12, 2004, that its original order of March 19, 2004, denying the post-conviction petition did not require modification.
2. Whether under this court's holding in Gunlord v. Bozzano, 95 Nev. 243, 591 P.2d 1149 (1979), the order entered after any reconsideration proceedings conducted in this case should be considered the final, appealable determination; and

3. Whether appellant's notice of appeal should therefore be considered timely under the Gunlord rationale.

In addition, appellant shall have 15 days from the date of this order within which to supplement his petition for en banc reconsideration with a certified copies of the post-conviction habeas petition and any supplemental petitions filed below, the written order of the district court entered on May 3, 2004, and the specific objections to the order of March 19, 2004, that appellant submitted to the district court. Further, we recall the remittitur in this appeal and stay its issuance pending resolution of the petition for en banc reconsideration.

It is so ORDERED.

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

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