

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRSTIN BLAISE LOBATO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59147

FILED

OCT 03 2011

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

ORDER TO SHOW CAUSE

This is an appeal from a district court order denying a post-conviction petition requesting genetic marker testing pursuant to NRS 176.0918. Our review of this appeal reveals two potential jurisdictional defects.

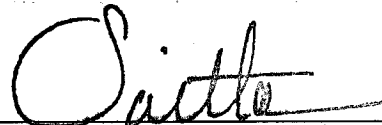
First, it is not clear that the district court's order is appealable. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1 (1990). NRS 176.0918 does not provide for an appeal, and it does not appear that any other statute or court rule provides for an appeal.

Second, the notice of appeal appears to be untimely. The district court's order was entered on July 27, 2011. However, the notice of appeal was not filed until September 1, 2011, well after the expiration of the 30-day appeal period prescribed by NRAP 4(b). Although the notice of appeal would be timely from the notice of entry of order, which was not served until August 2, 2011, it does not appear that the appeal period in this case is prescribed by NRS 34.575(1), which provides that a notice of appeal from an order denying post-conviction petition for a writ of habeas

corpus must be filed "within 30 days after service by the court of written notice of entry of the order or judgment." There does not appear to be any other statute or court rule that would run the appeal period in this matter from the date that written notice of entry was served. "[A]n untimely notice of appeal fails to vest jurisdiction in this court." Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994).

Appellant shall have 20 days from the date of this order to show cause why this appeal should not be dismissed for lack of jurisdiction. Respondent may file any reply within 5 days from the date that appellant's response is served. We caution appellant that failure to demonstrate that this court has jurisdiction may result in this court's dismissal of this appeal. The deadlines for filing a transcript request form, docketing statement, and briefs shall be suspended pending further order of this court.

It is so ORDERED.

 _____, C.J.

cc: Gallian Wilcox Welker Olson & Beckstrom, LC
Attorney General/Carson City
Clark County District Attorney