

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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4 THE STATE OF NEVADA,

5 Appellant,

6 vs.

7 NATASHA JACKSON,

8 Respondent.
9

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Tracie K. Lindeman
Case No. 67071
Clerk of Supreme Court

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11 **RESPONDENT'S MOTION TO DISMISS APPEAL**
12 **BASED ON LACK OF JURISDICTION**

13 Comes Now Respondent, NATASHA JACKSON, by and through Deputy
14 Public Defenders DAN A. SILVERSTEIN and CHRISTY L. CRAIG, and moves for
15 dismissal of the instant appeal based on lack of jurisdiction. This Motion is based upon
16 the attached points and authorities.
17

18 DATED this 2nd day of March, 2015.

19 PHILIP J. KOHN
20 CLARK COUNTY PUBLIC DEFENDER

21
22 By /s/ Dan A. Silverstein
23 DAN A. SILVERSTEIN, 7518
24 Deputy Public Defender
25 309 So. Third Street, Suite #226
26 Las Vegas, Nevada 89155-2610
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1 POINTS AND AUTHORITIES

2 ARGUMENT

3 The right to appeal is statutory, and where no statute or court rule provides for
4 appeal, there is no right of appeal. Castillo v. State, 106 Nev. 349, 352 (1990). The
5 State argues that jurisdiction for this appeal is conferred by NRS 34.575(2). This section
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7 reads:

8 “The State of Nevada is an interested party in proceedings for a writ of
9 habeas corpus. If the district court grants the writ **and orders the**
10 **discharge or a change in custody of the petitioner**, the district attorney
11 of the county in which the application for the writ was made, or the city
12 attorney of a city which is situated in the county in which the application
13 for the writ was made, or the Attorney General on behalf of the State, may
14 appeal to the Supreme Court from the order of the district judge within 30
15 days after the service by the court of written notice of entry of the order.”
16 NRS 34.575(2), emphasis added.

17 According to the plain language of the statute upon which the State relies for
18 jurisdiction, the State may only appeal the granting of a pretrial writ of habeas corpus
19 where the district court “...orders the discharge or a change in custody of the petitioner.”
20 While the district court granted the Respondent relief concerning two counts of an eight-
21 count Indictment, the granting of this petition did not result in either the discharge of the
22 Respondent, or any change in Respondent’s custody status. Even after the granting of a
23 portion of the Respondent’s petition, the Respondent remains incarcerated without bail,
24 as she has been since the Indictment was returned on August 18, 2014. Record on
25 Appeal, Vol. 1 (hereafter “ROA1”), p.6.

26 In Gary v. Sheriff, 96 Nev. 78 (1980), this Court explained the seemingly
27 disparate treatment accorded to the State and the defendant with respect to appellate
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1 review of pretrial habeas petitions. Specifically, the Court addressed the contention that
2 "...the legislative treatment accorded a defendant on the one hand, and the State on the
3 other is unequal and necessarily a denial of equal protection." Gary at 80. Because
4 Nevada law allows the State to appeal the granting of a pretrial petition, but disallows a
5 defendant from appealing the denial of such a petition, this Court offered an analysis of
6 the apparent unfairness of this system. The Gary Court explained that "...an order
7 denying pretrial habeas relief is not a final adjudication of [the defendant's] guilt. On the
8 other hand, an order granting such a petition for relief before trial possesses the quality of
9 a final judgment... The difference in finality between the denial and granting of habeas
10 relief supplies a reasonable basis [for] precluding review in the one instance and
11 allowing it in the other." Gary at 80.

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15 This analysis makes clear why the unambiguous language of NRS 34.575(2),
16 requiring either a "discharge or a change in custody of the petitioner" to trigger appellate
17 review, is a command to which this Court ought to strictly adhere. Because it is the
18 "difference in finality" which provides the rational basis for treating the denial of habeas
19 relief differently from the granting of habeas relief, Gary at 80, the district court's order
20 must possess the quality of a "final adjudication" in order to establish jurisdiction for
21 appellate review. The dismissal of two lesser counts from an eight-count murder
22 indictment, which occasions no discharge or change in the Respondent's custody status,
23 does not meet this criteria. It also does not fit within the plain statutory language of NRS
24 34.575(2).
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1 As a result of the granting of Respondent's petition as to Count 1 and Count 8 of
2 the Indictment, the district court did not order the discharge of the Respondent, and the
3 district court did not order any change in the Respondent's custody status. NRS
4 34.575(2) does not authorize the State's appeal in this case. For this reason alone, the
5 State's appeal should be dismissed.
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7 In the event that this Court accepts the State's appeal in spite of the clear
8 jurisdictional defect, the Respondent's substantive arguments follow.
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10 DATED this 2nd day of March, 2015.

11 PHILIP J. KOHN
12 CLARK COUNTY PUBLIC DEFENDER
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