

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAZEN ALOTAIBI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67380

FILED

SEP 04 2015

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

ORDER

Appellant has filed a motion to stay this direct appeal from the judgment of conviction and remand this matter to the district court to conduct an evidentiary hearing on his ineffective assistance of counsel claim. Respondent opposes the motion.

This court will exercise its discretion to stay direct appeals pending resolution of related post-conviction proceedings in district court only in "unusual and extraordinary cases." *Varwig v. State*, 104 Nev. 40, 42, 752 P.2d 760, 761 (1988). To demonstrate good cause to grant such a motion, an appellant must demonstrate "that he is likely to succeed on the merits of his post-conviction petition and that there is a strong likelihood that [staying the direct appeal] will serve the end of judicial economy." *Id.* Appellant's motion fails to address the likelihood of success on the merits, and contains only a bare, unsupported, statement that the requested remand is in the interest of judicial economy.

We are not convinced that appellant demonstrates "unusual and extraordinary circumstances" that warrant staying this appeal. *Id.* (explaining that this court will not stay direct appeals based on a mere demonstration of a prima facie post-conviction claim and noting that

staying appeals under such circumstances does not generally serve judicial economy). And appellant's request for a remand to conduct an evidentiary hearing on his ineffective-assistance claim is both premature and unnecessary. It appears that appellant has not yet filed a post-conviction petition for a writ of habeas corpus. To receive an evidentiary hearing, appellant must file such a petition in the district court. If the district court determines that an evidentiary hearing is warranted, *see Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984), no remand from this court is necessary for the district court to conduct that hearing.¹

For the foregoing reasons, appellant's motion to stay this appeal and remand this matter to the district court is denied. Appellant's third request for an extension of time to file the opening brief pending this court's resolution of the former motion is granted.² Appellant shall have until October 23, 2015, to file and serve the opening brief. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1). Failure to timely file the opening brief may result in the imposition of sanctions.

It is so ORDERED.

1. Sanders, C.J.

¹We express no opinion regarding the merits of appellant's ineffective-assistance of counsel claim or whether appellant is entitled to an evidentiary hearing.

²Appellant's second request for an extension of time is denied as moot.

cc: Gentile, Cristalli, Miller, Armeni & Savarese, PLLC
Gordon Silver
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