

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMMIE NUNN,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

Electronically Filed
Jul 15 2020 11:23 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 80121

**STATE'S REPLY IN SUPPORT OF MOTION TO STRIKE
PORTIONS OF APPELLANT'S OPENING BRIEF**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Deputy, JOHN NIMAN, and submits this Reply in Support of Motion to Strike Portions of Appellant's Opening Brief. This Reply is filed pursuant to NRAP Rule 27(a)(4) and is based on the following memorandum and all papers and pleadings on file herein.

Dated this 15th day of July, 2020.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ John Niman
JOHN NIMAN
Deputy District Attorney
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Office of the Clark County District Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

Appellant claims that the defects in his Notice of Appeal, and the resulting impropriety of certain arguments in his Opening Brief, amount to “a [t]echnicality.” See, Appellant’s Response to Motion to Strike (his “Response”) at 1. Appellant is wrong.

A Notice of Appeal is not simply a procedural or technical document – it is jurisdictional. The Nevada Supreme Court has made it clear that a Notice of Appeal is necessary to vest jurisdiction in that Court. See, e.g., Jordon v. Director, Dep’t of Prisons, 101 Nev. 146, 696 P.2d 998 (1985) (a notice of appeal that did not comply with statutory guidelines failed to vest jurisdiction in the Nevada Supreme Court); see also, Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994) (overturned on other grounds by Rippo v. State, 134 Nev. 411, 423 P.3d 1084 (2018)) (“We have consistently held that an untimely notice of appeal fails to vest jurisdiction in this court.”).

Appellant attempts to sidestep this Court’s lack of jurisdiction to address the rogue issues in his Opening Brief by arguing that the State had “complete notice” and that the State would not be prejudiced by the deficient Notice of Appeal. Response at 1-2. Neither of these postulations actually addresses the issue at hand, and neither is relevant to this Court’s determination that Appellant’s Notice of

Appeal does not vest jurisdiction in this Court to address portions of Appellant's Opening Brief.

Appellant references multiple cases to argue that this Court should be “lenient” regarding the deficient Notice of Appeal. See, Response at 2 (*citing* Gideon v. Wainwright, 372 U.S. 335 (1963), Penson v. Ohio, 488 U.S. 75 (1988) and Lemmond v. State, 114 Nev. 219, 954 P.2d 179 (1998)). Appellant does not attempt to specifically apply Gideon or Penson to the instant case, instead relying on the vague assertion that “[t]he Courts have always been lenient in accepting flawed pleadings from *Pro Per* litigants.” Id. The relevance of those cases is not clear, as Gideon deals with the right to appointed counsel and Penson deals with a counsel's motion to withdraw. Therefore, these cases fail to support Appellant's assertion, and the State submits that it cannot more specifically respond, as the State cannot be expected to argue against itself.

Appellant's reliance on Lemmond is likewise unpersuasive. Response at 2-3. In that case, the appellant mistakenly referenced the date of an amended notice of entry of an order denying a habeas petition, rather than the date of the order itself. 114 Nev. at 220, 954 P.2d at 1179. The Lemmond Court determined that, since the notice of appeal sufficiently referenced the order itself, the defect in the notice was merely “technical” and should be overlooked. Id. Here, Appellant's Notice of Appeal specifically referenced the district court's decision on November 14, 2019,

and included no reference to Appellant's habeas petition. Therefore, Appellant's notice did not merely include the incorrect date, a "technical defect" under Lemmond. Id. Instead, Appellant specifically appealed from one order, and is attempting to shoehorn claims from a separate order into the instant appeal, as the time for appealing from that order has run.

Appellant's suggestion that this Court should "remove" this case back to the district court to give Appellant an opportunity to cure the defects of his Notice of Appeal is not feasible. See, Response at 3. NRAP 26(b)(1)(A) explains that this "court may not extend the time to file a notice of appeal except as provided in Rule 4(c)." Appellant does not suggest that the instant case falls within any of the circumstances provided in NRAP 4(c); therefore, a remand would be futile, as the time for noticing an appeal has run.

CONCLUSION

Because Appellant's Notice of Appeal fails to vest jurisdiction in this Court to review the district court's denial of Appellant's Petition for Writ of Habeas Corpus, and because a remand would be futile, the State respectfully requests that this Court strike Argument I on pages 11-16 of Appellant's Opening Brief and any reference to the same in Argument III on pages 18-20 of Appellant's Opening Brief.

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Dated this 15th day of July, 2020.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ John Niman*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on July 15, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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BY /s/ E. Davis

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