

IN THE SUPREME COURT OF THE STATE OF NEVADA

EVARISTO JONATHAN GARCIA,  
Appellant,  
vs.  
JAMES DZURENDA, DIRECTOR,  
Respondent.

No. 80255

**FILED**

JAN 16 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER REGARDING MOTION*

This is an appeal from an order denying a postconviction petition for a writ of habeas corpus. Appellant has filed a motion to stay the briefing schedule in this appeal while the district court rules on appellant's pending timely motion to alter or amend the judgment. Respondent does not oppose the motion.

As appellant notes, his timely motion to alter or amend the district court's order did not toll the time to file his appeal. *Klein v. Warden*, 118 Nev. 305, 309–11, 43 P.3d 1029, 1032–33 (2002) (the civil tolling provisions of NRAP 4(a)(2) are inapplicable to the statutory procedures governing the litigation of post-conviction habeas corpus petitions). The district court presently has jurisdiction to consider and deny the pending motion to alter or amend. However, during the pendency of this appeal, and without a remand from this court, the district court is without jurisdiction to grant appellant's motion. *See, e.g., Layton v. State*, 89 Nev. 252, 254, 510 P.2d 864, 865 (1973); *see also Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978). Thus, although the district court may deny the motion without a remand from this court, before it may grant appellant's motion, it should enter and transmit to this court a written order certifying that it is inclined to grant the motion. Upon receipt of such an order, this court will remand

the matter to the district court so that jurisdiction to grant the motion will be properly vested in that court.

Appellant's motion to stay the briefing notes that to date the district court has not denied the motion and has not indicated whether it may be inclined to grant the motion to alter or amend. Accordingly, the motion for stay is granted as follows. Appellant shall have 30 days from the date of this order to file a status report informing this court of the decision of the district court to deny the motion or providing this court with the district court's order indicating its inclination to grant the motion. See *Foster v. Dingwall*, 126 Nev. 49, 228 P.3d 453 (2010); *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978). The briefing in this appeal is suspended pending further order of this court.

It is so ORDERED.

Pickering, C.J.

cc: Hon. David M. Jones, District Judge  
Rene L. Valladares  
Stephen Alexander Spelman  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk