

In the Supreme Court of the State of Nevada

Case No. 80255

Evaristo Jonathan Garcia

Appellant,

v.

James Dzurenda, et al.,

Respondent.

Electronically Filed
Dec 18 2020 03:34 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**Notice that the District Court's Prior Findings of Fact,
Conclusions of Law, and Order have been Rescinded**

Appellant Evaristo Garcia provides notice to this Court that the lower court has rescinded its November 18, 2020 Findings of Fact, Conclusions of Law and Order, which it previously provided to this Court, and intends to file a new order. Garcia is providing this notice out of an abundance of caution, so that this Court does not dismiss this appeal.

This case is an appeal from an order denying a post-conviction petition for writ of habeas corpus.¹ This Court had previously suspended the briefing schedule at Garcia's request so the district court could rule on a timely motion to alter or amend the judgment.² Following an indication from the district court it was inclined to grant the motion, this Court granted Garcia's motion to remand pursuant to NRAP 12A.³

This Court remanded the case to the district court for the "limited purpose of allowing the district court to hold an evidentiary hearing and

¹ 4/10/20 Nevada Supreme Court Order at 1.

² *Id.*

³ *Id.*

to enter its order.”⁴ Upon filing of that order, the aggrieved party “may file an amended notice of appeal from the new order.”⁵

On August 13, 2020, the district court informed this Court the evidentiary hearing was scheduled for September 21, 2020.⁶ The hearing took place, as scheduled.

On September 30, 2020, the district court issued a minute entry order denying Garcia’s petition and ordering the state to “prepare the order.”⁷ A week later, Garcia filed a motion asking the Court to prepare and file the order on the post-conviction petition.⁸

Before the court ruled on Garcia’s motion, it signed and filed the Findings of Fact, Conclusions of Law and Order the state drafted, and which the lower court provided to this Court.⁹

⁴ *Id.*

⁵ *Id.*

⁶ 8/13/20 Letter

⁷ 9/30/20 Minutes.

⁸ 10/7/20 Motion for Court to Prepare and File Order on Petition for Writ of Habeas Corpus (Post-Conviction)/

⁹ *See* 11/30/20 Letter to this Court with a copy of the Findings of Fact, Conclusions of Law, and Order.

The lower court refiled the Findings of Fact, Conclusions of Law and Order on December 2, 2020, and filed the Notice of Entry of the Findings of Fact, Conclusions of Law and Order on December 10, 2020.¹⁰

Also on December 10, 2020, the lower court held a hearing on Garcia's pending motion asking the court to draft and file its own order on Garcia's post-conviction petition.¹¹ It granted Garcia's motion and ordered the prior Findings of Fact, Conclusions of Law and Order rescinded.¹² It said it would issue a new Order "as soon as possible."¹³

Garcia intends to file an amended notice of appeal upon the filing of that Order. He is reluctant to file one from the November 18, 2020 Order given the December 10, 2020 Notice of Entry and the lower court's order to rescind the order. It is Garcia's understanding that the forthcoming order, which the court will draft itself, will be the operative

¹⁰ See 12/2/20 Findings of Fact, Conclusions of Law, and Order; 12/10/20 Notice of Entry. The Court re-signed the Order on December 2, 2020, and the Notice of Entry informs Garcia that he has 33 days from December 10, 2020 to file a Notice of Appeal. *Id.*

¹¹ Tr. 12/10/20.

¹² See Tr. 12/10/20.

¹³ Tr. 12/10/20 at 5.

order from which Garcia would appeal. In light of the lower court's

December 10, 2020 decision to rescind, Garcia does not believe the

November 18, 2021 order provided to this Court has any effect.

However, given the unique procedural posture of this case, Garcia opted

to provide this update to the Court so that this case remained open

while the lower court pens the final order.

Dated December 18, 2020.

Respectfully submitted,

Rene L. Valladares

Federal Public Defender

/s/ Amelia L. Bizzaro

Amelia L. Bizzaro

Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2020, I electronically filed the foregoing with the Clerk of the Nevada Supreme Court by using the appellate electronic filing system.

Participants in the case who are registered users in the appellate electronic filing system will be served by the system and include: Alexander Chen.

I further certify that some of the participants in the case are not registered appellate electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three calendar days, to the following person:

Evaristo Jonathan Garcia
No. 1108072

/s/ Jessica Pillsbury
An Employee of the
Federal Public Defender, District of Nevada