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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERTO TORRES CARO,
Appellant,

v.

STATE OF NEVADA,
Respondent.

Case No.: 84151
District Case No.: CR20-1505B

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RESPONSE TO APRIL 5, 2022 ORDER TO SHOW CAUSE

COMES NOW, William J. Routsis, II, trial counsel for the Appellant, ALBERTO TORRES CARO, and responds to the Court's Order filed April 5, 2022 as follows:

Very frankly, the undersigned cannot come up with any credible reason on why this appeal should not be dismissed.

Mr. Caro pled guilty to attempted battery with a deadly weapon causing substantial bodily harm, a gross misdemeanor, on December 10, 2020. Sentencing was not held, however, until December 21, 2021. At that time he was sentenced to 364 days in the Washoe County jail.

34 days later, Mr. Caro filed a pro se Notice of Appeal on January 24, 2022. The Governor's suspension of periods (assuming he had authority to do so) ended long before that.

NRAP 4(b)(1)(A) clearly provides that a notice of appeal by a defendant in a criminal case shall be filed with the district court clerk within 30 days after the entry of the judgment or order being appealed.

NRAP 4(c) provides the circumstances when an untimely direct appeal from a judgment of conviction sentence may be filed. By use of the word "only" in NRAP4(c)(1), the rule contains the exclusive situation where a notice of appeal filed 4 days out of the time can nevertheless be considered. None of those circumstances even remotely apply to this case.

And it is difficult for the undersigned to understand how there could be specific findings of fact and conclusions of law finding that Mr. Caro has a valid appeal-deprivation claim and is entitled to a direct appeal.

He received a very favorable plea bargain in bargaining his serious violent felony to a gross misdemeanor, especially considering his prior criminal history and pending felony charges. I did not recommend an appeal, nor did he ask me to file a Notice of Appeal, nor did he ever mention that he wished to appeal this matter. If he were successful on Appeal the State would then simply file the serious Felony of which the evidence was compelling.

The law is clear: He cannot challenge the voluntariness of his guilty plea on direct appeal. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364 (1986).

Likewise, he cannot complain that he was not afforded effective assistance of counsel on direct appeal; the more appropriate vehicle for that is a petition for post-conviction relief. Gibbons v. State, 97 Nev. 520, 522-23, 634 P.2d 1214 (1981).

More than that, after entry of a guilty plea and imposition of sentence, a statutory post-conviction habeas petition is the exclusive remedy for challenging the validity of a guilty plea made after sentencing. Harris v. State, 130 Nev. 435, 448, 329 P.3d 619 (2014). And that is true, even if Mr. Caro's complaint has to do with counsel's performance at sentencing only, but not as to the voluntariness of his guilty plea. See: Gonzales v. State, 137 Nev.Ad.Op. 40, 492 P.3d 556 (2021).

And finally, Mr. Caro cannot complain that the sentence is illegal. On the face of it, it is not. See: Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321 (1996). And clearly, the Court can impose concurrent or consecutive sentences as between this one and pending cases of a different court or case number. See: NRS 176.035(1).

We are sending an extra copy of this document to Mr. Caro at his current place of incarceration, so that he may respond. But very frankly, the undersigned firmly believes this appeal should be dismissed and that there simply are no reasons that can be articulated to remand this case to the district court to consider the type of findings of fact, etc. that could justify the filing of an out-of-time appeal.

DATED this 14th day of April, 2022.

Respectfully submitted,

LAW OFFICE OF WILLIAM J. ROUTSIS, II
1070 Monroe Street
Reno, Nevada 89509

By: /s/WilliamRoutsis
William J. Routsis, II

CERTIFICATE OF SERVICE

The undersigned does hereby swear and declare, under penalty of perjury, that they are an employee of THE LAW OFFICE OF WILLIAM J. ROUTSIS, II, and that on this 14th day of April, 2022, they caused a true and correct copy of the preceding document to be served upon all necessary parties, as follows:

1) Via electronic service, through the Court's E-Flex filing system, addressed as follows:

Washoe County District Attorney's Office
Appellate Division
jnoble@da.washoecounty.us

2) By depositing a true and correct copy in a self-addressed envelope, postage prepaid, for first-class delivery via USPS, addressed as follows:

Alberto Torres Caro, #1005463
Northern Nevada Correctional Center
PO Box 7000
Carson City, Nevada 89702

DATED this 14th day of April, 2022.

/s/ElizabethMartinez
Elizabeth Martinez