

No. 84622

IN THE NEVADA SUPREME COURT

Electronically Filed
Apr 28 2022 02:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Sheriff Joseph Lombardo, Las Vegas Metropolitan Police Dept.

Appellant,

v.

Mateo Facio,

Respondent.

Purported Appeal From An Order To Remand Defendant
Eighth Judicial District Court
Honorable Judge Jacqueline M. Bluth, District Court Judge
District Court Case No. C-22-361822

Respondent's Motion To Dismiss For Lack Of Jurisdiction

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POINTS AND AUTHORITIES

The Sheriff has appealed from an Order of the district court which remanded Mateo Facio to the custody of the Clark County Detention Center. There is no statute or court rule allowing an appeal from an order transferring a defendant who is facing trial on criminal charges from the custody of the Nevada Department of Corrections to the custody of a county detention facility. This Court has jurisdiction only when a statute or court rule provides for an appeal. *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990).

This appeal should also be dismissed because the Sheriff is not a defendant or the State. There is no statute or rule providing for an appeal in a criminal case by a person who is not a party, not a defendant, and not the State. *See* NRAP 3, NRAP 4(b)(1) (providing deadlines for the defendant and the State, but not any other person or entity). NRS 177.015 allows for an appeal from only “the party aggrieved.” *See also Whitley v. State*, 79 Nev. 406, 413-414, 386 P.2d 93, 97 (1963) (recognizing that appeals in criminal cases are allowed only by aggrieved parties, which can be the State or the defendant). The Sheriff is not a party to the

criminal case below.¹

NRS 177.205(1) provides that this Court may dismiss an appeal if it is “irregular in any substantial particular.” As there is no rule or statute providing for an appeal of this order, and there is no right of appeal by a person or entity who is not a party, this appeal should be dismissed.

¹ The Sheriff filed an Emergency Petition for Writ of Mandamus and/or Prohibition, in response to this same Order of Remand, which was docketed in this Court in No. 84622. In his Petition -- at pages 2, 4, 9 and 16 -- the Sheriff acknowledged that he was not a party to the criminal case below. The Sheriff also argued in his Writ Petition that his Department “does not have any plain, speedy or adequate remedy at law and, as a nonparty, a Writ Petition is its *only* avenue of relief from the district court’s improper exercise of authority and unlawful order.” *Id.* at pg. 16 (emphasis added). Respondent Facio requests that this Court take judicial notice of the documents filed in Docket No. 84622. It is unclear as to why the Sheriff is now taking the position that there is a right of appeal in light of his previous acknowledgement that he is not a party and has no avenue of relief, other than through a petition for extraordinary relief, from the Order to Remand.

Significantly, in denying the Sheriff’s petition for extraordinary relief, this Court reached the merits in finding that the district court did not abuse its discretion in entering the Order to Remand. This Court also referenced the courts’ inherent authority to carry out judicial functions. Order Denying Petition for Writ of Mandamus or Prohibition, Docket No. 84459, at pages 1-2. This Court *did not* dismiss the petition on the ground that there was an adequate remedy at law through an appeal.

CONCLUSION

This Court lacks jurisdiction over the Sheriff's appeal. It should be summarily dismissed.

Dated April 28, 2022.

Respectfully submitted,

JoNell Thomas
Special Public Defender

/s/ Tegan Machnich

Tegan Machnich
Chief Deputy Special Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2022, a copy of the foregoing

Motion to Dismiss was served as follows:

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