

IN THE SUPREME COURT OF THE STATE OF NEVADA

JON D. SILER,
Petitioner,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43956

FILED

OCT 08 2004

ORDER DENYING PETITION

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person petition to request a stay of sentence while a direct appeal is being pursued. In his petition, petitioner appears to assert that a direct appeal is pending in this court and that he seeks a stay of sentence. However, a direct appeal is not pending in this court. Consequently, this court denies the relief requested.

Because it appears that petitioner has been convicted of a misdemeanor offense in the justice's court, NRS 200.485(1)(a) (domestic battery—first instance), petitioner's appeal from his judgment of conviction must be made to the district court.¹ A claim that petitioner was inadequately advised of the right to appeal or that his counsel failed to file an appeal after he was requested to do so must be raised in the

¹See NRS 189.010 (providing that "a defendant in a criminal action tried before a justice of the peace may appeal from the final judgment therein to the district court of the county where the court of the justice of the peace is held, at any time within 10 days from the time of the rendition of sentence); see also NRS 177.105 ("A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail."). We express no opinion as to whether a notice of appeal would be timely filed at this time.

district court in the first instance in a post-conviction petition for a writ of habeas corpus.² Accordingly, we

ORDER the petition DENIED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Jon D. Siler
Attorney General Brian Sandoval/Carson City
Lyon County District Attorney
Lyon County Clerk

²See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); see also NRS 34.738(1) ("A petition that challenges the validity of a conviction or sentence must be filed with the clerk of the district court for the county in which the conviction occurred.").