

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERNEST JORD GUARDADO,  
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
WASHOE, AND THE HONORABLE  
ROBERT H. PERRY, DISTRICT JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 53440

**FILED**

MAY 06 2009  
TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER GRANTING PETITION

This is a proper person petition for a writ of mandamus. Petitioner seeks an order directing Judge Perry to resolve his pending post-conviction petition for a writ of habeas corpus.

Petitioner asserts that he was convicted in 2004 and filed a post-conviction petition for a writ of habeas corpus in the district court on July 8, 2004. It appears that petitioner raised a claim that he was deprived of a direct appeal without his consent and other claims challenging the validity of the judgment of conviction. The State filed a response to the petition. Petitioner asserts that the matter was then set for an evidentiary hearing and counsel was appointed to assist him.

On December 8, 2005, petitioner asserts that he was granted relief on the appeal deprivation claim and provided an opportunity to pursue the remedy set forth in Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994), the filing of a post-conviction petition for a writ of habeas corpus, with the assistance of counsel, raising direct appeal claims.

Petitioner claims that a supplemental petition was filed in the district court on December 28, 2006. The State then filed an answer. The district court conducted an evidentiary hearing on the supplemental petition on June 13, 2007, and the next day, the district court entered an order denying the supplemental petition. Petitioner appealed, and this court dismissed the appeal for lack of jurisdiction. Guardado v. Warden, Docket No. 49811 (Order Dismissing Appeal, March 20, 2008). In dismissing the appeal, this court concluded that the district court had not resolved all of the claims raised in the July 8, 2004 petition. Petitioner claims that to date no action has been taken on his July 8, 2004 petition.

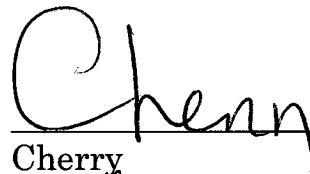
NRS 34.830 provides that any final order that disposes of a post-conviction petition for a writ of habeas corpus must contain specific findings of fact and conclusions of law. Petitioner may not file an appeal to this court unless the district court has entered a final decision on the petition. See NRS 34.575; NRAP 4(b)(1).

In dismissing the appeal in Docket No. 49811, this court determined that the July 8, 2004 petition had not been completely resolved, and thus, there was no final order in the habeas proceedings below. Because it was not entirely clear if the July 8, 2004 petition had been resolved since this court's decision in Docket No. 49811, this court directed the State to file an answer informing this court whether the July 8, 2004 petition remains pending and to show cause why this court should not grant the writ of mandamus directing the district court to resolve the July 8, 2004 petition in its entirety.


The State has filed a timely response informing this court that the July 8, 2004 petition remains pending in the district court and can

provide no reason why this court should not grant the writ of mandamus. Accordingly, we

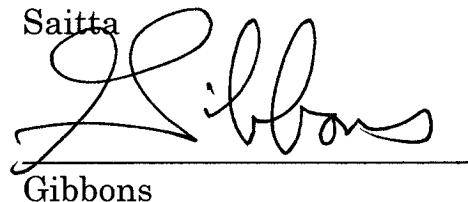
ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to resolve the July 8, 2004 petition as expeditiously as the district court's calendar permits.

 J.

Cherry

 J.

Saitta

 J.

Gibbons

cc: Hon. Robert H. Perry, District Judge  
Ernest Jord Guardado  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk