

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANGEL JAVIER DIAZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53484

FILED

APR 14 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a purported decision of the district court denying a motion to vacate an illegal sentence. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

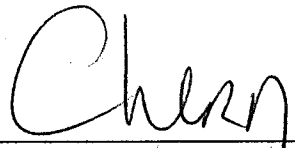
On March 25, 2009, appellant filed a notice of appeal in the district court from a purported decision of the district court denying a motion to vacate an illegal sentence. The criminal court minutes indicate that the district court took the matter off calendar on March 18, 2009, because of an appeal pending in this court in Docket No. 52700 from the denial of a motion for specific performance of plea agreement.


A motion to vacate an illegal sentence cannot be resolved by taking the motion off calendar. Further, a motion to vacate an illegal sentence is an independent proceeding from the motion for specific performance of plea agreement. See NRS 176.555 (providing that a motion to correct an illegal sentence may be made at any time); see generally Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996) (recognizing that a motion to correct an illegal sentence is incident to the trial proceedings). Although, the district court erred in taking the motion



off calendar, that decision is not appealable because it is not a final decision on the motion. See NRS 177.015(3). Accordingly, we

ORDER this appeal DISMISSED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Stefany Miley, District Judge
Angel Javier Diaz
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk