IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE APPLICATION OF DARIUS DION MCCALL, FOR AN ORDER TO SEAL RECORDS.

DARIUS DION MCCALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77774-COA

ORDER OF AFFIRMANCE

Darius Dion McCall appeals from a district court order denying a petition to seal criminal records. Eighth Judicial District Court, Clark County; James Crockett, Judge.

McCall filed a petition to seal criminal records in the district court under NRS 179.255, which in relevant part allows a person to petition to have arrest records sealed when the arrest did not result in a conviction. NRS 179.255(1). The district court set the petition for a hearing, and the Clark County District Attorney filed an opposition on behalf of the State of Nevada. Following the hearing, the district court issued a written order summarily denying McCall's petition for good cause shown and McCall timely filed a notice of appeal from that order. McCall subsequently moved the district court for reconsideration, arguing essentially that the district court failed to apply controlling law and should have granted his petition. He also argued that his attorney's supposed failure to make certain arguments before the district court amounted to fraud warranting NRCP 60(b) relief from the order denying the petition. McCall represents in his

briefing before this court that the district court denied that motion, but no order doing so appears in the record on appeal.

On appeal, McCall contends that the district court failed to evaluate his petition under the proper statute. He contends that this court should therefore remand this case to the district court with instructions to seal all records associated with his arrests that did not result in convictions, seemingly taking the position that if the court evaluated his petition under the proper statute, sealing would be mandatory. Finally, McCall contends that his counsel's failure to make certain arguments before the district court constituted fraud warranting NRCP 60(b) relief.

As a preliminary matter, we decline to address McCall's contentions with respect to NRCP 60(b) relief, as those issues are not properly before us. McCall's notice of appeal does not identify any district court order addressing his request for such relief. *See* NRAP 3(c)(1)(B) (providing that a notice of appeal must "designate the judgment, order or part thereof being appealed"); *see also Yu v. Yu*, 133 Nev. 737, 738 n.1, 405 P.3d 639, 639 n.1 (2017) (recognizing that an order denying NRCP 60(b) relief is independently appealable). And this court will generally not consider any order on appeal that is not included in the notice of appeal unless, among other things, "the intention to appeal from a specific judgment may be reasonably inferred from the text of the notice." *Collins v. Union Fed. Sav. & Loan Ass'n*, 97 Nev. 88, 89-90, 624 P.2d 496, 497 (1981). Indeed, McCall could not have intended to seek this court's review of the purported denial of NRCP 60(b) relief because he filed his notice of appeal prior to filing the motion for relief from the judgment. Moreover, to the extent this motion sought reconsideration or other relief, the arguments presented in that motion are likewise not properly before us given that the

motion was filed after McCall's notice of appeal. *See Arnold v. Kip*, 123 Nev. 410, 416-17, 168 P.3d 1050, 1054 (2007) (noting that arguments made in a motion for reconsideration can be reviewed in the context of an appeal from a final judgment when, among other things, they are properly part of the record on appeal as demonstrated by the motion and order having been filed prior to the notice of appeal); *Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) ("We cannot consider matters not properly appearing in the record on appeal.").

Turning to the district court's order denying McCall's petition, we note that Nevada's record sealing statutes provide courts with "broad discretion" when determining whether to seal criminal records, and we review such decisions for an abuse of that discretion. *In re Application of Finley*, 135 Nev., Adv. Op. 63, 457 P.3d 263, 266 (Ct. App. 2019) (citing *State v. Cavaricci*, 108 Nev. 411, 412, 834 P.2d 406, 407 (1992));[1] *see* NRS 179.255(7) (providing that courts "*may* order" arrest records sealed where no conviction resulted (emphasis added)). Although McCall contends that the district court relied on the wrong legal authority when evaluating his petition, the district court's written order does not reveal what authority it relied on; the order merely denies McCall's petition for good cause shown with no further explanation. And to the extent a transcript of the hearing

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[1]McCall asks this court to overrule *Cavaricci*, but we cannot overrule Nevada Supreme Court precedent. *See Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (noting that stare decisis "applies *a fortiori* to enjoin lower courts to follow the decision of a higher court"); *cf. People v. Solorzano*, 63 Cal. Rptr. 3d 659, 664 (Ct. App. 2007) ("The Court of Appeal must follow, and has no authority to overrule, the decisions of the California Supreme Court." (internal quotation marks and punctuation omitted)). Even if we could, McCall's arguments for overruling *Cavaricci* are without merit.

might have shed more light on the district court's analysis and its evaluation of the parties' arguments, McCall filed a certificate with the supreme court in which he expressly declined to request any transcripts. *See* NRAP 9(b) (providing that "[a] pro se appellant in a civil appeal shall identify and request all necessary transcripts," or file and serve a certificate stating that no transcripts are being requested); *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that it is the appellant's burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, "we necessarily presume that the missing [documents] support[ ] the district court's decision"). Accordingly, we cannot discern from the record on appeal whether the district court failed to rely on controlling law as McCall alleges, and thereby erroneously determined that McCall was ineligible to invoke the court's discretion to seal his arrest records as a matter of law, or whether it reached the merits of the petition and properly exercised its discretion to deny it.[2] Under these circumstances, we are constrained to presume that the district court did not err or abuse its discretion in resolving this matter. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 135. We note, however, that an individual with arrests that did not result in convictions would be eligible to file a petition

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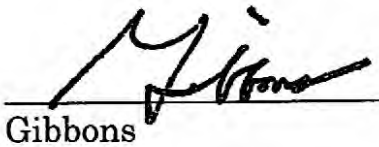
[2]Although the record includes a minute order from the court clerk indicating that the district court may have ruled on the same legal grounds urged by the State in its opposition to McCall's petition, "the clerk's minute order . . . [is] ineffective for any purpose" and thus cannot provide the basis for reversal of the challenged decision. *See Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987); *see also Div. of Child & Family Servs. v. Eighth Judicial Dist. Court*, 120 Nev. 445, 451, 92 P.3d 1239, 1243 (2004) (noting that a minute order is ineffective because it is "impermanent" and "[t]he court remains free to reconsider the decision and issue a different written judgment").

to have his or her arrest records sealed. *See* NRS 179.255(1) (requiring only that the petitioner was arrested and that the charges were dismissed in order for the petitioner to be legally eligible to file a petition to request that the court seal the associated arrest records).

Finally, although McCall implies that the district court was required to seal his arrest records under NRS 179.255, that statute merely grants the court discretion to do so, and McCall has not set forth any specific argument as to how the district court's decision constituted an abuse of that discretion. *See Finley*, 135 Nev., Adv. Op. 63, 457 P.3d at 266; *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (noting that issues not raised on appeal are deemed waived); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider claims that are not cogently argued). Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. James Crockett, District Judge
Darius Dion McCall
Clark County District Attorney
Eighth District Court Clerk