

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER LEE MARTIN, A/K/A
CHRISTOPHER LEE SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84682-COA

FILED

OCT 27 2022

STEPHEN A. BERMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER DISMISSING APPEAL

Christopher Lee Martin appeals from a judgment of conviction, entered pursuant to a guilty plea, of failure to register as a sex offender. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Martin argues the district court erred by allowing Pershing County Court Services (Court Services) to conduct drug testing and to report probation violations to the court. The State argues the appeal should be dismissed pursuant to the fugitive dismissal rule because Martin violated the terms of his probation, absconded, and a bench warrant has been issued for his arrest.

Under the fugitive dismissal rule, also known as the fugitive disentitlement doctrine, "an appellate court may dismiss the appeal of a defendant who is a fugitive from justice during the pendency of his appeal." *Ortega-Rodriguez v. United States*, 507 U.S. 234, 239 (1993); see *Arvey v. State*, 94 Nev. 566, 567, 583 P.2d 1086, 1087 (1978) ("An appellate court is vested with broad discretion in its disposition of appeals by escaped

convicted felons.”). The Nevada Supreme Court has recognized that “[n]o persuasive reason exists why this Court should proceed to adjudicate the merits of a criminal case after the convicted defendant who has sought review escapes from the restraints placed upon him pursuant to the conviction.” *Arvey*, 94 Nev. at 567, 583 P.2d at 1087 (quoting *Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970)).

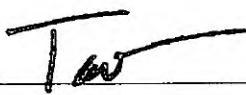
In this matter, Martin was convicted of failure to register as a sex offender, a felony, and the district court sentenced Martin to 19 to 48 months in prison, suspended the sentence, and placed Martin on probation for a period not to exceed 30 months. Shortly thereafter, Martin filed the instant appeal. After filing his appeal, Martin failed to report to the Division of Parole and Probation (Division) and the Court Services Coordinator. The Division discovered Martin’s listed address was uninhabited and no change of address had been reported. Both entities reported that Martin had violated the terms of his probation, and the district court issued a bench warrant for Martin’s arrest.

Martin failed to comply with the terms of his probation, his location is unknown, and there is an outstanding bench warrant for his arrest. Moreover, the State argues Martin waived his right to appeal by absconding. Martin did not file a reply to that argument and thus conceded his status as an absconder. *See Colton v. Murphy*, 71 Nev. 71, 72, 279 P.2d 1036, 1036 (1955) (concluding that when respondents’ argument was not addressed in appellants’ opening brief, and appellants declined to address the argument in a reply brief, “such lack of challenge . . . constitutes a clear concession by appellants that there is merit in respondents’ position”). For

these reasons, we conclude that Martin is an escaped convicted felon. Therefore, we decline to entertain the merits of Martin's appeal. *See id.* (dismissing an appeal where the defendant "failed to appear before a district court on other criminal charges and the judge of that court issued a bench warrant for [his] arrest" while his appeal was pending); *see also State v. Beebe*, 452 P.3d 1063, 1065-66 (Or. Ct. App. 2019) (dismissing an appeal where the defendant absconded while on probation and a warrant was issued for his arrest); *State v. Johnson*, 299 S.W.3d 330, 332-33 (Mo. Ct. App. 2009) (same). Accordingly, we

ORDER this appeal DISMISSED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Pershing County Public Defender
Attorney General/Carson City
Pershing County District Attorney
Clerk of the Court/Court Administrator