

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOYCE WAMBURA, A/K/A JOYCE  
NYABATURU LOVE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 86890

FILED

FEB 22 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DISMISSING APPEAL*

This is an appeal from an amended judgment of conviction. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

Joyce Wambura was convicted, pursuant to a guilty plea, of one count of theft. The district court issued a judgment of conviction on May 22, 2023, and an amended judgment of conviction on May 31, 2023. Per the terms of the judgment of conviction, Wambura's sentence was suspended and the district court ordered her placed on probation. Both the original and amended judgments of conviction imposed a special condition of probation that Wambura make regular minimum monthly restitution payments of \$1,000. Wambura filed her notice of appeal from the amended judgment of conviction on June 27, 2023.

Wambura filed her opening brief on January 25, 2024. The State subsequently filed a motion to dismiss, Wambura filed an opposition, and the State filed a reply. The State argues that the appeal is moot, as the only issue challenged by Wambura in her opening brief—that the district court erred by finding her in violation of probation without holding a financial hardship hearing as mandated under NRS 176A.430(6)—is

premature and nonjusticiable because the district court did not find Wambura in violation of probation.

Wambura argues in her opposition that there is a justiciable issue that may be challenged in her appeal, namely that the district court ordered her to pay \$1,000 a month in restitution.

In its reply, the State argues that Wambura only challenges the failure to hold a financial hardship hearing, not the imposition of the restitution payments. However, the State argues that if Wambura is challenging the imposition of restitution payments, that this issue could only have been raised on an appeal from the original judgment of conviction, because in an appeal from an amended judgment of conviction, an appellant “may only raise challenges that arise from the amendments made to the original judgment of conviction,” citing *Jackson v. State*, 133 Nev. 880, 882, 410 P.3d 1004, 1006 (Ct. App. 2017). It argues that in order to raise a challenge to the imposition of restitution payments, the appeal would need to have been taken from the original judgment of conviction, but that the notice of appeal was filed outside of the 30-day window to file under NRAP 4(b)(1)(A).

Mootness concerns a question of justiciability. *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). A case on appeal is moot when the court cannot grant relief with respect to the challenged order. *Id.* This court does not render advisory opinions but resolves actual controversies by an enforceable judgment. *NCAA v. University of Nevada*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981).

The only issue raised in Wambura’s opening brief is the district court’s failure to provide her with a financial hardship hearing under NRS 176A.430. Wambura does not assert, and the record does not indicate that

she requested a hearing under NRS 176A.430(6), or that one was denied. She argues that she is entitled to a hearing before the district court finds her in violation of her probation for failure to pay. NRS 176.430(6) provides that failure to comply with an order for restitution is a violation of a condition of probation unless the failure was caused by economic hardship resulting in an inability to pay, and that a defendant is entitled to a hearing to show the existence of such hardship. The district court held a status check on compliance hearing on July 25, 2023, where it stated that the division of probation and parole had informed the court that there had been no restitution paid. The district court did not determine that Wambura was in violation of probation, but rather ordered a further status check on compliance calendared after this appeal is concluded. Thus, it does not appear that there is an actual justiciable controversy being challenged on appeal. *NCAA*, 97 Nev. at 57, 624 P.2d at 10. Insofar as Wambura argues in her opposition that she is challenging the imposition of the \$1,000 monthly restitution payments, these payments were imposed in the original judgment of conviction and may only have been challenged in an appeal from that original judgment. *Jackson*, 133 Nev. at 882, 410 P.3d at 1006. Therefore the appeal is moot. We grant the motion to dismiss and

ORDER this appeal DISMISSED.

*Stiglich*

\_\_\_\_\_, J.  
Stiglich

*Pickering*

\_\_\_\_\_, J.  
Pickering

*Parraguirre*

\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Tara D. Clark Newberry, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk