

STATE V. JUDD

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
vs.
KEITH RUSSELL JUDD,
Defendant-Appellant.

No. 31,858

COURT OF APPEALS OF NEW MEXICO

May 16, 2012

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, James F.
Blackmer, District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Keith Russell Judd, Pro se Appellant

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: JONATHAN B. SUTIN Judge, J. MILES
HANISEE, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

Defendant appeals an order denying his request to set a hearing on a motion. We proposed to dismiss the appeal for two reasons. Defendant has timely responded. We have considered his arguments and finding them unpersuasive, we dismiss.

First, we proposed to dismiss the appeal as Defendant had not timely filed a notice of appeal in the district court. Defendant suggests that this Court should transfer his timely notice to the district court. There is no authority for such a procedure. Further, Defendant argues that he timely mailed the appeal and that we should following the prison mail box rule. Even if we were to follow the prison mail box rule, there is no indication in the record that a notice of appeal was filed in the district court. That is where the notice of appeal must be filed. Thus, even if it was timely filed, it was not filed in the proper court.

Second, we pointed out that there was no docketing statement for Defendant's appeal of this particular order. Defendant indicates that he mailed one. Even if he did and it has been lost in the mail, we still have no way of knowing what issues he was raising. Defendant could have sent us a copy of the docketing statement he asserts that he mailed earlier. He did not.

Without a docketing statement and a properly filed notice of appeal, we decline to hear the appeal. Insofar as Defendant alleges ineffective assistance of counsel, his argument fails since he is not represented by counsel. He cannot claim ineffective assistance of counsel when he is representing himself.

For the reasons stated herein and in the notice of proposed disposition, we dismiss Defendant's appeal from the order denying his request for a hearing.

IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

JONATHAN B. SUTIN Judge

J. MILES HANISEE, Judge