

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK
JUL 27 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

EDMUND M. ABORDO and CEDRIC)	2 CA-HC 2012-0002
AH SING,)	
)	DEPARTMENT A
Petitioners/Appellants,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
)	Appellate Procedure
TODD THOMAS, Warden, Saguaro)	
Correctional Center-Eloy,)	
)	
Respondent/Appellee.)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CV201200072

Honorable Boyd T. Johnson, Judge

DISMISSED

Edmund M. Abordo
Cedric Ah Sing

Eloy
In Propria Persona

Struck, Wieneke & Love, P.L.C.
By Daniel P. Struck

Chandler

and

Daniel M. Louie, Hawaii Attorney General
By Lisa M. Itomura

Honolulu, HI
Attorneys for Respondent/Appellee

B R A M M E R, Judge.

¶1 Edmund Abordo and Cedric Ah Sing appeal from the trial court’s denial of their application for a writ of habeas corpus, in which they sought release from custody. For the following reasons, we dismiss their appeal.

¶2 Abordo and Sing currently are incarcerated in a private corrections facility, Corrections Corporation of America (CCA), in Eloy, Arizona, apparently related to sentences imposed in Hawaii. In January 2012, the trial court denied Abordo’s and Sing’s application for writ of habeas corpus, in which they claimed their confinement in Arizona was illegal because there was no contract between CCA and Hawaii. Noting, inter alia, that Abordo and Sing had “failed to present a verified pleading for filing as required by A.R.S. § 13-4122,” the court ordered the clerk to assign a habeas corpus cause number to the file and dismissed the application without prejudice, giving Abordo and Sing the opportunity to refile it. Instead of filing a new, verified application, they filed a “Motion in Opposition to the Court Clerks [sic] Answering of Petitioners’ Writ of Habeas Corpus pursuant to [A.R.S.] § 13-4125,” which the court treated as a motion for reconsideration and denied.

¶3 On appeal, Abordo and Sing contend the trial court erred by dismissing their “writ of habeas corpus” and opposition motion. The state argues the court’s dismissal of the application without prejudice is not an appealable order. We agree. A dismissal without prejudice is not a final judgment and therefore generally is not

appealable.¹ *McMurray v. Dream Catcher USA, Inc.*, 220 Ariz. 71, ¶ 4, 202 P.3d 536, 539 (App. 2009). Because the order dismissing Abordo’s and Sing’s application without prejudice is not a final judgment, the appeal of that order must be dismissed. *See L.B. Nelson Corp. of Tucson v. W. Am. Fin. Corp.*, 150 Ariz. 211, 217, 722 P.2d 379, 385 (App. 1986).

¶4 For the reasons stated herein, this appeal is dismissed.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

¹Dismissal of an action without prejudice is appealable: (1) when the filing of another lawsuit is barred by the statute of limitations, *McMurray v. Dream Catcher USA, Inc.*, 220 Ariz. 71, ¶ 4, 202 P.3d 536, 539 (App. 2009); or (2) when the dismissal order “in effect determines the action and prevents judgment” from which an appeal might have been taken, A.R.S. § 12-2101(A)(3). Here, there is no suggestion the statute of limitations bars the refiling of the claim, and it is clear the trial court intended the parties to refile their petition in compliance with the appropriate statutes.