

IN THE UTAH COURT OF APPEALS

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Jose Galvan,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner and Appellant,)		
)	Case No. 20051172-CA	
v.)		
)	F I L E D	
State of Utah,)	(March 2, 2006)	
)		
Respondent and Appellee.)	<table border="1"><tr><td>2006 UT App 82</td></tr></table>	2006 UT App 82
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Second District, Ogden Department, 050906251
The Honorable W. Brent West

Attorneys: Jose Galvan, Gunnison, Appellant Pro Se
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Bench, Greenwood, and McHugh.

PER CURIAM:

Jose Galvan appeals the district court's dismissal of some causes of action alleged in his petition for post-conviction relief.¹ This matter is before the court on its own motion for summary disposition based upon the lack of a final appealable order. See Utah R. App. P. 10(e).

This court does not have jurisdiction to consider an appeal unless it is taken from a final judgment or order, see Utah R. App. P. 3(a), or qualifies for an exception to the final judgment rule. See Loffredo v. Holt, 2001 UT 97, ¶¶10, 15, 37 P.3d 1070. An order is final only if it disposes of the case as to all parties, and "finally dispose[s] of the subject-matter of the litigation on the merits of the case." Bradbury v. Valencia, 2000 UT 50, ¶9, 5 P.3d 649 (quotations and citation omitted).

¹It is possible that Galvan attempted to appeal from an order denying his motion to withdraw his plea. However, the notice of appeal was filed in his post-conviction matter and not in the underlying case in which the motion was filed.

The decision appealed from is not a final appealable order because it does not dispose of all issues in the litigation. Galvan enumerated several issues in his petition for post-conviction relief. The district court determined that some of those issues were frivolous and should be dismissed. However, the district court also determined that one claim required a response from the State. The district court ordered the State to file a response to that issue.

Because the order appealed from is not a final order, this court lacks jurisdiction to hear this appeal. When this court lacks jurisdiction, it must dismiss the appeal. See Loffredo, 2001 UT 97 at ¶11.

Accordingly, Galvan's appeal is dismissed without prejudice.

Russell W. Bench,
Presiding Judge

Pamela T. Greenwood,
Associate Presiding Judge

Carolyn B. McHugh, Judge