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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Filing Date: January 8, 2021

No. S-1-SC-37602

ROGER ROMERO,

Petitioner-Appellee,

v.

STATE OF NEW MEXICO,

Respondent-Appellant.

**APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY
James Waylon Counts, District Judge**

Office of the Twelfth Judicial District Attorney
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for Appellant

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for Appellee

DISPOSITIONAL ORDER OF TRANSFER

{1} WHEREAS, this matter having come before the Court upon the State's appeal from a district court order insofar as it granted Petitioner's petition for writ of habeas corpus, see Rule 12-102(A)(3) NMRA (providing for direct appeals to the Supreme Court from the granting of writs of habeas corpus under Rule 5-802 NMRA);

{2} WHEREAS, every member of the Court having considered the briefs and being otherwise fully informed on the issues and applicable law;

{3} WHEREAS, the State on appeal challenges the district court's exercise of postconviction jurisdiction under both Rule 5-802 and Rule 5-803 NMRA in seeking to vacate the district court's order setting aside Petitioner's magistrate court conviction for accumulating waste on his property in violation of Lincoln County, N.M. Ordinance 2016-02 (Aug. 16, 2016);

{4} WHEREAS, this Court determines that, at the time his petition was filed, Petitioner was no longer "in custody or under restraint" for purposes of habeas corpus jurisdiction, as required by Rule 5-802(A);

{5} WHEREAS, Rule 5-803(A) governs a petition for postsentence relief when a Petitioner "is not in custody or under restraint as a result of" a challenged conviction;

{6} WHEREAS, this Court determines that the district court had jurisdiction over this matter solely by reason of Rule 5-803;

{7} WHEREAS, the Court of Appeals has jurisdiction over appeals taken from a district court order setting aside a conviction, see Rule 12-102(B); and

{8} WHEREAS, NMSA 1978, Section 34-5-10 (1966) provides for the transfer of misfiled appeals to the proper appellate court;

{9} NOW, THEREFORE, IT IS ORDERED that the State's appeal of the district court's order setting aside Petitioner's conviction is transferred to the Court of Appeals for consideration and review.

{10} IT IS SO ORDERED.

MICHAEL E. VIGIL, Chief Justice

BARBARA J. VIGIL, Justice

C. SHANNON BACON, Justice

DAVID K. THOMSON, Justice

**JUDITH K. NAKAMURA, Justice, Retired
Sitting by Designation**