

NOV - 9 2007

FILED

STATE OF MINNESOTA
IN COURT OF APPEALS

Larry Edwin Craig, petitioner,

Appellant,

O R D E R

vs.

A07-1949

State of Minnesota,

Respondent.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE
THERE IS A QUESTION WHETHER THIS COURT HAS JURISDICTION:**

1. This postconviction appeal was filed on October 15, 2007.
2. On November 1, respondent filed a notice of review by mail. Respondent seeks review of an October 4, 2007 order denying respondent's motion to strike the memorandum of law filed by the American Civil Liberties Union and the American Civil Liberties Union of Minnesota.
3. In a civil appeal, a respondent may obtain review of a judgment or order entered in the same action that may adversely affect respondent by filing a notice of review. Minn. R. Civ. App. P. 106.
4. This court previously held that a postconviction appeal is a civil appeal, and that therefore a notice of review may be filed in a postconviction appeal. *Bolstad v. State*, 435 N.W.2d 547, 549 (Minn. App. 1989).

5. After *Bolstad* was issued, the rules governing criminal appeals were amended to include provisions for postconviction appeals. See Minn. R. Crim. P. 28.02, .04. This court held that the implicit effect of the amendments is that postconviction appeals are now criminal appeals, despite the holding of *Bolstad*. *Waynewood v. State*, 547 N.W.2d 453, 455 (Minn. App. 1996), *aff'd on other grounds*, 552 N.W.2d 718 (Minn. 1996). The rule governing a defendant's appeal from an order denying postconviction relief does not authorize the state to file a notice of review. See Minn. R. Crim. P. 28.02.

IT IS HEREBY ORDERED:

1. On or before November 19, 2007, the parties shall serve and file informal memoranda (an original and four copies) with the clerk of the appellate courts, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155, which shall address the following:

(a) Is respondent authorized to file a notice of review in this postconviction appeal? See *id.* (holding that the state may not file a notice of review in a criminal appeal).

(b) If the answer to (a) is no, should the notice of review be dismissed?

2. Memoranda filed after November 19, or memoranda filed without *four copies* and *proof of service*, may not be considered by the court.

3. Failure to comply may result in such sanctions as the court deems appropriate, including dismissal.

4. If, after completion of research, respondent concludes that this court lacks jurisdiction over the notice of review, respondent shall file a notice of dismissal of the notice of review.

5. This order does not stay or extend briefing deadlines or other procedural requirements under the rules.

Dated: November 8, 2007

BY THE COURT

A handwritten signature in cursive script, appearing to read "Edward L. Tamm", written over a horizontal line.

Chief Judge