

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,  
Appellant/Cross-Respondent,  
vs.  
THE STATE OF NEVADA,  
Respondent/Cross-Appellant.

No. 43493

FILED

MAR 01 2005

ORDER DENYING MOTION

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
JEF DEPUTY CLERK

This is an appeal and a cross-appeal from an order of the district court denying in part and granting in part a post-conviction petition for a writ of habeas corpus in a capital case. The State has moved to strike appellant's opening brief, and appellant has opposed the motion. The State contends that the opening brief violates NRS 177.015 by raising claims regarding the penalty hearing. This appeal and cross-appeal are not subject to NRS 177.015, which governs appeals from criminal actions not habeas proceedings.<sup>1</sup> Nor are we persuaded by the State's other arguments that it is necessary to strike the opening brief. We therefore deny the State's motion to strike. The State in its own brief to this court may challenge the cognizability of any issues which it believes are improperly raised in the opening brief.

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<sup>1</sup>See NRS 34.575.

We also deny the State's motion to hold the briefing schedule in abeyance. The State shall have thirty days from the date of this order to file a combined answering brief on appeal and opening brief on cross-appeal and an appendix. Further briefing will then proceed in accordance with SCR 250(7)(c) and NRAP 31(a)(1).

It is so ORDERED.

Becker, C.J.

cc: Eighth Judicial District Court Dept. 11, District Judge  
Special Public Defender David M. Schieck  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk