

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RIPPO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44094

FILED

AUG 24 2005

ORDER TO SHOW CAUSE

RECEIVED BY CLERK
CLERK OF THE SUPREME COURT
BY *J. Richards*
CLERK

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus in a death penalty case. This court's initial review of the opening brief and appendix reveals that the appendix provided by appellant's counsel does not contain relevant portions of the record made and considered below that are necessary for this court's complete review and resolution of many of appellant's assignments of error.

For example, appellant challenges the district court's resolution of claims of ineffective assistance of counsel relating to: certain aggravating circumstances alleged by the State; the jury selection process at appellant's trial; the testimony of jailhouse informants at appellant's trial; the admission of a photograph at appellant's trial;¹ the verdict forms provided at appellant's trial; the jury instructions given at the guilt and penalty phases of appellant's trial; the presentation and consideration of character evidence at the penalty phase; the presentation and

¹See NRAP 28(e) ("If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the transcript at which the evidence was identified, offered, and received or rejected").

consideration of mitigating circumstances at the penalty phase; and allegedly improper prosecutorial argument at the penalty phase.

The appendix submitted by appellant's counsel, however, does not contain: the formal documents filed by the State alleging aggravating circumstances; any pretrial motions, petitions, or oppositions regarding the aggravating circumstances; relevant portions of the transcript of the jury selection at appellant's trial, relevant portions of the trial transcripts where allegedly improper photographic evidence and jailhouse informant testimony was admitted; jury instructions requested or provided at the guilt and penalty phases of appellant's trial, relevant portions of any transcripts where proposed jury instructions were discussed or considered, any verdict forms provided at appellant's trial, and the transcript of the penalty phase of appellant's trial.

The burden is on the appellant to not only demonstrate district court error, but also to provide an adequate record enabling this court to review the assignments of district court error asserted on appeal.² Accordingly, appellant's counsel shall have 30 days from the date of this order within which to show cause why this court should not summarily reject those assignments of district court error for which counsel has failed to provide a record sufficient to enable this court to review and consider the issue presented. Alternatively, appellant's counsel shall have 30 days from the date of this order with which to file a supplemental appendix containing those relevant portions of the trial court transcripts and record that relate to appellant's assignments of error, including, but not limited

²Greene v. State, 96 Nev. 555, 612 P.2d 686 (1980); Lee v. State, 85 Nev. 379, 455 P.2d 623 (1969).

to: any motions or pretrial petitions and oppositions challenging the aggravating circumstances; the jury instructions proposed and given below in both the guilt and penalty phases of appellant's trial; those portions of the trial transcripts relating to appellant's claims of ineffective assistance of trial counsel regarding jury selection, jailhouse informant testimony, the photograph at issue; and the transcript of the penalty hearing.³

Appellant's counsel should be apprised that this court expects prompt and timely compliance with this order. In the event counsel elects to submit a supplemental appendix, this court expects the appendix to comply in all material particulars with the Nevada Rules of Appellate Procedure and to contain certified file-stamped copies of the relevant transcripts and parts of the record made and considered below.⁴

³Because appellant's appendix does not contain any parts of the record relating to these arguments, appellant's brief does not contain citations to the transcript or appendix where the matter relied upon can be found, as required by this court's appellate rules. See NRAP 28(c) ("Every assertion in briefs regarding matters in the record shall be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found"). Upon the filing of a supplemental appendix, appellant's counsel shall include appropriate citations to the supplemental record in the reply brief.

⁴We remind counsel that this court cannot consider evidence and matters that were not presented to or considered by the court below at trial or during the post-conviction proceedings. We further remind counsel that claims that the district court erred in rejecting a post-conviction claim of ineffective assistance can involve analysis of the extent to which the claim may have been belied by the record, the extent to which counsel's performance may have fallen below an objective standard of reasonableness, and the extent to which any deficient performance of counsel may have prejudiced appellant. The record provided by appellant's counsel should enable this court to review the district court's decision in light of these considerations.

Furthermore, counsel's failure to timely provide an adequate record for this court's review of the issues presented may result in this court's summary rejection of any issues for which counsel has failed to provide an adequate record demonstrating error. Finally, we grant appellant's motion for an extension of time to file the reply brief. Appellant's counsel shall have 30 days from the date of this order within which to file and serve the reply brief.

It is so ORDERED.

Becker _____, C.J.

cc: Christopher R. Oram
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger