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KENNETH COUNTS,  
Appellant,  
v.  
THE STATE OF NEVADA,  
Respondent.

Case No. Tracie K. Lindeman  
5/21/17

**MICHAEL H. SCHWARZ, ESQ.**  
Law Offices of Michael H. Schwarz  
Nev. Bar #005126  
601 East Charleston Blvd.  
Las Vegas, Nevada 89104  
(702) 598-3909

**DAVID ROGER**  
Clark County District Attorney  
Nevada Bar #002781  
Regional Justice Center  
200 Lewis Avenue  
Post Office Box 552212  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
State of Nevada

**CATHERINE CORTEZ MASTO**  
Nevada Attorney General  
Nevada Bar #003926  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1265

Counsel for Appellant

## Counsel for Respondent

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## MEMORANDUM

This is a fast track appeal from an order denying a post-conviction habeas petition. Appellant was convicted of Conspiracy to Commit Murder and sentenced as a habitual offender pursuant to NRS 207.010 in 2008. Appellant's conviction was affirmed on direct appeal in 2009. Appellant filed a post-conviction habeas petition in 2010 which was denied. A Findings of Fact, Conclusions of Law and Order was entered on September 9, 2010. Notice of Entry was filed on October 15, 2010. Appellant filed a Notice of Appeal on November 15, 2010. Appellant filed his Fast Track Statement and one volume Appendix on December 27, 2010. Neither document complies with NRAP 3C and 30.

Per NRAP Rule 3C(e)(1)(C), every assertion in a Fast Track Statement regarding matters in an appendix shall cite to the page of the appendix that supports the assertion. Per NRAP Rule 30(b)(2), the appendix must contain any petitions, oppositions, findings, the Notice of Appeal and the Notice of Entry. Appellant's Fast Track Statement contains almost no citations to the Appendix and the Appendix fails to contain the required documents. The Appendix consists solely of the transcript of Appellant's sentencing hearing and the transcript of arguments on the post-conviction petition. Appellant's post-conviction petition challenged Appellant's habitual criminal adjudication both on ineffective assistance of counsel and substantive grounds. Accordingly, the petition, the State's opposition, Appellant's points and authorities filed in support of the petition, the district court's findings are necessary to this Court's review of the issues presented on appeal. In addition, other pleadings were referenced in the post-conviction proceeding which have not been included in the Appendix, including the habitual criminal notice, the judgments of conviction and sentencing transcripts and other documents admitted into evidence at the sentencing hearing.

Appellant's deficiencies in the Fast Track Statement and appendix now become the State's problem because the Fast Track Response is due within 20 days per NRAP 3C. However, the State can not respond adequately where Appellant has failed to include the necessary documents and has made arguments without any reference to the record.

1 WHEREFORE, the State respectfully requests that the Fast Track Statement and  
2 appendix in this case be stricken and the State be relieved of any obligation to respond until  
3 a Fast Track Statement and appendix that complies with the rules of appellate procedure are  
4 filed

5 Dated this 3<sup>rd</sup> day of January, 2011.

6 Respectfully submitted,

7 DAVID ROGER  
8 Clark County District Attorney  
9 Nevada Bar # 002781

10 BY

11 /s/ Nancy A. Becker  
12 NANCY A. BECKER  
13 Deputy District Attorney  
14 Nevada Bar #00145

15 Attorney for Respondent  
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