1	IN THE SUPREME COU	RT OF THE STATE OF NEVADA
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4		Electronically Filed Jan 03 2011 04:14 p.m.
5	KENNETH COUNTS,	) Case No. Fraqie K. Lindeman
6	Appellant,	
7	V.	
8	THE STATE OF NEVADA,	<pre>}</pre>
9	Respondent.	}
10	MOTION TO STRIKE APPELLANT'S FAST TRACK STATEMENT AND APPENDIX	
11	FASI IKACK SIA	I EWIENT AND APPENDIX
12	MICHAEL H SCHWADZ ESO	DAVID ROGER
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27	Counsel for Appellant	Counsel for Respondent
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1	IN THE SUPREME COURT OF THE STATE OF NEVADA	
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4	KENNETH COUNTS, ) Case No. 57217	
5	Appellant,	
6	V.	
7	THE STATE OF NEVADA,	
8	Respondent.	
9	MOTION TO STRIKE APPELLANT'S	
10	FAST TRACK STATEMENT AND APPENDIX	
11	COMES NOW the State of Nevada, by DAVID ROGER, Clark County District	
12	Attorney, through his deputy, NANCY A. BECKER, and submits this Motion to Strike	
13	Appellant's Fast Track Statement and Appendix.	
14	This motion is based on the following memorandum and all papers and pleadings on	
15	file herein.	
16	Dated this 3 <sup>rd</sup> day of January, 2011.	
17	DAVID ROGER Clark County District Attorney	
18	Clark County District Attorney Nevada Bar # 002781	
19		
20	BY /s/ Nancy A. Becker	
21	NANCY A. BECKER	
22	Deputy District Attorney Nevada Bar #00145	
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24	Attorney 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.

10 Per NRAP Rule 3C(e)(1)(C), every assertion in a Fast Track Statement regarding 11 matters in an appendix shall cite to the page of the appendix that supports the assertion. Per 12 NRAP Rule 30(b)(2), the appendix must contain any petitions, oppositions, findings, the 13 Notice of Appeal and the Notice of Entry. Appellant's Fast Track Statement contains almost 14 no citations to the Appendix and the Appendix fails to contain the required documents. The 15 Appendix consists solely of the transcript of Appellant's sentencing hearing and the 16 transcript of arguments on the post-conviction petition. Appellant's post-conviction petition 17 challenged Appellant's habitual criminal adjudication both on ineffective assistance of 18 counsel and substantive grounds. Accordingly, the petition, the State's opposition, 19 Appellant's points and authorities filed in support of the petition, the district court's findings 20 are necessary to this Court's review of the issues presented on appeal. In addition, other 21 pleadings were referenced in the post-conviction proceeding which have not been included 22 in the Appendix, including the habitual criminal notice, the judgments of conviction and 23 sentencing transcripts and other documents admitted into evidence at the sentencing hearing.

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26 27 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.

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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 Nevada Bar # 002781	
9		
10	BY	
11	/s/ Nancy A. Becker NANCY A. BECKER	
12	Deputy District Attorney Nevada Bar #00145	
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14	Attorney for Respondent	
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1	CERTIFICATE OF SERVICE	
2	I hereby certify and affirm that this document was filed electronically with the	
3	Nevada Supreme Court on January 3, 2011. Electronic Service of the foregoing document	
4	shall be made in accordance with the Master Service List as follows:	
5	CATHERINE CORTEZ MASTO	
6	Nevada Attorney General	
7	NANCY A. BECKER	
8	Deputy District Attorney	
9		
10	I further certify that I served a copy of this document by mailing a true and correct	
11	copy thereof, postage pre-paid, addressed to:	
12	MICHAEL H SCHWARZ ESO	
13	MICHAEL H. SCHWARZ, ESQ. Law Offices of Michael H. Schwarz 601 East Charleston Blvd.	
14	Las Vegas, Nevada 89104	
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16		
17	BY /s/ eileen davis	
18	Employee, District Attorney's Office	
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