


IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRSTIN BLAISE LOBATO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58913

FILED

FEB 23 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER

Appellant has filed a motion for leave to file an opening brief in excess of 30 pages. NRAP 32(a)(7)(A)(i), (D). The proposed brief is 98 pages. See NRAP 32(a)(7)(C) (explaining how to compute page limitation). Respondent opposed the motion because it stated summarily that excess pages are necessary “to fully develop the extensive claims” that were raised below. Appellant filed a reply that fully explains the need for excess pages: the underlying habeas petition raised in excess of 70 claims supported by more than 100 exhibits and numerous witnesses, there was extensive briefing below, and appellant needs to address all of her claims on appeal to give this court an opportunity to review them so that they will be exhausted should she later seek review in federal court.¹

¹Appellant suggests that the State’s response to the brevity of her motion is disingenuous because the State did not oppose a similarly brief motion to exceed the page limitation for the opening brief filed on direct appeal from the judgment of conviction. Even if this were an appropriate consideration, we note that the applicable rules have changed. For example, whereas the rule that applied in the direct appeal provided that briefs could not exceed 30 pages without “permission of the court,” NRAP 28(g) (repealed effective July 1, 2009), and did not state the standard for

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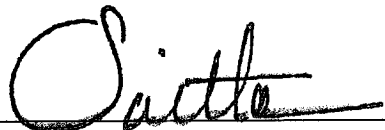
We appreciate the exhaustion requirements that apply to state inmates seeking federal habeas relief, but we are not convinced that the federal exhaustion requirements preclude this court from enforcing reasonable page and type-volume limitations on the briefs filed in post-conviction appeals docketed in this court or make irrelevant the considerations expressed in cases like Hernandez v. State, 117 Nev. 463, 24 P.3d 767 (2001) (discussing page limitations in context of death penalty direct appeal). It remains counsel's role to present the appellate issues in a succinct manner and to winnow out weaker claims in favor of stronger ones. Although there are instances of repetition in the proposed opening brief, we conclude that appellant's reply demonstrates good cause to file a brief that exceeds the page limitation in this case. Accordingly, appellant's motion is granted in part.

We decline, however, to file the opening brief received via E-Flex on January 31, 2012, because it does not fully comply with the form requirements set forth in NRAP 32(a). In particular, the brief does not have margins of at least 1 inch on all four sides as required by NRAP 32(a)(4), and the proportional typeface (Times New Roman) is smaller than the 14-point minimum required by NRAP 32(a)(5)(A). Accordingly, the clerk of this court shall reject the opening brief submitted on January 31, 2012. Appellant shall have 10 days from the date of this order to file

granting a motion, the current rules provide that these motions are "disfavor[ed]" and "will be granted only upon a showing of diligence and good cause," NRAP 32(a)(7)(D)(i), and require that the motion "be accompanied by a declaration stating in detail the reason for the motion," NRAP 32(a)(7)(D)(ii). The State's response therefore was well-taken considering the current rules and the brevity of the declaration that accompanied appellant's motion.

and serve an opening brief that complies with NRAP 34(a). The brief shall contain no more than 29,024 words.²

It is so ORDERED.

 , C.J.

cc: Gallian Wilcox Welker Olson & Beckstrom, LC
Attorney General/Carson City
Clark County District Attorney

²Because the proposed brief does not fully comply with NRAP 32(a) and compliance with the rule likely will increase the number of pages, we cannot set a page limitation in granting the motion at this time. In contrast, full compliance with NRAP 32(a) will not increase the words in the brief. We therefore grant the motion based on the type volume, using the word count set forth in appellant's reply in support of the motion.