

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 58913

FILED

SEP 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

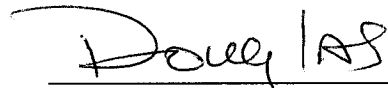
ORDER DENYING PETITION


This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. We granted appellant permission to file a 129-page opening brief, far in excess of the normal page limitation even if the appeal involved a capital sentence (which it does not). See NRAP 32(7)(A), (B). Three parties sought leave to file a joint amicus brief in support of appellant. We denied the motion, primarily because the issues addressed in the proposed amicus brief are addressed in the 129-page opening brief and it did not appear that the amicus brief added anything distinctive or that had been missed by appellant's counsel. The parties seeking to participate as amicus then filed a motion to reconsider that decision and modify the prior order. We again denied relief. The proposed amici now seek en banc reconsideration of our decision.¹ The request is denied because en banc reconsideration of

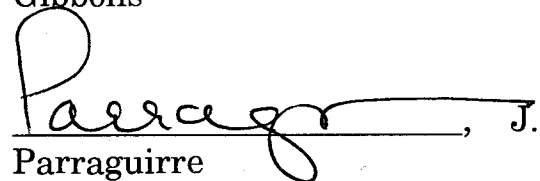
¹Whether treated as a motion or a petition for reconsideration, the document submitted by amici is overlong and should not have been filed absent this court's authorization to file an overlength motion or petition. See NRAP 27(d)(1)(2); NRAP 40A(d).

our decision on a procedural motion is not contemplated under NRAP 40A, which is directed toward a panel's final disposition of a case.²

It is so ORDERED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

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

²We note that this court is under no duty to allow an amicus curiae to file a brief. See NRAP 29(a) (providing that, with certain specified exceptions, an amicus curiae “may file a brief only by leave of court”). The fact that Rule 29 does not specify when this court will grant such leave does not preclude this court from exercising its discretion to deny leave to file an amicus brief. No other amicus motions have been submitted in this matter and, therefore, the suggestions that this court is discriminating based on viewpoint are unfounded. And the examples of other cases where amicus briefs have been allowed or requested by this court (as happened in at least seven of the cases referenced by the proposed amici) are immaterial; that this court has allowed or requested amicus briefs in other cases does not mandate that the court allow all amicus briefs without limitation or consideration of the particular circumstances and whether the proposed amicus brief will be of assistance to the court in the specific case.