IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 58913

FILED

OCT 19 2012

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

ORDER DENYING MOTION

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Appellant has filed a motion for leave to file a reply brief in excess of the 15-page limit set forth in NRAP 32(a)(7)(A)(i). Respondent filed a response opposing the motion, and appellant filed a reply in support of the motion.

The reply brief submitted by appellant is 168 pages—more than eleven times longer than the applicable page limit. Appellant asserts that a 168-page reply brief is necessary to address the State's mischaracterizations of the district court's order and "extensive erroneous assertions of fact and misapplication of the law" and to exhaust every issue for future federal court review. We are not convinced that these explanations amount to a "showing of diligence and good cause" to warrant a 168-page reply brief. NRAP 32(a)(7)(D)(i).

A reply brief serves a very limited purpose: "answering any new matter set forth in the opposing brief." NRAP 28(c). For this reason, the applicable page limit is half that allowed for the answering brief. See NRAP 32(a)(7)(A)(i). But appellant's reply brief exceeds the length of the answering brief filed in this case by 75 pages, making it almost twice as

long as the 93-page answering brief. We see no reason for appellant to need 168 pages to respond to any new matter set forth in the answering brief. The alternative explanation, that appellant needs to file a 168-page reply brief because she has to raise every possible legal issue on appeal to preserve those issues for possible further review in federal court, is equally unavailing. While it is true that federal courts require state inmates seeking federal habeas review to exhaust federal constitutional claims by presenting those claims to the state high court so that that court has an opportunity to consider the issue and correct the asserted error, Anderson v. Harless, 459 U.S. 4, 6 (1982); Picard v. Connor, 404 U.S. 270, 274-75 (1971), those federal exhaustion requirements have no bearing on whether appellant has demonstrated good cause to file a 168-page reply brief. Nor do they preclude this court from enforcing reasonable page limits on briefs submitted for our review. Appellant has cited no controlling authority to the contrary. More importantly, the federal exhaustion requirements have no relevance to the length of the reply brief because that brief is limited to "answering any new matter set forth in the opposing brief", NRAP 28(c), and therefore cannot be used present any claims for the first time. Thus to the extent that the federal exhaustion requirements have any relevance to the page limits on briefs filed with this court, it is limited to the opening brief, which represents appellant's opportunity to present her claims to this court, see NRAP 28(a)(5), (9). Here, we allowed appellant to file a 129-page opening brief. That was more than sufficient for appellant to present her federal constitutional claims to this court and allow us the opportunity to consider them and correct any errors. For these reasons, the motion for leave to file a 168-

page reply brief is denied. The clerk of this court shall reject the reply brief received via E-Flex on October 9, 2012.

Appellant shall have 30 days from the date of this order to file and serve a reply brief, if deemed necessary. See NRAP 28(c). The reply brief shall not exceed 47 pages (approximately half the length of the answering brief).

It is so ORDERED.

Cherry, C.J.

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