

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUILLERMO RENTERIA-NOVOA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 61865

**FILED**

JUL 26 2013

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

*ORDER*

Appellant has submitted two motions for extensions of time to file the opening brief—one requested a two-day extension and another requesting a one-day extension. Extraordinary circumstances and extreme need having been shown, the motions are granted. NRAP 31(b)(3)(B).

Appellant also has submitted a proposed opening brief with a motion for leave to exceed the type-volume limitation. NRAP 32(a)(7)(A)(ii), (D). According to the certificate of compliance included in the proposed brief, the brief contains 20,942 words.<sup>1</sup> The motion indicates that “effective prosecution” of the issues raised in the brief, particularly those involving the sufficiency of the evidence, *Batson* violations, and instructional error, require “extensive briefing” and that “effective prosecution of these and many of the other claims described [in the motion] required briefing in excess of the limit(s) otherwise allowed.”

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<sup>1</sup>It is not clear whether counsel’s type-volume count includes the footnotes, as required by NRAP 32(a)(7)(C).

This court “looks with disfavor on motions to exceed the applicable page limit or type-volume limitation, and therefore, permission to exceed the page limit or type-volume limitation will not be routinely granted.” NRAP 32(a)(7)(D)(i); *see also Hernandez v. State*, 117 Nev. 463, 467, 24 P.3d 767, 770 (2001) (“Page limits . . . are ordinary practices employed by courts to assist in the efficient management of the cases before them.” (quoting *Cunningham v. Becker*, 96 F. Supp. 2d 369, 374 (D. Del. 2000))). Accordingly, a motion “will be granted only upon a showing of diligence and good cause.” NRAP 32(a)(7)(D)(i).

As we have explained, “it is not counsel’s obligation to present every nonfrivolous claim” that counsel has identified, *Hernandez*, 117 Nev. at 465, 24 P.3d at 768-69, nor is it a hallmark of effective appellate representation to present every nonfrivolous claim, *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996) (“Effective assistance of appellate counsel does not mean that appellate counsel must raise every non-frivolous issue.”). *See also Smith v. Robbins*, 528 U.S. 259, 288 (2000) (“[A]ppellate counsel who files a merits brief need not (and should not) raise every nonfrivolous claim, but rather may select from among them in order to maximize the likelihood of success on appeal.”); *Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (observing that “the weeding out of weaker issues is widely recognized as one of the hallmarks of effective appellate advocacy” and that “a lawyer who throws in every arguable point—‘just in case’—is likely to serve her client less effectively than one who concentrates solely on the strong arguments”). While we are aware that longer briefs are needed in some cases, there also must remain reasonable limits. *Hernandez*, 117 Nev. at 467-68, 24 P.3d at 770 (denying motion for leave to file 124-page opening brief in death penalty appeal and

instead granting leave to file brief of no more than 80 pages “[g]iven the seriousness and complexity [of the] appeal”).

Here, the proposed brief exceeds the type-volume limitation in NRAP 32(a)(7)(A)(ii) by almost 7,000 words (half the total allowed by the rule). It includes 13 issues, some of which have multiple sub-issues. And some of the issues, such as challenges to certain jury instructions, appear to be included because doing so has “become standard practice in sexual assault cases” (in counsel’s words) rather than because counsel has determined that these are among the strongest issues in the case. Based on our review of the proposed brief, we are convinced that it is so excessively long that it would render a disservice to appellant by obscuring potentially good claims. We therefore direct the clerk of this court to reject the opening brief received via E-Flex on July 19, 2013.

Given the seriousness of this case (appellant was convicted of multiple sex offenses and is serving several life sentences), we grant appellant permission to file an over-length opening brief. The brief shall not exceed 17,000 words. The type-volume count shall comply with NRAP 32(a)(7)(C) (providing that the disclosure statement, table of contents, table of authorities, required certificate of service and compliance with NRAP, and any addendum do not count toward type-volume limitation but that limitation applies to all other parts of the brief beginning with the statement of case, “including headings, footnotes, and quotations”).

Appellant shall have 30 days from the date of this order to file and serve the opening brief. Extensions of time will be granted only on showing of extraordinary circumstances and extreme need. NRAP 31(b)(3)(B). Counsel’s caseload normally will not be deemed such a circumstance. *Cf. Varnum v. Grady*, 90 Nev. 374, 528 P.2d 1027 (1974).

Failure to timely file the opening brief may result in the imposition of sanctions.<sup>2</sup>

It is so ORDERED.

Pickering, C.J.

cc: Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney

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<sup>2</sup>We defer ruling on appellant's motion asking this court to direct the district court clerk to transmit an original exhibit pending the filing of the opening brief.