

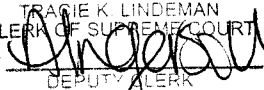
IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 61967

FILED

DEC 06 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
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 in a death penalty case. Appellant has filed a motion for leave to file an opening brief in excess of the page limitations allowed in NRAP 32(a)(7)(i). Counsel indicates in the motion that his request is based on the lengthy and complex nature of the case and the number of significant issues raised on appeal.

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 the 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))). Rather, 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.”). While we are aware that longer briefs are needed in some cases, there must also 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 “[given the seriousness and complexity [of the appeal]]”). In general, the limitations set forth in NRAP 32(a)(7)(B) are reasonable.

Here, the opening brief exceeds the page limitation by 25 pages. Appellant was convicted of serious offenses, including most significantly first-degree murder for which he received the death penalty, but counsel has not demonstrated that a brief in excess of the usual type-volume limitation is warranted in this case. *See 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 will not presume to direct counsel in exercising his professional judgment as to the issues to pursue in an appeal, we are not inclined to grant a request to exceed the page limitation where the proposed brief includes issues that appear to be appropriate for direct appeal with no discussion of the procedural default

rules and that counsel concedes have been rejected by this court but are raised solely to preserve them for federal review, *see Hernandez*, 117 Nev. at 466-67, 24 P.3d at 769-70 (acknowledging that counsel may deem it necessary to raise claims contrary to controlling decisions to exhaust state remedies and preserve those matters for federal review but "exhaustion does not require an extended or elaborate argument"). Accordingly, the motion is denied. The clerk of this court shall strike the opening brief that was inadvertently filed on November 18, 2013.

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 a showing of extraordinary circumstances and extreme need. NRAP 31(b)(3)(D). 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 comply with this order may result in the imposition of sanctions.

It is so ORDERED.

Pickering, C.J.

cc: Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney