

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAQUEZ DEJUAN BARBER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62649

FILED

NOV 12 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

O R D E R

We previously ruled on numerous motions filed in this case, all related in one way or another to whether juvenile court documents related to the certification of appellant for criminal proceedings as an adult should be filed under seal in this appeal from the subsequent judgment of conviction in the criminal proceedings. That procedural order has spurred another series of motions. Appellant has filed a motion and supplemental motion to reconsider that decision. Respondent has filed a motion to strike the citation to an unpublished decision of this court that is included in appellant's motion and supplemental motion. Appellant opposes the motion to strike, and respondent has filed a reply asking for clarification of how to proceed on the motion and supplemental motion to reconsider. In this order, we address the motion to strike, the opposition to that motion, and the reply.

This court's rules preclude citation to our unpublished decisions "as legal authority" with certain exceptions that are not relevant here. SCR 123. Appellant acknowledges this rule but suggests that

counsel did not violate the rule because the unpublished decision was clearly identified as such and the motion “did not cite the case as precedent or as controlling legal authority” ostensibly because “[t]he case was not in italics as are the published opinions within the motion.” We disagree with appellant’s characterization. Even though the decision is identified as being unpublished, that does not change the fact that the citation appears immediately after a purported statement of the law; it serves no other purpose than as legal authority. Appellant also points out instances in which this court has cited to unpublished decisions of other courts, implying that this justifies violation of SCR 123. That premise has no merit.¹ Citation to the case is inappropriate, and we will not consider it in resolving the motion to reconsider.

Respondent also seeks clarification as to how to proceed on the motion to reconsider, expressing confusion as to whether the motion falls under NRAP 27, which allows a response to the motion, or under NRAP 40, which allows an answer only upon order of the court. As respondent seems to acknowledge, the motion cannot be considered as a petition for rehearing under NRAP 40 as that rule clearly addresses petitions for rehearing of the court’s decision under NRAP 36, which is the judgment of the court, not a procedural order. Rule 27 broadly provides that “[a]n application for an order or other relief is made by motion unless these

¹We note that citation to the unpublished decisions of other courts is governed by the rules of those courts, not by SCR 123.

Rules prescribe another form.” Accordingly, respondent may file a response to the motion. NRAP 27(a)(3). Respondent shall have until November 15, 2013, to file a response to the motion, if deemed necessary.

It is so ORDERED.

Pickering, C.J.

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