

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

Appellant,

VS.

Respondent.

Electronically Filed
Jan 30 2014 11:18 a.m.
Tracie K. Lindeman
Case No. 12-609 Supreme Court

**APPELLANT’S MOTION FOR LEAVE TO FILE REPLY BRIEF IN
EXCESS OF TYPE-VOLUME LIMITATION**

Comes Now Appellant, JAQUEZ BARBER, by and through Deputy Public Defender, SHARON G. DICKINSON, and moves this Honorable Court for leave to file an Reply Brief in excess of type-volume limitation. This Motion is based upon the attached Declaration of Counsel.

DATED THIS 29th day of January, 2014.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By:

Sharon Dickinson
SHARON S. DICKINSON //

SHARON G. DICKINSON, #3710
Deputy Public Defender
309 S. Third Street, Ste. 226
Las Vegas, Nevada 89155
(702) 455-4685

1 **DECLARATION OF SHARON G. DICKINSON**

2 1. I am an attorney licensed to practice law in the State of Nevada; I
3
4 am a deputy public defender assigned to represent JAQUEZ BARBER in this
5 appeal; I am familiar with the procedural history of this case.

6 2. To fully develop the facts and issues in this case, I found it
7
8 necessary to write a Reply Brief in excess of 7,000 words and 650 lines of text.

9 3. The first 2 issues in the brief are issues of first impression,
10
11 requiring more explanation, legal authority, and analysis than usually needed. The
12 briefing of these issue was further complicated because the State declined to
13
14 address any of the cases presented within the first issue and claimed this Court did
15 not need to decide the issue. The State then presented its own version of Jaquez's
16 Issue I. By responding in this manner, the State forced defense counsel to not only
17
18 address their new assertion but also explain why the original issue needed to be
19
20 decided. Thus, I needed to use more than 18 pages to adequately respond to Issue
21 I. Issue I is an issue of first impression intertwining juvenile and adult criminal
22 law. Jaquez argues that if the juvenile court did not have jurisdiction over his case
23
24 and him then the district court could not obtain jurisdiction. It is an important
25
26 issue because it involves a purposeful delay on the part of the State not bringing
27
28 Jaquez to court for more than one year even though he was in the custody of the
State. Thus, Jaquez asserts that NRS 62D.310 divested the juvenile court of
jurisdiction after one year and when the juvenile court lost jurisdiction then the

1 certification order was void. Because the State refused to address the cases cited
2 in the Opening Brief and presented a disjointed argument as to why this Court
3 should ignore Issue I, it took more than 18 pages to explain why the State is
4 wrong.
5

6
7 4. In Issue II, another case of first impression, the State took a similar
8 approach and refused to address whether the waiver of the certification hearing by
9 a Jaquez was a knowing and intelligently waiver. Again, the State suggested in its
10 Answering Brief that this does not need to be addressed and does not address it.
11 Thus, again, I needed to explain why the State's position was incorrect. Then I
12 needed to spend additional time explaining all the facts presented to the juvenile
13 court prior to and at the certification hearing because the State argued that the
14 waiver was of no consequence because the court made findings under the factors
15 of *In re William S*, 122 Nev. 432 (2006) and *In re Seven Minors*, 99 Nev. 427
16 (1983) *disapproved on other grounds In re William S.*, at 422, n. 23. Thus, I used
17 more than 10 pages to adequately address this issue of first impression.
18
19
20
21

22 5. I also needed to use a significant amount of words and lines to explain all
23 the mischaracterizations and untruths the State presented through the Answering
24 Brief. I needed approximately 5 pages to go over some specific misstatements in
25 the Statement of Facts and the Statement of the Case. But I found misstatement
26 throughout the brief. For example, in Issue I the State claimed one reason for the
27 one year delay in a final disposition of the juvenile case was that Jaquez and the
28

1 State were pursuing negotiations between this case and his other adult case
2 C253779. RAB: 11-12. But the record showed that Jaquez was sentenced to
3 prison in C253779 on 07/21/09. IV:721. The juvenile certification petition was
4 filed more than one year later, on 08/13/10. IV:655. Therefore, the State's
5 suggestion that on or about 09/27/10 Jaquez attempted to negotiate his certification
6 hearing with his adult case, C253779, and when negotiations fell through he was
7 then sentenced in C253779 was absolutely untrue. RAB:12. I then needed to go
8 through the record to thoroughly explain why the State's allegations were belied
9 by the record.
10
11
12

13 6. Another problem that I found was that the State repeatedly changed
14 my arguments and issues and claimed I was really arguing something else. When
15 the State did this, the new argument always served to benefit the State. For
16 instance, in the Answering Brief, the State listed Issue VII as "[A]oyama's
17 Independent Expert Opinion Did Not Violate the Confrontation Clause." RAB:40.
18 However, the Defense raised Issue VII as: "The court denied Jaquez the right of
19 confrontation when allowing the latent print examiner to testify to the conclusion
20 of other print examiners." Then rather than addressing the expert's testimony as to
21 the opinion testimony of other experts, the State repeatedly addressed only the
22 testifying expert's opinion. Again, the State mischaracterized this issue and
23 Jaquez's argument. OB:39. Thus, to explain all the misstatements and the correct
24 law withing for this right of confrontation issue, I needed more than 13 pages. If
25
26
27
28

1 the State had correctly stuck to the issue and the facts then I would not have
2 needed to use that many words or lines.

3
4 7. The State even added a new issue on the end: X: "Any Error Was
5 Harmless." I needed more than one page to address this new issue that violated
6 NRAP 28(a)(9A) because the State did not cite to any facts or any issues within
7 this section. Instead, the State summarily cited case law.
8

9
10 8. In Issue VIII, the State refused to acknowledge controlling case law on
11 the issue of restitution. Thus, I needed to re-explain the cases the State decided
12 not to address and explain why the State's argument asking for a remand was an
13 incorrect way of handling restitution. This took me more than 2 pages to
14 adequately explain.
15

16
17 9. As to Issue III, the Right to a Speedy Trial issue, the State did not
18 understand how to apply the *Doggett* test. In applying the test the State
19 mischaracterized the facts and law. Because of this, I needed to included
20 additional points and authorities to explain the test. The State also incorrectly used
21 the facts in this area, thus requiring additional words for me to adequately explain.
22

23
24 10. On of the most serious mischaracterization of the facts came in Issue
25 IV. In this issue the State incorrectly claimed Jaquez withdrew his request to fire
26 his attorney and wanted to keep counsel because she was ready for trial on
27 09/20/12. RAB:29-30. But the record showed that when Jaquez asked for a new
28 attorney the court told him he was not going to get one but that he could represent

1 himself. After this, Jaquez agreed to go to trial with her because he did not want
2 to represent himself. I:228-31. Thus, he had no choice. The State deceptively only
3 cited to part of the conversation between Jaquez and the court on 09/20/12, leaving
4 out the fact that the court refused to give him a new attorney and his attorney told
5 the court that another attorney from her office would not handle Jaquez's case.
6
7 Compare I:228-31 with RAB:30 .
8

9 11. Unfortunately I found misstatements of the facts and misstatements of
10 the law in many areas of the brief and thus needed to correct what the State
11 asserted. Because of this, I needed to use 16,824 words and 1,566 lines of text.
12
13 Although this may seem like a lot, the State's Answering Brief was 13, 614 words
14 and amounted to 55 pages. And the State did not respond to many of the
15 arguments and issues within my brief because the State decided it did not have to
16 do so. Thus, the reply brief is longer than the Answering Brief I had to respond to
17 all the misstatements, omissions, and inaccurate assertions in the State's long brief.
18
19 I also needed to respond to all the State's erroneous arguments.
20
21

22 12. Effective prosecution required briefing in excess of the limits otherwise
23 allowed by the rules of appellate procedure. Accordingly, Appellant respectfully
24 requests that this Honorable Court allow submission of a Reply Brief in excess of
25 the limit(s) proscribed by NRAP 32(a)(7).
26
27
28

1 I declare under penalty of perjury that the foregoing is true and
2 correct.

3
4 EXECUTED on the 29th day of January, 2014.

5
6 
7 SHARON G. DICKINSON

8
9 **CERTIFICATE OF COMPLIANCE**

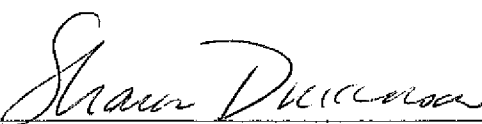
10 1. I hereby certify that the reply brief complies with the formatting
11 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and
12 the type style requirements of NRAP 32(a)(6) because:

13
14 The opening brief has been prepared in a proportionally spaced
15 typeface using Times New Roman in 14 size font.

16
17 2. I further certify that the reply brief is proportionately spaced, has a
18 typeface of 14 Font or more and exceeds the type-volume limitations and contains
19 16,824 words and 1,566 lines of text which exceeds the limitations set forth in
20 NRAP 32(a)(7).
21

22 DATED this 29th day of January, 2014.

23
24 PHILIP J. KOHN
25 CLARK COUNTY PUBLIC DEFENDER

26
27 By 
28 SHARON G. DICKINSON, #3710
Deputy Public Defender

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

CATHERINE CORTEZ MASTO
STEVEN S. OWENS

SHARON G. DICKINSON
HOWARD S. BROOKS

JAQUEZ BARBER
NDOC No. 1039024
c/o Ely State Prison
P.O. Box 1989
Ely, NV 89301

8