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Respondent.

**APPELLANT’S MOTION TO RECONSIDER ORDER OF 02/19/14 AND  
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 asks this Honorable Court to reconsider its Order of 02/19/14 and give leave to file a Reply Brief in excess of type-volume limitation based on a showing of diligence and good cause: a Reply containing 10,887 words. This Motion is based upon the attached Declaration of Counsel.

DATED THIS 25<sup>th</sup> day of February, 2014.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By:

*Sharon Dickinson*  
SHARON G. DICKINSON, #3710  
Deputy Public Defender

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. On 02/19/14, the Court rejected Jaquez's submitted Reply Brief  
7  
8 because it was in excess of 7,000 words and 650 lines of text and ordered Jaquez  
9 to resubmit a Reply Brief conforming to the word, page, or line limitations of  
10  
11 NRAP 32(a)(7).

12                   3. NRAP 32(a)(7) allows parties in a noncapital case to submit an  
13  
14 Opening Brief that is 14,000 words, an Answering Brief containing 14,000 words,  
15 and a Reply Brief of 7,000 words. NRAP 32(a) (7)(D) provides that a party may  
16 exceed the word limit upon "a showing of diligence and good cause."

17                   4. The rejected Reply Brief contained 16,824 words. I am asking the  
18  
19 Court to reconsider its prior ruling limiting the word count to 7,000 words and  
20  
21 allow the filing of a Reply Brief of 10,887 words, which is in excess of the  
22 limitations of NRAP 32(a)(7), because I have shown diligence and good cause.

23                   5. After working on the rejected Reply Brief for 5 days, I reduced the  
24  
25 Reply Brief to 10,887 words, a reduction of approximately 33%. Although 10,887  
26 words is over the 7,000 word amount allowed for a Reply Brief and the Court's  
27  
28 Order, it is not over the total amount of words allowed when combining the word  
count for Opening and Reply Briefs. Jaquez's Opening Brief contained 9,952

1 words. By using far less than 14,000 for the Opening Brief, the Court received  
2 4,048 fewer words than allowed for an Opening Brief. If the Court would allow  
3 the 4,048 words to be added to the amount of words allowed for a Reply Brief then  
4 I am under the total amount allowed for both briefs which is 21,000 words.  
5

6           6. But even if this Court is not inclined to add the unused words to  
7 the Reply, there is good cause for the filing of a Rely Brief that is 10,887 words.  
8 First, it is important to note that Respondent's Answering Brief contains 13,614  
9 words, significantly more words than the number of words Jaquez used in the  
10 Opening Brief (9,952 words) thereby requiring more argument and analysis than  
11 normally within a Reply.  
12

13           7. Another reason for the need for the additional word count is  
14 because Jaquez raised 9 issues within his Opening Brief. The first 2 issues in the  
15 brief are issues of first impression, requiring more explanation, legal authority, and  
16 analysis than usually needed.  
17

18           8. The briefing of all issues in the Reply was further complicated  
19 because State declined to address many cases presented, manufactured its own  
20 version of Jaquez's arguments and issues, invented facts to help its case, asked for  
21 a remand back to district court in 3 issues, addressed the same or similar  
22 arguments in separate subheadings, misstated several legal principals, frequently  
23 used partial quotes in cases or the record to mischaracterize what occurred or what  
24 the case stood for, ignored controlling case law for some issues, completely  
25  
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1 changed the focus and title for Issue VII, used incorrect legal tests when analyzing  
2 some of the issues, insufficiently addressed standards of error, and misstated the  
3 procedural history and facts in the case. (For some of the specifics, see attached  
4 prior motion filed on 01/30/14). Thus, there was a lot to reply to because the  
5 Answering Brief contained so many incorrect legal and factual assertions and  
6 erroneous legal analysis.  
7

8  
9 9. Under *Polk v. State*, 233 P.3d 357, 359 (Nev. 2010), Jaquez must  
10 adequately respond to State's incorrect assertions, fallacious arguments, erroneous  
11 facts, and incomplete analysis because this Court could consider the absence of a  
12 response to statements in State's Answering Brief, a concession that the State is  
13 correct.  
14  
15

16 10. I have exercised diligence in writing the Reply Brief and by  
17 reducing the words to 10,887 without (hopefully) compromising the integrity of  
18 the issues and arguments. Any further word reductions would substantially hinder  
19 the ability and opportunity for Jaquez to fully litigate his claims before this Court.  
20 To reduce the Reply Brief further would unfairly impair Jaquez's right to effective  
21 assistance of counsel under the Sixth and Fourteenth Amendments and under the  
22 Due Process Clause due to the unique issues, facts and circumstances presented.  
23  
24

25 11. In the past, this Court has allowed for the filing of Reply Briefs  
26 in excess of 7,000 upon a finding of diligence and good cause. See *Preciado v.*  
27 *State*, Case No. 58000 (Reply Brief 57 pages long, less than double spaced, less  
28

1 than one inch margins, appears to contain approximately 16,000 words); Patterson  
2 v. State, Case No. 54408 (Reply Brief 50 pages long, not double spaced, margins  
3 less than one inch, word count unknown).  
4

5 12. Therefore, I am asking the Court to find good cause and diligence  
6 and allow the filing of the Reply containing 10,887 words.  
7

8 I declare under penalty of perjury that the foregoing is true and  
9 correct.  
10

11 EXECUTED on the 25<sup>th</sup> day of February, 2014.  
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14 SHARON G. DICKINSON  
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CATHERINE CORTEZ MASTO	SHARON G. DICKINSON
STEVEN S. OWENS	HOWARD S. BROOKS

JAQUEZ BARBER  
NDOC No. 1039024  
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Respondent.

Docket 62649 Document 2014-03173



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

7                    2. To fully develop the facts and issues in this case, I found it  
8 necessary to write a Reply Brief in excess of 7,000 words and 650 lines of text.  
9

10                   3. The first 2 issues in the brief are issues of first impression,  
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 address any of the cases presented within the first issue and claimed this Court did  
14 not need to decide the issue. The State then presented its own version of Jaquez's  
15 Issue I. By responding in this manner, the State forced defense counsel to not only  
16 address their new assertion but also explain why the original issue needed to be  
17 decided. Thus, I needed to use more than 18 pages to adequately respond to Issue  
18 I. Issue I is an issue of first impression intertwining juvenile and adult criminal  
19 law. Jaquez argues that if the juvenile court did not have jurisdiction over his case  
20 and him then the district court could not obtain jurisdiction. It is an important  
21 issue because it involves a purposeful delay on the part of the State not bringing  
22 Jaquez to court for more than one year even though he was in the custody of the  
23 State. Thus, Jaquez asserts that NRS 62D.310 divested the juvenile court of  
24 jurisdiction after one year and when the juvenile court lost jurisdiction then the  
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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 4. In Issue II, another case of first impression, the State took a similar  
7 approach and refused to address whether the waiver of the certification hearing by  
8 a Jaquez was a knowing and intelligently waiver. Again, the State suggested in its  
9 Answering Brief that this does not need to be addressed and does not address it.  
10 Thus, again, I needed to explain why the State's position was incorrect. Then I  
11 needed to spend additional time explaining all the facts presented to the juvenile  
12 court prior to and at the certification hearing because the State argued that the  
13 waiver was of no consequence because the court made findings under the factors  
14 of *In re William S*, 122 Nev. 432 (2006) and *In re Seven Minors*, 99 Nev. 427  
15 (1983) *disapproved on other grounds In re William S.*, at 422, n. 23. Thus, I used  
16 more than 10 pages to adequately address this issue of first impression.  
17  
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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  
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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  
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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 Compare I:228-31 with RAB:30 .  
7

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 Although this may seem like a lot, the State's Answering Brief was 13, 614 words  
13 and amounted to 55 pages. And the State did not respond to many of the  
14 arguments and issues within my brief because the State decided it did not have to  
15 do so. Thus, the reply brief is longer than the Answering Brief I had to respond to  
16 all the misstatements, omissions, and inaccurate assertions in the State's long brief.  
17 I also needed to respond to all the State's erroneous arguments.  
18  
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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 29<sup>th</sup> 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 29<sup>th</sup> 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

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