1	IN THE SUPREME COURT OF THE STATE OF NEVADA
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3	ANTHONY CASTANEDA) No. 64515
4 5) Electronically Filed Appellant,) Apr 08 2015 04:00 p.m
6) Tracie K. Lindeman _{v.}) Clerk of Supreme Cou
7	j ·
8	THE STATE OF NEVADA,
9	Respondent.
10	APPELLANT'S MOTION FOR LEAVE TO FILE
11	SUPPLEMENTAL POINTS AND AUTHORITIES AND CORRECTION OF THE RECORD
12	
13	COMES NOW Appellant, ANTHONY CASTANEDA, by and through his
14	attorneys, P. DAVID WESTBROOK and AUDREY M. CONWAY, Deputy Public
15	Defenders, and pursuant to the Nevada Rules of Appellate Procedure moves this
16	Honorable Court to grant leave to file Supplemental Points and Authorities and
17	·
18	Correction of the Record regarding questions raised by the Court, but not previously
19	briefed, during the oral argument in the above entitled case, and regarding a factual error
20	contained in the Opening Brief. This Motion is based upon the following Points and
21	
22	Authorities and the attached Declaration pursuant to NRAP 27, 28, and 31(e).
23	DATED this 8 th day of April, 2015.
24	PHILIP J. KOHN
25	CLARK COUNTY PUBLIC DEFENDER
26	By: /s/ P. David Westbrook By: /s/ Audrey M. Conway
27	P. DAVID WESTBROOK, #9278 AUDREY M. CONWAY, #5611
28	Deputy Public Defender Deputy Public Defender

MEMORANDUM OF POINTS AND AUTHORITIES

NRAP 27(a) requires application for an order or other relief by way of motion with this Court. NRAP 28A(a)(3) requires parties to represent that the brief is supported by the record in the case. Although NRAP 31(e) does not specifically address the filing of supplemental briefs after oral argument, the rule provides that "when pertinent and significant authorities come to a party's attention after the party's brief has been filed, but before a decision, a party may promptly advise the Supreme Court or Court of Appeals by filing and serving a notice of supplemental authorities, setting forth the citations." While this Court will generally consider supplemental authorities submitted before oral argument, NRAP 31(e), supplemental authority is also appropriate in response to specific case law inquiries by the Court at oral argument that the advocate was not fully prepared to answer. See e.g., ANTONIN SCALIA & BRYAN A. GARNER, MAKING YOUR CASE: THE ART OF PERSUADING JUDGES 193 (West 2008). In addition, NRPC 3.3: Candor Toward the Tribunal, requires attorneys to correct representations made to the Court if they are discovered to be in error.

On April 7, 2015, this Court heard oral argument in the above entitled case. During the argument, two issues arose which warrant the filing of Supplemental Points and Authorities and Correction of the Record: (1) the Honorable Justice Pickering posed a question regarding Perez v. State, a case which had not been addressed in the parties' written briefs; (2) a factual error in Appellant's Opening Brief was discovered as a result of the oral argument which warrants reduction of a sentence in the Opening Brief.

After the oral argument, defense counsel further reviewed the case law and the record in this case and prepared supplemental points and authorities on these two issues. Counsel respectfully requests leave of the Court to file the Supplemental Points and Authorities and Correction of the Record to shield Mr. Castaneda from irreparable harm which would occur should the Court base its decision on authority not addressed in the briefs, and to insure that a mistaken assertion of fact in the Opening Brief can be corrected.

Respectfully submitted,

PHILIP J. KOHN CLARK COUNTY PUBLIC DEFENDER

By: <u>/s/ P. David Westbrook</u>
P. DAVID WESTBROOK, #9278
Deputy Public Defender

By /s/ Audrey M. Conway
AUDREY M. CONWAY, #5611
Deputy Public Defender
309 So. Third Street, Suite #226
Las Vegas, Nevada 89155-2610
(702) 455-4685

AFFIDAVIT OF P. DAVID WESTBROOK

STATE OF NEVADA)

)ss:

COUNTY OF CLARK)

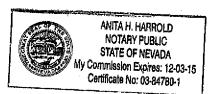
- P. DAVID WESTBROOK, being first duly sworn, deposes and says:
- 1. That I am an attorney duly licensed to practice law in the State of Nevada; that I am the Deputy Public Defender assigned to represent ANTHONY CASTANEDA in the instant matter, and that I am familiar with this facts and circumstances of this case.
- 2. That on April 7, 2015, oral argument was held before this Honorable Court. During the oral argument, questions were raised about the application of Perez v. State, 129 Nev. Adv. Op. 90, 313 P.3d 862 (2013), to the issues raised in the instant case. Further, a factual error in Appellant's Opening Brief was discovered as a result of the oral argument. After the oral argument, defense counsel further reviewed the case law in this area and the record in this case, and prepared points and authorities on these two issues.

P. DAVID WESTBROOK

SUBSCRIBED AND SWORN to before me this day of April, 2015.

NOTARY PUBLIC in and for said

County and State.



CERTIFICATE OF SERVICE I hereby certify that this document was filed electronically with the Nevada

Supreme Court on the 8th day of April, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO STEVEN S. OWENS

AUDREY M. CONWAY HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to: ANTHONY CASTANEDA, 370 East. Harmon #H-305, Las Vegas, NV 89169.

BY <u>/s/ Carrie M. Connolly</u>
Employee, Clark County Public
Defender's Office