

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 ANTHONY CASTANEDA

) No. 64515

4
5 Appellant,

) Electronically Filed
) Apr 08 2015 04:00 p.m.
) Tracie K. Lindeman
) Clerk of Supreme Court

6 v.

7 THE STATE OF NEVADA,

8
9 Respondent.

10 **APPELLANT'S MOTION FOR LEAVE TO FILE**
11 **SUPPLEMENTAL POINTS AND AUTHORITIES AND**
12 **CORRECTION OF THE RECORD**

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 Correction of the Record regarding questions raised by the Court, but not previously
18 briefed, during the oral argument in the above entitled case, and regarding a factual error
19 contained in the Opening Brief. This Motion is based upon the following Points and
20 Authorities and the attached Declaration pursuant to NRAP 27, 28, and 31(e).
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23 DATED this 8th day of April, 2015.

24 PHILIP J. KOHN
25 CLARK COUNTY PUBLIC DEFENDER

26 By: /s/ P. David Westbrook
27 P. DAVID WESTBROOK, #9278
28 Deputy Public Defender

By: /s/ Audrey M. Conway
AUDREY M. CONWAY, #5611
Deputy Public Defender

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 NRAP 27(a) requires application for an order or other relief by way of motion
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4 with this Court. NRAP 28A(a)(3) requires parties to represent that the brief is supported
5 by the record in the case. Although NRAP 31(e) does not specifically address the filing
6 of supplemental briefs after oral argument, the rule provides that “when pertinent and
7 significant authorities come to a party's attention after the party's brief has been filed, but
8 before a decision, a party may promptly advise the Supreme Court or Court of Appeals
9 by filing and serving a notice of supplemental authorities, setting forth the citations.”
10 While this Court will generally consider supplemental authorities submitted before oral
11 argument, NRAP 31(e), supplemental authority is also appropriate in response to specific
12 case law inquiries by the Court at oral argument that the advocate was not fully prepared
13 to answer. See e.g., ANTONIN SCALIA & BRYAN A. GARNER, MAKING YOUR
14 CASE: THE ART OF PERSUADING JUDGES 193 (West 2008). In addition, NRPC
15 3.3: Candor Toward the Tribunal, requires attorneys to correct representations made to
16 the Court if they are discovered to be in error.
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20 On April 7, 2015, this Court heard oral argument in the above entitled case.
21 During the argument, two issues arose which warrant the filing of Supplemental Points
22 and Authorities and Correction of the Record: (1) the Honorable Justice Pickering posed
23 a question regarding Perez v. State, a case which had not been addressed in the parties'
24 written briefs; (2) a factual error in Appellant's Opening Brief was discovered as a result
25 of the oral argument which warrants redaction of a sentence in the Opening Brief.
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1 After the oral argument, defense counsel further reviewed the case law and the
2 record in this case and prepared supplemental points and authorities on these two issues.
3 Counsel respectfully requests leave of the Court to file the Supplemental Points and
4 Authorities and Correction of the Record to shield Mr. Castaneda from irreparable harm
5 which would occur should the Court base its decision on authority not addressed in the
6 briefs, and to insure that a mistaken assertion of fact in the Opening Brief can be
7 corrected.
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10 Respectfully submitted,

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12 PHILIP J. KOHN
13 CLARK COUNTY PUBLIC DEFENDER


14
15 By: /s/ P. David Westbrook
16 P. DAVID WESTBROOK, #9278
17 Deputy Public Defender

18 By /s/ Audrey M. Conway
19 AUDREY M. CONWAY, #5611
20 Deputy Public Defender
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STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

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.

P. David Westbrook
P. DAVID WESTBROOK


NOTARY PUBLIC in and for said
County and State.

