

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBURT HICKMAN, JR. A/K/A
WILLIAM HICKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64776

FILED

AUG 05 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Nalme
DEPUTY CLERK

*ORDER REJECTING FAST TRACK STATEMENT, IMPOSING
ADDITIONAL SANCTION, REFERRING COUNSEL TO STATE BAR
FOR INVESTIGATION, REMOVING COUNSEL, AND REMANDING TO
SECURE APPELLATE COUNSEL*

This is an appeal from a judgment of conviction. Because the rough draft transcript request form was not filed with the notice of appeal, *see* NRAP 3C(d)(3)(A)(ii), on January 10, 2014, we directed appellant's counsel, Mitchell L. Posin, to file the rough draft transcript request form within 10 days or face sanctions. *See* NRAP 3C(n). Mr. Posin did not comply and on February 13, 2014, we imposed a conditional sanction against him and directed him to file the required document within 11 days. We also reminded Mr. Posin that the fast track statement and appendix were due to be filed by February 19, 2014. Mr. Posin filed the rough draft transcript request form and the conditional sanction was automatically vacated. However, he failed to file the fast track statement and appendix as directed. Therefore, on March 14, 2014, we entered a second conditional sanction order against Mr. Posin and directed him to file the fast track statement and appendix within 10 days or pay a \$1000 sanction within 15 days. Because Mr. Posin did not comply with our

order, on May 5, 2014, we ordered him to appear before this court on June 12, 2014, and show cause why additional sanctions should not be imposed.

Approximately one-half hour before the time scheduled for his appearance, Mr. Posin submitted a cover page via E-Flex. During his appearance, he represented to the court that he filed the fast track statement and it complied with the Nevada Rules of Appellate Procedure to the best of his knowledge. The day after his appearance, Mr. Posin submitted the fast track statement. Although the fast track statement was more than two months overdue, Mr. Posin did not file a motion for an extension of time. Significantly, he failed to file an appendix. *See* NRAP 3C(e)(2) (requiring the filing of a joint appendix, or in the absence of an agreement regarding a joint appendix, an appellant's appendix). And the submitted fast track statement is deficient because it does not have 1-inch margins on all four sides as required by NRAP 32(a)(4), *see* NRAP 3C(h)(1) (requiring fast track filings to comply with the formatting requirements of NRAP 32(a)(4)-(6)), or citations to the appendix supporting each assertion regarding matters in the transcripts or other documents as required by NRAP 3C(e)(1)(C). Due to these deficiencies, we direct the clerk of this court to reject the cover page and fast track statement received via E-Flex on June 12 and 13, 2014. *See* NRAP 32(e) ("If a brief . . . is not prepared in accordance with this Rule, the clerk will not file the document . . .").

We have repeatedly stated that we expect all appeals to be "pursued in a manner meeting high standards of diligence, professionalism, and competence." *Cuzdey v. State*, 103 Nev. 575, 578, 747 P.2d 233, 235 (1987); *accord Polk v. State*, 126 Nev. 180, 184, 233 P.3d 357, 359 (2010); *Barry v. Lindner*, 119 Nev. 661, 671, 81 P.3d 537, 543 (2003); *State, Nev. Emp't Sec. Dep't v. Weber*, 100 Nev. 121, 123, 676 P.2d

1318, 1319 (1984). It is incumbent upon Mr. Posin, as part of his professional obligations of competence and diligence to his clients, to know and comply with all applicable court rules. See RPC 1.1; RPC 1.3. These rules have been implemented to promote cost-effective, timely access to the courts; it is “imperative” that he follow these rules and timely comply with our directives. *Weddell v. Stewart*, 127 Nev. ___, ___, 261 P.3d 1080, 1084 (2011). The obligation is on Mr. Posin, not this court, to calendar and comply with filing deadlines consistent with the applicable rules. And he is “not at liberty to disobey notices, orders, or any other directives issued by this court.” *Id.* at ___, 261 P.3d at 1085.

Mr. Posin’s failure to comply with our rules and orders has forced this court to divert our limited resources to ensure his compliance and needlessly delayed the processing of this appeal. Therefore, we impose an additional \$1000 sanction. See NRAP 3C(n). Mr. Posin shall have 15 days from the date of this order to pay the sum of \$2000 to the Supreme Court Law Library and file proof of such payment with this court.¹ Moreover, we refer Mr. Posin to the State Bar of Nevada for investigation pursuant to SCR 104-105. Bar counsel shall, within 90 days of the date of this order, inform this court of the status or results of the investigation and any disciplinary proceedings in this matter. Finally, we remove Mr. Posin as counsel in this appeal.

We remand this appeal to the district court for the limited purpose of securing appellate counsel for appellant. If appellant is indigent, the district court shall have 30 days to appoint appellate counsel.

¹This sum includes the \$1000 sanction imposed in the March 14, 2014, order.

Otherwise, the district court shall order that, within 30 days, appellant must retain appellate counsel and have counsel enter a notice of appearance in the district court. Upon the appointment or appearance of appellate counsel, the district court clerk shall immediately transmit to the clerk of this court a copy of the district court's written or minute order or counsel's notice of appearance.

The briefing of this appeal shall be suspended pending further order of this court.

It is so ORDERED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Carolyn Ellsworth, District Judge
Law Offices of Mitchell Posin, Chtd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk
Supreme Court Law Librarian
Bar Counsel
Wilburt Hickman, Jr.