

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONTE JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65168

FILED

AUG 13 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER

Appellant has submitted, in proper person, a letter requesting that this court allow him to file a supplemental opening brief to address unrecorded bench conferences at trial and the recent recantation made by his codefendant. Although appellant has not been granted leave to file documents in this appeal in proper person, *see* NRPA 46(b), the clerk of this court shall file the proper person letter received on July 21, 2014.

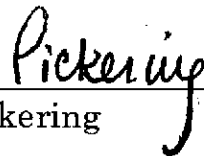
Appellant's counsel has filed a "Notice of Endorsement" of the proper person document. Therein, counsel states that the issue regarding the unrecorded bench conferences was raised in and denied by the district court. Thus, this issue "is ripe to be raised on appeal." But counsel indicates that the recantation issue is new and requests that, because this is a capital case, this matter be remanded to the district court for "further litigation" regarding the recantation.

In response, the States argues that no supplemental brief is warranted because the opening brief has not yet been filed. The State also contends that a remand is unwarranted where the record is complete for purposes of reviewing the claims that were raised in the district court and appellant cites no authority allowing a remand in order to raise a new

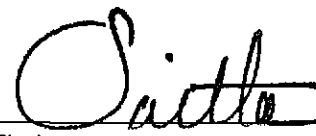
claim. Any new claim, it asserts, must be raised in a successive post-conviction petition for a writ of habeas corpus.

The recantation cited by appellant, attached to his letter as "Exhibit B," is dated June 10, 2014, after entry of the district court order challenged on appeal. There is no indication from the record before this court that any issue relating to the recantation was raised in the district court. It thus appears that appellant seeks the remand in order to raise a claim that was not presented to the district court. Accordingly, we agree with respondent that a remand is not appropriate because appellant can file a petition in the district court raising the new claim.¹ The motion for a remand is denied. Because appellant is represented by counsel in this appeal and the opening brief has not yet been filed, his request to file a supplemental opening brief is also denied. See NRAP 46(b).

It is so ORDERED.


Pickering, J.


Parraguirre, J.


Saitta, J.

cc: Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Donte Johnson

¹We express no opinion as to whether appellant could overcome the applicable procedural default rules in NRS chapter 34.