

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

DELARIAN K. WILSON,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed  
Mar 21 2016 10:10 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

CASE NO: 68576

**MOTION TO STRIKE PORTIONS OF APPELLANT’S REPLY BRIEF OR  
FOR LEAVE OF COURT TO FILE SUPPLEMENTAL PLEADINGS**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Deputy, OFELIA MONJE, and this Motion to Strike Portions of Appellant’s Reply Brief or for Leave of Court to File Supplemental Pleadings. This motion is filed pursuant to Nevada Rules of Appellant Procedure (“NRAP”) Rule 27 and is based on the following memorandum and all papers and pleadings on file herein.

Dated this 21<sup>st</sup> day of March, 2016.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY /s/ Ofelia Monje  
OFELIA MONJE  
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## MEMORANDUM

Appellant's Reply Brief alleges for the first time before this Court that Appellant's deadline for filing a Post-Conviction Petition for Habeas Corpus may be equitably tolled pursuant to federal authority. Appellant's Reply Brief ("ARB"), pp. 3-21. This argument should be struck due to Appellant's failure to raise it in his Opening Brief or Respondent should be given an opportunity to address this contention.

NRAP Rule 28(c) directs that a reply brief "must be limited to answering any new matter set forth in the opposing brief." As such, "[i]ssues not raised in an appellant's opening brief are deemed waived. Powell v. Liberty Mut. Fire Ins. Co., 127 Nev. \_\_\_, \_\_\_, 252 P.3d 668, 672 fn. 3 (2011) (*citing* Bongiovi v. Sullivan, 122 Nev. 556, 570, 138 P.3d 433, 444 fn. 5 (2006)). Similarly, an "issue, raised for the first time in appellant's reply brief, will not be considered on appeal." Phillips v. Mercer, 94 Nev. 279, 283, 579 P.2d 174, 176-77 (1978) (*citing* Blouin v. Blouin, 67 Nev. 314, 218 P.2d 937 (1950); accord, State v. Glusman, 98 Nev. 412, 428, 651 P.2d 639, 649 (1982).

Appellant's Opening Brief did not discuss the applicability of federal authority to allow him to toll the time for filing his Post-Conviction Petition of Writ of Habeas Corpus. Respondent's Brief did not raise any issues relating to tolling to

prompt Appellant to raise this issue in his Reply Brief. As such the argument should be struck or Respondent should be given an opportunity to address it.

### **CONCLUSION**

Wherefore, the State respectfully requests that this Court strike the new arguments from Appellant's Reply Brief or permit supplemental briefing by Respondent to address Appellant's new arguments.

Dated this 21<sup>st</sup> day of March, 2016.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY */s/ Ofelia Monje*

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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on March 21, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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