

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

TERRENCE BOWSER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed  
Jun 14 2017 09:02 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court Case No. 71516

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL OPENING BRIEF**

COMES NOW Appellant, Terrence Bowser, by and through appointed counsel, Jamie Resch, Esq., and files this Motion for Leave to File Supplemental Opening Brief. This motion is based on the following memorandum and all papers and pleadings on file herein.

DATED this 14th day of June, 2017.

RESCH LAW, PLLC d/b/a Conviction  
Solutions

By: 

JAMIE J. RESCH

Attorney for Appellant

## **MEMORANDUM**

Bowser filed his opening brief in the instant appeal on February 8, 2017. The State requested two lengthy extensions in which to file an answering brief, based on the complex nature of the claims and record in this appeal. A reply brief was filed on May 9, 2017, and the matter is currently in screening before this Court.

Part of the complexity of the instant matter arises from the fact trial counsel was found to be ineffective in failing to file a notice of appeal from the judgment and conviction. This resulted in the undersigned counsel being appointed first to prosecute a deprivation of appeal post-conviction petition, and then to prepare this direct appeal on Bowser's behalf. The undersigned received a telephone call from trial counsel on June 13, 2017, which led to a discussion of a potentially meritorious line of argument trial counsel hoped could be included in the appeal, which would be in addition to the arguments previously submitted. After conducting appropriate research concerning that discussion, this motion was immediately prepared for the Court's consideration.

Therefore, Bowser requests permission to file a supplemental opening brief which would contain the following issue: Whether his conviction and sentence imposed after re-trial violated the Double Jeopardy Clause in that harsher sentences were imposed for the convictions for Count 4 and Count 6 than were imposed at his original trial. Support for such an argument can be found in this Court's prior decisions in Wilson v. State, 123 Nev. 587, 170 P.3d 975 (2007) and Dolby v. State, 106 Nev. 63, 787 P.2d 388 (1990).

While there is certainly an undertone that it would have been preferred to include this issue in the opening brief, there is no great prejudice to the State where the matter has not yet been submitted for decision. That is, had the issue been raised in the opening brief, the State would have had to respond to it anyway. The opening brief only used 10,172 words; well short of the limit imposed by NRAP 32(a)(7). This request is therefore made in good faith and not an attempt to subvert page limitations. Bowser believes the matter can be adequately presented in under ten supplemental pages, and certainly well under any remaining limit for the opening brief.

As authority for this request, Bowser would note this Court has granted leave in other published decisions which allowed the filing of a supplement to an opening brief, after the original briefing had been completed. See Buschauer v. State, 106 Nev. 890, 804 P.2d 1046 (1990), Schatz v. Devitte, 75 Nev. 124, 335 P.2d 783 (1959). See also NRAP 28(c) (Allowing a reply brief and stating; “[U]nless the court permits, no further briefs may be filed”).

Any harm here from allowing supplemental briefing is minimal, and far exceeds the potential damage which could arise from a potentially meritorious claim going unrepresented. In order to ensure a Constitutionally effective direct appeal, Bowser requests leave to file a short supplement to the opening brief in which to raise his Double Jeopardy claim.

DATED this 14th day of June, 2017.

RESCH LAW, PLLC d/b/a Conviction  
Solutions

By: \_\_\_\_\_

JAMIE J. RESCH

Attorney for Appellant

## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on June 14, 2017. Electronic service of the foregoing document shall be made in accordance with the master service list as follows:

STEVEN WOLFSON  
Clark County District Attorney  
Counsel for Respondent

ADAM P. LAXALT  
Nevada Attorney General



An Employee of RESCH LAW, PLLC, d/b/a  
Conviction Solutions