

IN THE SUPREME COURT OF THE STATE OF NEVADA

---

ALFRED C. HARVEY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

---

Electronically Filed  
Apr 11 2018 04:05 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Case No. 72829

**APPELLANT'S REPLY TO STATE'S OPPOSITION TO MOTION  
SEEKING STAY OF PROCEEDINGS PENDING RESOLUTION OF  
DISTRICT COURT MOTIONS OR MOTION FOR AN EXTENSION  
OF TIME TO FILE OPENING BRIEF**

Comes Now Appellant ALFRED C. HARVEY, by and through  
Chief Deputy Public Defender SHARON G. DICKINSON, files his reply to  
State's Opposition to Motion Seeking Stay of Proceedings Pending  
Resolution of District Court Motions or Motion for an Extension of Time to  
File Opening Brief. This reply is based on the points and authorities  
included herein and all documents on file in this case.

DATED this 11 day of April, 2018.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER  
By /s/ Sharon G. Dickinson  
SHARON G. DICKINSON, #3710  
Chief Deputy Public Defender

## **POINTS AND AUTHORITIES**

State does not oppose a 75 day extension for Albert Harvey to file his Opening Brief.

However, State opposes a stay or abeyance of the appellate briefing and proceedings while the motions are resolved in district court. State's opposition is based on an inaccurate reading of NRAP 8(a)(1)(A) which State claims requires Alfred to obtain a stay of the appellate proceedings in district court.

### **A. Request for a stay or abeyance of briefing.**

When it is unknown how long it will take to resolve a matter involving district court, the normal practice of this Court is to stay the appellate proceedings and briefing pending the resolution of the district court matter. See *Skropeta v. State*, Case No. 69812, attached as Exhibit A (briefing stayed while motion for a new trial decided in district court); also see *Camacho v. State*, Case No. 73380 (briefing held in abeyance pending resolution of sealed documents).

In each instance, Court did not require the party to first obtain a stay in district court because to do so would make no sense. *District Court does not have the authority to stay or hold appellate briefing in abeyance* in the Nevada Supreme Court or the Court of Appeals. There is no reason for

Alfred to go to district court for a stay because district court does not tell the Nevada Supreme Court what to do with is docket.

**B. NRAP 8(a)(1)(A) is not applicable.**

NRAP 8 (a)(1)(A) states:

(a) Motion for Stay.

(1) Initial Motion in the District Court. A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of, or proceedings in, a district court pending appeal or resolution of a petition to the Supreme Court or Court of Appeals for an extraordinary writ;

NRAP 8(a)(1)(A) is not applicable in this instance because Alfred Harvey is not seeking a stay of the “judgment or order of, or proceedings in, a district court pending appeal or resolution of a petition to the Supreme Court of Court of appeals for an extraordinary writ.”

NRAP 8(a)(1)(a) only applies when a *party seeks to stay matters in district court before direct appeal* while the Appellate Court makes a decision.

Here, Alfred’s motion *seeks to stay the appellate proceedings or to hold briefing in the Nevada Supreme Court in abeyance* until his Motion to Reconstruct the Record and his Motion for a New Trial are decided in district court.

The cases State cites are irrelevant. Three of the civil cases cited by the State to hold Appellant must first seek a stay in district court do not discuss a stay and do not use the word “stay” in the opinions: *Prabhu v. Levine*, 112 Nev. 1538, 1549 (1966); *M&R Investment Company, Inc. V. Mandarino*, 103 Nev. 711, 718 (1987); *Raishbrook v. Bayley*, 90 Nev. 415, 416 (1974). *Kockos v. Bank of Nevada*, 90 Nev. 140, 143 (1974) does not discuss how to obtain a stay of appellate proceedings in the Nevada Supreme Court but makes mention of the staying of a lien. Thus, none of the civil cases State cites stand for the proposition alleged.

Likewise, *State v. Robles-Neives*, 129 Nev. 537 (2013) has no relevance to this issue. In *Robles-Neives*, this Court listed the factors a district court must use when deciding to stay a trial in district court while the State appeals to the Nevada Supreme Court the trial court’s decision to grant defendant’s motion to suppress. *Robles-Neives* has nothing to do with staying or holding briefing in the Nevada Supreme Court in abeyance – it only discusses procedures in district court.

State claims it will be harmed if this Court grants a stay or holds briefing in abeyance. Oppo:3. This again makes no sense because State agrees to a 75 day extension to give Alfred Harvey time to litigate his motions in district court.

Yet State claims it will be harmed because it will not be able to make a record in district court. Oppo:3-4. State's place to make a record is here, in the Opposition.

Moreover, as noted previously, the district court has no authority to decide how a case proceeds during the appellate process. NRAP 8(a)(1(A) only applies to cases in district court, only applies to staying proceedings in district court, and only applies to cases *before* the appellate process on direct appeal begins.

Finally, State's argument that Alfred Harvey's request to stay or hold briefing in abeyance is premature also makes no sense. Alfred Harvey's Opening Brief was due on April 9, 2018. Thus, he neither to either request a stay of the appeal or seek an extension.

### **CONCLUSION**

In view of the above, Alfred Harvey asks this Court to grant his motion by either holding briefing in abeyance or granting an extension of 75 days.

DATED this 11 day of April, 2018.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER  
By /s/ Sharon G. Dickinson  
SHARON G. DICKINSON, #3710  
Chief Deputy Public Defender

**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 11 day of April, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT  
STEVEN S. OWENS

SHARON G. DICKINSON  
HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

ALFRED HARVEY  
NDOC No. 1174900  
c/o Southern Desert Correctional Center  
P.O. Box 208  
Indian Springs, NV 89018

BY /s/ Carrie M. Connolly  
Employee, Clark County Public  
Defender's Office

# **EXHIBIT A**

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN PAUL SKROPETA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69812

FILED

SEP 16 2016

TRAVIS K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER GRANTING MOTION*

This appeal was docketed in this court February 23, 2016. On July 26, 2016, appellant filed in the district court a "Motion for New Trial Pursuant to NRS 176.515 Based on the Grounds of Newly-Discovered Brady Evidence, Motion to Dismiss, and Request for Evidentiary Hearing." Appellant has filed a motion for a stay of the appellate proceedings pending the district court's ruling on the motion. The motion for stay is unopposed. Having considered the motion, we grant it to the following extent: although this court has jurisdiction over appellant's direct appeal, the district court retains jurisdiction to decide a motion for a new trial during the pendency of the direct appeal. *See Vest v. State* 120 Nev. 669, 671, 98 P.3d 996, 997 (2004). According to the district court docket entries, a hearing on the motion for new trial is scheduled for September 12, 2016. Appellant shall have 15 days from the date of this

order to inform this court in writing of the results of the hearing. We stay the appellate proceedings pending further order of this court.

It is so ORDERED.<sup>1</sup>

 C.J.

cc: Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney

---

<sup>1</sup>We deny as moot appellant's motion for an extension of time to file the opening brief and appendix.