

ALFRED C. HARVEY, ) NO. 72829, 75911  
)  
) Electronically Filed  
) Appellant, ) Jan 23 2020 10:34 a.m.  
) Elizabeth A. Brown  
) Clerk of Supreme Court  
vs. )  
)  
)  
) THE STATE OF NEVADA, )  
)  
)  
) Respondent. )  
)

Comes Now Appellant, ALFRED C. HARVEY, by and through Chief Deputy Public Defender, SHARON G. DICKINSON, and pursuant to NRAP 27 moves this Honorable Court for leave to file a Reply to State's Answer to his NRAP 40(B) Petition for Review. This Motion is based upon the attached Declaration of Counsel.

DARIN M. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

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## **DECLARATION OF SHARON G. DICKINSON**

1. I am an attorney licensed to practice law in the State of Nevada; I am a chief deputy public defender assigned to represent ALFRED C. HARVEY in this appeal; I am familiar with the procedural history of this case.

2. Under NRAP 40(B), Petitioner carries the burden for review. As such, Alfred asks this Court to allow him to file a Reply to State's Answer to Petition for Review filed on 01/21/20. This response is timely in that the request occurs two days after receipt of the State's Answer and it is brief. The Reply contains approximately 1752 words, which is less than half allowed for a Petition (4,667).

3. A Reply is necessary because State misled this Court as to several arguments and cases and brought up new arguments.

4. Alfred would like to address numerous contentions made by the State under Issue A. One involves State incorrectly claiming Appellate Counsel's argument below were not cogently presented. However, the record is clear that the COA identified Issue I as a sufficiency and a variance issue: "The variance between the information and evidence was immaterial, and sufficient evidence supports the finding that Harvey took the items." Order:4. The problem is that COA rested its decision on cases never cited

by either party: *Simpson v. Eighth Jud. Dist. Court*, 88 Nev. 654, 661 (1972) and *Alford v. State*, 111 Nev. 1409, 1415 (1995). Moreover, this Court may address Issue I sua sponte . *Jezdik v. State*, 121 Nev. 129, 140-41 (2—5).

5. Also, under Issue A, State brought up an argument regarding the notice listed in the Information. State never challenged the district court's ruling prohibiting an amendment prior to trial because of notice. Accordingly, Alfred would like to respond.

6. Under Issue B, State raised an argument not addressed in Alfred's Petition, discussing statutory interpretation of NRS 176.515. Moreover, *Dieudonne v. State*, 127 Nev. 1, 5 (2011) only applies to a guilty plea and sentencing – not a trial.

7. The above are only some examples of what Alfred would like to Reply to – there are more. Thus, for all the above reasons, and more, Alfred asks this Court to allow the filing of a brief Reply which is being submitted along with this motion.

8. Appellate Counsel would also like the opportunity to refute and respond to State's public allegations that she lacks briefing skills. This prosecutor responded to the arguments Appellate Counsel made below, never claimed he did not understand her arguments, never sought to strike

her arguments, and never made such allegations in this case until the filing of State's Answer to Alfred's Petition. The parties understood the issues.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 23 day of January, 2020.

/s/ Sharon G. Dickinson  
SHARON G. DICKINSON

### **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 23 day of January, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD  
ALEXANDER CHEN

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 C. 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