IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jan 05 2018 11:30 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

PAOLA M. ARMENI, JONAH J. HORWITZ, and DEBORAH A CZUBA,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, COUNTY OF CLARK, STATE OF NEVADA, THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE,

Respondents,

And

TIMOTHY FILSON, Warden, ADAM PUAL LAXALT, Attorney General for the State of Nevada, and THE STATE OF NEVADA,

Real Party in Interest.

CASE NO: 73462

D.C. NO: 81C053867

OPPOSITION TO MOTION FOR LEAVE TO FILE REPLY

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IN THE SUPREME COURT OF THE STATE OF NEVADA

PAOLA M. ARMENI, JONAH J. HORWITZ, and DEBORAH A CZUBA, Petitioners, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, COUNTY OF CLARK, STATE OF NEVADA, THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE, Respondent, And TIMOTHY FILSON, Warden, ADAM PUAL LAXALT, Attorney General for the State of Nevada, and THE STATE OF NEVADA, Real Party in Interest.	CASE NO: 73462 D.C. NO: 81C053867

OPPOSITION TO MOTION FOR LEAVE TO FILE REPLY

COMES NOW, the State of Nevada, Petitioner, by STEVEN B. WOLFSON, District Attorney, through his Chief Deputy, JONATHAN VANBOSKERCK, and submits this Opposition to Motion for Leave to File Reply pursuant to Rule 27(e) of the Nevada Rules of Appellate Procedure. This opposition is based on the following memorandum and all papers and pleadings on file herein.

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Dated this 5th day of January, 2018.

Respectfully submitted,

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

BY */s/ Jonathan VanBoskerck*
JONATHAN VANBOSKERCK
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MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner has failed to justify the filing of any reply. Rule 21 of the Nevada Rules of Appellate Procedure (NRAP) does not permit such a pleading and the excuses offered by Petitioners are nothing more substantive than an attempt to reiterate previous arguments. As such, this Court should deny leave to file a reply.

NRAP 21 allows for filing of a petition. NRAP 21(a)(1). If the Court does not deny a demand for extraordinary relief outright, it may direct the filing of an answer. NRAP 21(b)(1)-(2). The Court may solicit "amicus curiae to address the petition." NRAP 21(b)(3). The Court may also "invite the trial judge to address the petition." NRAP 21(b)(1)(4). However, the rule does not authorize any reply to an answer.

Nor do any of the excuses offered by Petitioners justify ignoring the plain text of the rule. Petitioners first complain, that "[t]he State submits that counsel were

sanctioned for attempting to amend their petition when leave to amend had already been denied[.]" (Motion for Leave, p. 3). However, Petitioners have already addressed this issue. (Petition, p. 16-18, 25, footnote 6).

Petitioners allege that "[t]he State submits that the petitioners were sanctioned for seeking reconsideration[.]" (Motion for Leave, p. 3). However, Petitioners have also already addressed this issue as well. (Petition, p. 16, 24-25, 34).

Petitioner contends "that [t]he State maintains that the petitioners were given notice and an opportunity to be heard on the sanctions by virtue of an email sent to them with a proposed order memorializing the sanction[.]" (Motion for Leave, p. 3). This is essentially a timing argument and as such the record speaks for itself. Moreover, Petitioners placed the e-mail in question into the record so they were clearly aware of it. 3 Appellant's Appendix (AA) 538.[1] Petitioners should also have been aware of the relevance of Byford v. State, 123 Nev. 67, 69, 156 P.3d 691, 692 (2007), since that authority has been available since 2007. As such, the petition should have addressed Petitioners failure to object to the sanctions below and their failure to address this issue in the petition should be treated as an admission that they are not entitled to relief. See, Polk v. State, 126 Nev. __, __, 233 P.3d 357, 360-61 (2010); Dermody v. City of Reno, 113 Nev. 207, 210-11, 931 P .2d 1354, 1357

[1] Petitioners' erroneously title their appendix Appellant's Appendix even though this matter is one seeking extraordinary relief. The State has followed Petitioners' naming convention in order to avoid confusion.

(1997); Guy v. State, 108 Nev. 770, 780, 839 P .2d 578, 584 (1992), cert. denied, 507, U.S. 1009, 113 S. Ct. 1656 (1993); Davis v. State, 107 Nev. 600, 606, 817 P .2d 1169, 1173 (1991).

Petitioners assert that "[t]he State expresses the opinion that it was misconduct for the petitioners to file an amended petition … without seeking leave[.]" (Motion for Leave, p. 3). However, Petitioners have already addressed this issue. (Petition, p. 25, footnote 6).

Petitioners contend that "[t]he State implies that the petitioners initiated their post-conviction litigation to delay an execution date[.]" (Motion for Leave, p. 4). However, Petitioners have already addressed this issue. (Petition, p. 6-7, 36, footnote 9).

Petitioners argue that "[t]he State insists that the petitioners filed their … petition on the eve of their deadline[.]" (Motion for Leave, p. 4). This claim clearly relates to the State's view that Petitioners were inappropriately pursuing a strategy of delay. Petitioner was aware of this belief before pursuing extraordinary relief from this Court. 1 AA 197; 2 AA 460-63. Indeed, Petitioners replied to this concern below. 1 AA 215-22; 2 AA 471-73. The proposed reply offers little that is not already in the record. (Reply in Support of Petition for Writ of Mandamus, p. 33-43).

Finally, Petitioner complains that "[t]he State is of the view that the petitioners were acting as part of a grand conspiracy amongst federal defenders[.]" (Motion for Leave, p. 4). This claim clearly relates to the State's view that Petitioners were inappropriately pursuing a strategy of delay. Petitioner was aware of this belief before pursuing extraordinary relief from this Court. 1 AA 197; 2 AA 460-63. Indeed, Petitioners replied to this concern below. 1 AA 215-22; 2 AA 471-73. Again, the proposed reply offers little that is not already in the record. (Reply in Support of Petition for Writ of Mandamus, p. 33-43).

Ultimately, Petitioners' demand to file a reply that primarily reiterates arguments made below should be denied because they were well aware of the arguments the State made below and still failed to address them in the petition. Petitioners apparently feel they have the right to get the last word in. However, such a sense of entitlement is not supported by NRAP 21 and is unwarranted since the State has not offered novel arguments that were not made below. Since the lack of a right of a reply in NRAP 21 should have put Petitioners on notice that they should present *all* of their arguments in their petition, this Court should not indulge Petitioners need to restate arguments made below merely to get the last word.

CONCLUSION

Based on the foregoing arguments, the State respectfully requests that this Court deny Petitioner's Motion for Leave to File Reply.

Dated this 5th day of January, 2018.

Respectfully submitted,

STEVEN B. WOLFSON
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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on January 5, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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

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