

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED C. HARVEY,)	NO. 72829, 75911
)	Electronically Filed
Appellant,)	Feb 25 2019 08:51 a.m.
)	Elizabeth A. Brown
vs.)	Clerk of Supreme Court
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
)	

APPELLANT’S MOTION FOR LEAVE TO FILE BRIEF IN EXCESS OF TYPE-VOLUME LIMITATION

Comes Now Appellant, ALFRED C. HARVEY, by and through Chief Deputy Public Defender, SHARON G. DICKINSON, and moves this Honorable Court for leave to file a Reply Brief in excess of type-volume limitation in pursuant to NRAP 32(D). This Motion is based upon the attached Declaration of Counsel and Points and Authorities.

DATED THIS 22 day of February, 2019.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Sharon G. Dickinson
SHARON G. DICKINSON, #3710
Chief Deputy Public Defender
309 S. Third Street, Ste. 226
Las Vegas, Nevada 89155
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POINTS AND AUTHORITIES

NRAP 32 (a)(7)(D) states:

(i) The court looks with disfavor on motions to exceed the applicable page limit or type-volume limitation, and therefore, permission to exceed the page limit or type-volume limitation will not be routinely granted. A motion to file a brief that exceeds the applicable page limit or type-volume limitation will be granted only upon a showing of diligence and good cause. The court will not consider the cost of preparing and revising the brief in ruling on the motion.

(ii) A motion seeking an enlargement of the page limit or type-volume limitation for a brief shall be filed on or before the brief's due date and shall be accompanied by a declaration stating in detail the reasons for the motion and the number of additional pages, words, or lines of text requested. A motion to exceed the type-volume limitation shall be accompanied by a certification as required by Rule 32(a)(9)(C) as to the line or word count.

(iii) The motion shall also be accompanied by a single copy of the brief the applicant proposes to file.

As addressed in Counsel's declaration, a showing of diligence and good cause exists. First, it is important to note that this appeal is two cases consolidated. But for the consolidation Alfred would have been entitled to double the word limit in responding to State's Answering Brief – 14,000 words. However, because of the consolidation Alfred is given a 7,000 word limit. Counsel is asking to file a Reply with 8,672 words.

Also, State's Answering Brief contains 13,394 words and raises approximately 73 new legal authorities not addressed in Alfred's Opening

Brief. Because State does not address many of Alfred's arguments, Counsel spent extra words describing the legal significance of State's omission.

Additionally, these two cases involve questions of statutory construction and legal issues not previously decided by this Court thus requiring more discussion than in other cases.

Also, Counsel did spend time deleting or changing arguments in an attempt to get within the word limit. Accordingly, Counsel asks this Court to grant this motion allowing for the filing of a Reply Brief with 8,672 words.

DATED THIS 22 day of February, 2019.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER
By /s/ Sharon G. Dickinson
SHARON G. DICKINSON, #3710
Chief Deputy Public Defender
309 So. Third Street, Suite #226
Las Vegas, Nevada 89155-2610

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. This appeal stems from two separate direct appeals that Court consolidated. Case 75911 is the direct appeal of the Judgment of Conviction entered on 03/17/17. The notice of appeal in Case 75911 was filed on 04/10/17.

3. Case 72829 is the direct appeal of the denial of a Motion for a New Trial decided on 05/04/18. The notice of appeal was filed on 05/16/18.

4. On 03/17/18 Court consolidated Case 72829 and Case 75911.

5. NRAP 32(a)(7)(A) provides that “[a] reply brief is acceptable if it contains no more than half the type-volume specified for an opening or answering brief.” Thus, a reply brief is limited to 7,000 words.

6. If Case 72829 and Case 75911 had proceeded *without consolidation*, Alfred would be entitled to two reply briefs totaling 14,000 words. Accordingly, Alfred is asking this Court to allow him to file a reply

brief with 8,672 words because his two cases were consolidated and he is unable to address the issues thoroughly in 7,000 words.

7. Other reasons additional words are needed include the length of State's Answering Brief. State's Answering Brief contains 13,394 words and raises approximately 73 new legal authorities not addressed in Alfred's Opening Brief. Because State does not address many of Alfred's arguments, Counsel spent extra words describing the legal significance of State's omission.

8. Another reason additional words were needed is because there are several issues involving questions of statutory construction and legal issues not previously decided by this Court. Thus Counsel needed to provide additional argument.

9. Counsel did spend time deleting or changing arguments in an attempt to get within the word limit.

10. Effective prosecution of the constitutionally significant and complex issues raised in Appellant's Opening Brief and the necessary reply to State's Answering Brief required briefing in excess of the limits otherwise allowed by the rules of appellate procedure for the Reply. Accordingly, Appellant respectfully requests that this Honorable Court allow submission of a Reply Brief in excess of the limit(s) proscribed by NRAP 32(a)(7).

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

EXECUTED on the 22 day of February, 2019.

/s/ Sharon G. Dickinson
SHARON G. DICKINSON

CERTIFICATE OF COMPLIANCE

1. I hereby certify that the reply brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

The reply brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 size font.

2. I further certify that the reply brief is proportionately spaced, has a typeface of 14 points or more and contains 8,672 words which exceeds the limitations set forth in NRAP 32(a)(7).

DATED this 22 day of February, 2019.

DARIN M. IMLAY
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 22 day of February, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
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 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