

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED C. HARVEY,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

CASE NO:

Electronically Filed
Feb 25 2019 02:03 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
72829

**OPPOSITION TO APPELLANT'S MOTION FOR LEAVE TO FILE BRIEF
IN EXCESS OF TYPE-VOLUME LIMITATION**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, JONATHAN E. VANBOSKERCK, and files this Opposition to Appellant's Motion for Leave to File Brief in Excess of Type-Volume Limitation. This opposition is filed pursuant to NRAP Rule 27 and Rule 32(a)(7)(D) and is based on the following memorandum and all papers and pleadings on file herein.

Dated this 25th day of February, 2019.

Respectfully submitted,

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

BY */s/ Jonathan E. VanBoskerck*

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
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Office of the Clark County District Attorney

ARGUMENT

Appellant fails to justify his demand to exceed the type-volume limitation. Indeed, his attempt to establish good cause actually supports denying his motion.

Nevada Rules of Appellate Procedure Rule (NRAP) 32(a)(7)(D)(i) indicates that “[t]he court looks with disfavor on motions to exceed the applicable ... type-volume limitation, and therefore, permission ... will not be routinely granted.” Such an extraordinary request “will be granted only upon a showing of diligence and good cause.” Id. This Court has recognized that reasonable limitations on briefs are “necessary for the functioning of this court” and “are ordinary practices employed by courts to assist in the efficient management of the cases before them.” Hernandez v. State, 117 Nev. 463, 467, 24 P.3d 767, 770 (2001). Indeed, this Court pointed out that “a shorter brief provides more effective advocacy than a longer one.” Id.

Appellant fails to establish good cause or diligence. Appellant’s first allegation of good cause is that this matter started out as two separate appeals and thus he should have received twice the word-volume limit. (Excess Motion, p. 2). Such a risible contention does not establish good cause. Regardless, such an argument should have been raised against consolidation and not in a motion to exceed the word-volume limitations. Additionally, it is belied by the record since Appellant’s Opening Brief and Respondent’s Answering Brief were both able to comply with the rule.

Appellant's second claim of good cause is that the State raised "73 new legal authorities not addressed in Alfred's Opening Brief." (Excess Motion, p. 2-3). This is a naked assertion since Appellant never sets out what these authorities are and why he believes they are so difficult to address. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

Third, Appellant complains that "[b]ecause the State did not address many of Alfred's arguments, Counsel spent extra words describing the legal significance of State's omission." (Excess Motion, p. 3). This argument makes no sense. If Respondent failed to address a claim it should take less space to argue Polk v. State, 126 Nev. ___, ___, 233 P.3d 357, 360-61 (2010), error than to address a fully developed position on the merits.

Finally, Appellant offers the naked assertion that "these two cases involve questions of statutory construction and legal issues not previously decided by this Court[.]" (Excess Motion, p. 3). Appellant's failure to demonstrate why this requires ignoring the rules of this Court is fatal to his demand. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Regardless, a request to exceed the type-volume limitations on this ground should be addressed contemporaneously with Appellant's Opening Brief. Saving these issues for a reply brief raises sand bagging concerns. See, Righetti v. Eighth Judicial Dist. Ct., 133 Nev. ___, 388 P.3d

643, 648 (2017) (noting that a party should “squarely present his untested legal position to the district court”).

CONCLUSION

This Court has warned that rules exist for a reason and that violating them comes with a price:

In the words of Justice Cardozo,

Every system of laws has within it artificial devices which are deemed to promote ... forms of public good. These devices take the shape of rules or standards to which the individual though he be careless or ignorant, must at his peril conform. If they were to be abandoned by the law whenever they had been disregarded by the litigants affected, there would be no sense in making them.

Benjamin N. Cardozo, *The Paradoxes of Legal Science* 68 (1928).

Scott E. v. State, 113 Nev. 234, 239, 931 P.2d 1370, 1373 (1997).

WHEREFORE, the State respectfully requests that Appellant’s Excess Motion be denied.

Dated this 2nd day of July, 2018.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY /s/ Jonathan E. VanBoskerck

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
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Office of the Clark County District Attorney

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on February 25, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

SHARON G. DICKINSON
Deputy Public Defender

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BY /s/ J. Garcia
Employee, District Attorney's Office

JEV//jg