

ALFRED C. HARVEY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court
Case No. 72829/75911

Comes Now Appellant, ALFRED C. HARVEY, by and through Chief Deputy Public Defender, SHARON G. DICKINSON, and files a reply to State's Opposition to Appellant's Motion for Leave to File Brief in Excess of Type-volume limitation pursuant to NRAP 32(a)(7)(D). This Motion is based upon the attached Declaration of Counsel and Points and Authorities.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER
By: /s/ Sharon G. Dickinson
SHARON G. DICKINSON, #3710
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POINTS AND AUTHORITIES

State claims Appellant failed to establish good cause or diligence in support of his motion to allow for the filing of a Reply Brief in excess of type-volume limitations. First, State claims that the fact this case began as two separate appeals which would have allowed for twice the number of words does not matter. State claims Alfred should have argued against consolidation. Motion:1.

However, pursuant to NRAP 3(b)(2), court consolidated the cases on its own motion. See Order filed 07/26/18.

Moreover, at the time of consolidation, Alfred did not know that State would file an Answering Brief ignoring many of his arguments and citing new authorities. *See Exhibit A* (State's index and number of new authorities circled) and compare with *Exhibit B* (Appellant's index). The fact Alfred's Opening Brief was within the word limit of under 14,000 words does not mean he is able to get his Reply in under the word limit of 7,000 because in the Reply he must respond to State's arguments.

As required by NRSAP 32 (a)(7)(D)(iii), Alfred submitted his Reply Brief. In his Reply, he specifically noted numerous areas where State ignored his arguments, presented new arguments for Alfred to address , or misstated facts in arguments at the following pages: 7, 9, 10, 12-13, 14-17,

18-20, 21-25,30, 32, 34, 38-40. He also addressed State's factual misstatements and noted State's Issue VII was nonresponsive in separate sections. Thus, Alfred's assertion was not naked as State alleges. If State was confused, it could have compared the Opening and Answering briefs. Nonetheless, Alfred presented sufficient evidence showing good cause and diligence as to why he needed to use 1,672 more words.

Yet, State claims Alfred only needed to cite *Polk v. State*, 233 P.3d 357, 360-61 (2010) when State failed to address his arguments. By not denying it ignored Alfred's arguments, State admits it did so. Thus, it was important in the brief and here to point out what State ignored and why this Court should not ignore the argument's and issue Alfred raised in his Opening Brief.

State further claims Alfred's assertion of statutory constructions arguments and legal arguments not previously decided is another naked assertion. However, these were noted in the brief submitted and in the Opening Brief: NRS 175.141, NRS 175.415, NRS 178.388, and NRS 175.101, NRS 176.515. Also, State understands the statutory construction arguments because State addressed these issues in its Answering Brief.

Finally, Alfred is simply asking for an additional 1,672 words over the 7,000 word limit and if the cases had not been consolidated he would not be over because he would have been given 14,000 words to reply.

CONCLUSION

Counsel asks this Court to grant this motion allowing for the filing of a Reply Brief with 8,672 words.

DATED THIS 26 day of February, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 26 day of February, 2019. 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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BY /s/ Carrie M. Connolly
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Defender's Office

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