

SUPREME COURT OF THE STATE OF NEVADA

SAMMIE NUNN,)	CASE NO: 80121	Electronically Filed Jul 13 2020 11:39 a.m.
Appellant,)	E-filed	Elizabeth A. Brown Clerk of Supreme Court
v.)		
STATE OF NEVADA,)		
Respondent.)		
)		

Response to Motion to Strike Portions of Appellant's Opening Brief

I. The State's Motion to Strike Parts of Appellant's Opening Brief on a Technicality Should Be Denied.

A. The State has had Ample Notice of the Issues in Defendant's Appeal.

Defendant filed a *Pro Per* Notice of Appeal on November 21, 2019, and that appeal covered many issues in his case which, according to the State, did not conform with NRAP 3(c)(1)(B). When counsel was appointed on February 18, 2020 for appellate work, he did not file another Notice of Appeal. The Clerk of the Court had prepared the Case Appeal Statement, which was filed November 22, 2019. Counsel, after reviewing the record, prepared a Docketing Statement on March 5, 2020, which clearly listed what he believed would be the issues on appeal. His Opening Brief,

filed June 26, 2020, conformed to the Docketing Statement.

The State, therefore, has always had complete notice of all the facts upon which Defendant was basing his Appeal. Defendant, through counsel, submitted a 245 page Appendix with his Opening Brief that listed every relevant docket entry needed for the Appeal.

The Courts have always been lenient in accepting flawed pleadings from *Pro Per* litigants. *See, Gideon v. Wainwright*, 372 U.S. 335 (1963); *Penson v. Ohio*, 488 U.S. 75 (1988). Defendant submits that this is especially true when, as here, the State will not be prejudiced by a technical error in pleadings.

B. The State will not be Prejudiced by the Technical Error Alleged in the Notice of Appeal.

The State cannot argue it is prejudiced by any lacking in the *Pro Per* Notice of Appeal. The State did not object to the Notice when it was filed seven months ago. The State did not object to the Clerk's Case Appeal Statement when filed. The State did not object to counsel's Docketing Statement filed on March 5, 2020. It is only now, when faced with the difficult task of responding on the merits to the difficult issues raised in the Opening Brief that the State makes a technical objection to a minor nonconformity between the issues in the Defendant's Opening Brief and the *Pro Per* Notice of Appeal. The case of *Lemmond v. State*, 114 Nev. 219, 954 P.2d 179

(1998), is directly on point. In that case the Supreme Court made clear that where the intent to appeal from a final judgment can be reasonably inferred and the respondent is not misled, an appeal will not be dismissed due to technical defects, stating . . . :

“The notice of appeal is not, however, intended to be a technical trap for the unwary draftsman.” *Id.* 220

Defendant therefore respectfully submits this Honorable Court should deny the State’s Motion to Strike parts of his Opening Brief. Striking important parts of the Opening Brief would deny Defendant his statutory right to appeal, NRS 177.015.

Alternatively, the Court should remove the case to District Court and grant the Defendant thirty days to refile a Notice of Appeal consistent with NRAP 3(c)(1)(B).

Dated this 13th day of July, 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 13th day of July, 2020, I served a copy of this Response to Motion to Strike Portions of Appellant's Opening Brief to:

[X] Via Electronic Service (eFlex) to the Nevada Supreme Court;

[X] and by United States first class mail with postage affixed to the Nevada Attorney General and to the Defendant as follows:

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