

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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DEQUINCY BRASS,  
Appellant,

v.

THE STATE OF NEVADA,  
Respondent.

CASE NO:

Electronically Filed  
Feb 25 2021 03:47 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
81142

**OPPOSITION TO MOTION TO SUPPLEMENT OPENING BRIEF TO  
REFERENCE A NEWLY DISCOVERED BAR COMPLAINT AGAINST  
MITCHELL POSIN THAT WAS PENDING DURING BOTH *YOUNG*  
HEARINGS**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Deputy, JOHN NIMAN, and files this Opposition to Appellant's Motion to Supplement Opening Brief to Reference a Newly Discovered Bar Complaint Against Mitchell Posin that was Pending During Both *Young* Hearings. This motion is filed pursuant to NRAP Rule 27 and is based on the following memorandum and all papers and pleadings on file herein.

Dated this 25<sup>th</sup> day of February, 2021.

Respectfully submitted,

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

BY /s/ John T. Niman

JOHN T. NIMAN  
Deputy District Attorney  
Nevada Bar #014408  
Office of the Clark County District Attorney

## ARGUMENT

This Court should reject Appellant's attempt to supplement his Opening Brief with information that was not presented to the district court and has no connection to Appellant's claims. Specifically, Appellant is requesting to amend his Opening Brief to include a reference to a bar complaint against Appellant's trial counsel which was pending at the time Appellant attempted to remove counsel as attorney of record. Appellant argues that had he known about this bar complaint at the time he filed the Opening Brief, he would have included it because "it is directly relevant to the conflict of interest that existed at the Young hearings." This Court should not entertain Appellant's Motion.

First, this Court need to consider contentions of appellant when Appellant's Opening Brief fails to cite to the record on appeal. NRAP 28(a)(4), (e); Allianz Ins. Co. v. Gagnon, 860 P.2d 720, 109 Nev. 990 (1993). Further, this Court has previously concluded that its review on appeal is generally limited to the exhibits that were considered by the district court prior to entry of the judgment of conviction. See Williams v. State, Docket No. 76669, Order Denying Motion (filed May 1, 2020) (citing NRAP 10(a), (b); FRAP 10(a); FRAP 10(e); AA Primo Builders, LLC v. Washington, 126 Nev. 578, 245 P.3d 1190 (2010) (looking to analogous federal rules when interpreting this court's rules); e.g., S & E Shipping Corp. v. Chesapeake & O. Ry. Co., 678 F.2d 636, 641-42 (6th Cir.1982) (holding that the district court's grant of permission to include stipulations in the record on

appeal pursuant to FRAP 10(e) was improper where the stipulations were filed in the district court after filing the notice of appeal); United States v. Canon, 534 F.2d 139, (9th Cir. 1976) (concluding that an affidavit, filed by the state in the district court after the notice of appeal was filed and entry of order appealed from, and which was not before the district court when it made its order, was not a proper part of the record on appeal and would not be considered on appeal); In re Saco Local Development Corp., 13 B.R. 226, 229 (Bankr.D.Me. 1981) (depositions filed in the bankruptcy court more than one month after entry of an order and never offered into evidence in bankruptcy court could not be part of record on appeal of that order)).

Here, evidence of a pending bar complaints against Mr. Posin was not included in the trial record prior to the issuance of Appellant's Judgment of Conviction. THE Nevada Supreme Court reviews the district court's denial of Appellant's request to substitute counsel for an abuse of discretion. The Nevada Supreme Court order referenced in Appellant's Motion was issued February 19, 2021, nine months after Appellant's Judgment of Conviction was filed. Information that the district court did not have—because it did not exist—or did not consider cannot reasonably be interpreted to have impacted the court's ruling and is therefore irrelevant to whether an abuse of discretion occurred. Therefore,

any amendment to Appellant's brief including this information would be irrelevant to this Court's appellate review.

### **CONCLUSION**

WHEREFORE, the State respectfully requests that this Court DENY Appellant's Motion to Supplement Opening Brief to Reference a Newly Discovered Bar Complaint Against Mitchell Posin that was Pending During Both *Young* Hearings.

Dated this 25<sup>th</sup> day of February, 2021.

Respectfully submitted,

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

BY */s/ John T. Niman*

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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 25<sup>th</sup> day of February, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD  
Nevada Attorney General

DEBORAH L. WESTBROOK  
Chief Deputy Public Defender

JOHN T. NIMAN  
Deputy District Attorney

*/s/ J. Garcia*

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Employee, Clark County  
District Attorney's Office

JTN/Julia Barker/jg