

IN THE SUPREME COURT OF THE STATE OF NEVADA

NARCUS WESLEY,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

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Case No. 82690

RESPONDENT'S ANSWERING BRIEF

**Appeal From Denial of Petition for Writ of Habeas Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County**

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v.

THE STATE OF NEVADA,

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Case No. 82690

**Appeal From Denial of Petition for Writ of Habeas Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County**

STATEMENT OF THE ISSUES

1. Whether the new claims Wesley raises on appeal are waived for failure to raise them below.
2. Whether Wesley's Reply Brief was improperly filed so the district court was under no obligation to consider it.
3. Whether the district court was correct in denying Wesley's claim as procedurally barred
4. Whether Wesley was not required to be present at the hearing and was not prejudiced by his absence

STATEMENT OF THE CASE

On August 1, 2007, the State of Nevada filed an Information against Wesley. AA at 000001. Wesley was charged with: Count 1 – Conspiracy to Commit Burglary; Count 2 – Conspiracy to Commit Robbery; Counts 3 and 11 – Burglary While in Possession of a Deadly Weapon; Counts 4, 6, 7, and 9 – Robbery with Use of A Deadly Weapon; Counts 5 and 8 – Assault with Use of a Deadly Weapon; Count 10 – First Degree Kidnapping with Use of a Deadly Weapon; Counts 12-15,

and 17 – Sexual Assault with Use of a Deadly Weapon; Count 16 – Coercion with Use of a Deadly Weapon; and Count 18 – Open or Gross Lewdness with Use of a Deadly Weapon AA at 1-9.

Jury trial began on April 9, 2008. AA at 10. The jury returned its verdict on April 18, 2008. AA at 1191. The jury found Wesley guilty of all counts. AA at 1191-1196.

The Judgment of Conviction was filed on July 18, 2008, and an Amended Judgment of Conviction reflecting a correction in the sentence to Counts 12-15, and 17 was filed on October 8, 2008. AA 1218, 1229. On March 11, 2010, the Nevada Supreme Court filed an Order affirming Petitioner's convictions. Remittitur issued on April 8, 2010. Respondent's Appendix ("RA") at 7.

Wesley filed an initial Petition for Writ of Habeas Corpus on September 9, 2010, which was denied on January 4, 2011. RA at 8-17. Wesley appealed the denial of his first Petition; the denial was affirmed on January 16, 2013. RA at 19-26.

Wesley filed an additional pro per Petition for Writ of Habeas Corpus on November 12, 2020. AA at 1237. The State responded on December 18, 2020. AA at 1245-1252.

On January 14, 2021, the district court summarily denied the Petition without Wesley present, stating that: "So I've reviewed the pleadings in this. We'll go on the record. Note that Ms. Wong is here on behalf of the State. Mr. Wesley is not present;

he's in custody of NDOC and was not transported. The Court has reviewed the pleadings in this case; it will not take argument from the State. And based on the pleadings, I find that the State's response is compelling. I agree that Mr. Wesley should have submitted all the arguments in this writ when his initial writ was filed. And so this petition will be denied by the Court." AA at 001257.

Wesley attempted to file a Reply in support of his pending Petition, in advance of the District Court's hearing on the matter. AA at 001258. Therein Mr. Wesley attempted to address the State's arguments. AA at 001259-001265. Wesley sent his Reply Brief to the district court on January 5, 2021. AA at 001258. The district court received the Reply Brief on January 11, 2021. Id. The District Court filed the brief on January 26, 2021, after the hearing had occurred. AA at 001258, 001265, 001266.

The Findings of Fact and Conclusions of Law were filed on February 23, 2021. AA at 001269. Notice of Entry of that Order was filed on February 24, 2021. AA at 001278. A Notice of Appeal was filed on March 24, 2021. AA at 001267. Wesley filed his Appellant's Opening Brief on September 24, 2021. The State's response now follows.

ARGUMENT

I. THE NEW CLAIMS WESLEY RAISES ON APPEAL ARE WAIVED FOR FAILURE TO RAISE THEM BELOW

On appeal, Wesley attempts to raise new grounds upon which he is allegedly entitled to relief. Wesley argues: (1) the district court erred by not considering

Wesley's Reply Brief; (2) the district court erred by not directing that Wesley be transported to the court for the Petition hearing; and (3) the district court erred by not re-opening the hearing *sua sponte* after Wesley's Reply Brief was filed. Appellant's Opening Brief ("AOB") at 6-11. However, these arguments were absent from Wesley's Reply Brief so whether the district court considered his Reply Brief is irrelevant. Because these claims were not presented to the district court, this Court should decline to take it into consideration as well. See Guy v. State, 108 Nev. 770, 180, 839 P.2d 578, 584 (1992) (stating: "[b]ecause appellant failed to present these hearsay exceptions at trial, the trial court had no opportunity to consider their merit. Consequently, we will not consider them for the first time on appeal."); see also McNelton v. State, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999) (declining to address arguments not raised before the district court). Therefore, the district court could not have abused its discretion since it did not have the opportunity to address Wesley's newly raised claim below. Thus, such allegations should be denied.

Even if this Court were to address Appellant's waived claims, they would fail for the following reasons.

A. There is no evidence the district court did not consider the Reply Brief

Wesley claims the district court erred by not considering his Reply Brief before making its ruling on his Petition for Writ of Habeas Corpus. AOB at 9. Wesley states the brief was mailed three weeks before the hearing on January 5, 2021, and the

court did not file the document until after the hearing. Id. Therefore, the court did not consider it. Id. However, Wesley's argument is belied by the record.

The district court received Wesley's Reply Brief on January 11, 2021. AA at 001258. However, the hearing on the Petition took place on January 14, 2021. AA at 001255. Thus, the court actually received the Reply Brief only three days prior to the hearing, and not three weeks prior as Wesley suggests. AA at 001255; See AOB at 9. Regardless, Wesley does not submit any evidence that the court did not review his Reply Brief prior to ruling on the Petition. See generally AOB. Further, there is no evidence of that in the record. While the court does not mention his Reply Brief outright at the hearing, and the brief had not yet been filed, Wesley cannot assume those two facts equate to the conclusion that the court did not review his Reply Brief. See AA at 001255-001257, 001258.

Therefore, there is no evidence the court did not consider Wesley's Reply Brief in ruling on the Petition and Wesley's claim is belied by the record.

B. Wesley does not challenge the procedural bar on appeal so it is waived

Wesley does not challenge the district court's denial of his claims as procedurally barred. Therefore, this Court must affirm the district court's ruling on its face. See AA 1271-1276 (District Court's Finding of Fact Conclusions of Law Order stating Wesley's Petition was procedurally barred under NRS 34.810).

Wesley argued his Petition was not procedurally time barred in his Reply Brief. See AA at 001259-001260. However, he does not reiterate these arguments on appeal. He fails to address the procedural time bar on appeal and abandons his argument. When an appellant abandons an argument, the court should treat that omission as a waiver of the issue or a concession. See Belcher v. State, 136 Nev. 261, 267, 464 P.3d 1013, 1023 (2020).

Here, Wesley does not present his arguments against the procedural time bar to this Court. He simply asks this Court to find the district court erred by not considering his Reply Brief, which contained these arguments, even though that claim is belied by the record (addressed above). Thus, he abandons his arguments against the procedural time bar on appeal, and this Court should treat any argument against the procedural time bar as waived or conceded.

Therefore, the argument against the procedural time bar is waived.

II. THE DISTRICT COURT WAS UNDER NO OBLIGATION TO CONSIDER WESLEY’S REPLY BRIEF AND DID NOT ABUSE ITS DISCRETION

Wesley claims the district court erred by not considering his Reply Brief. AOB at 6-11. Wesley filed his Reply Brief after he had already filed his Petition for Writ of Habeas Corpus and the State had filed its Response. AA at 1237-1244; 1245-1250. Wesley’s claim fails.

First, this Court is under no obligation to address Wesley's claim because he does not cite any relevant legal authority to support his claim. This Court has held that issues or claims not presented supported by relevant legal authority do not need to be addressed by the court. Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Therefore, this Court should not address the merits of this claim. However, Wesley's claim also fails on the merits.

The district court has discretion to permit a petitioner to supplement the initial petition, but Wesley did not request and the district court did not grant permission to supplement the initial petition. See NRS 34.750(5); State v. Powell, 122 Nev. 751, 758, 138 P.3d 453,458 (2006) (the district court has broad discretion regarding supplemental pleadings in postconviction cases). Further, a pro per petitioner is not entitled to file a response where, as here, the State has not moved to dismiss the petition. See NRS 34.750(3)-(5). A district court has no obligation to permit a petitioner to raise issues that were not raised in an appropriately filed pleading. See Barnhart v. State, 122 Nev. 301, 303-04, 130 P.3d 650, 651-52 (2006).

Wesley claims that the district court erred in not considering his reply to the State's response to his postconviction petition. AOB at 8-9. However, Wesley did not obtain the court's permission to supplement the initial petition. Therefore, it is at the district court's discretion whether they consider supplemental filings such as his reply.

The district court did not abuse their discretion because, as discussed *supra* in Section I(A) the court was not under any obligation to consider Wesley's reply. Therefore, Wesley's claim the district court erred in not considering his Reply Brief fails on the merits.

Wesley further claims the district court could have re-opened the hearing on the Petition *sua sponte* after his reply was filed in order to make a record of the arguments made in his Reply Brief. AOB at 9. Wesley claims the district court abused its discretion by not doing so. Id. However, this claim also fails.

First, Wesley did not ask the district court for a hearing so that the court could hear argument, including those made in his Reply Brief. See AA at 001258-001265. Second, again, Wesley does not provide any relevant legal authority to support this claim and therefore this Court should not address it. Maresca, 103 Nev. 669, 673, 748, P.2d 3, 6. Finally, this claim fails on the merits. The district court was under no obligation to re-open a hearing *sua sponte* to hear argument that would be based on a Reply Brief that was improperly filed.

Therefore, the district court's ruling was correct.

III. THE DISTRICT COURT'S DENIAL OF WESLEY'S PETITION WAS CORRECT

A. Wesley's Claims were Waived.

Claims other than challenges to the validity of a guilty plea and ineffective assistance of trial and appellate counsel must be raised on direct appeal "or they will

be considered waived in subsequent proceedings.” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)); see also NRS 34.724(2)(a); NRS 34.810(1)(b)(2); Evans v. State, 117 Nev. 609, 646–47, 29 P.3d 498, 523 (2001).

Wesley offered substantive claims in the Second Petition that were waived due to his failure to raise them on direct appeal. AA at 001271-001272. First, he argued that his conviction was invalid because he did not use a deadly weapon but was convicted for deadly weapon crimes. AA at 001239. Wesley also argued that the jury was improperly instructed on the deadly weapon enhancements, which constituted plain error. AA at 001240. Wesley specifically complained that he was convicted of using a deadly weapon without a requirement of proof that the weapon could cause substantial bodily harm or death. AA at 001241. Wesley complained that Instruction 36 improperly relieved the State of its obligation to prove a firearm is a deadly weapon. AA at 001243. Therefore, the district court properly denied his Second Petition.

B. The Second Petition was Untimely.

NRS 34.726(1) states that “unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur.” The one-year

time bar is strictly construed and enforced. Gonzales, 118 Nev. 590, 53 P.3d 901. The Nevada Supreme Court has held that the “clear and unambiguous” provisions of NRS 34.726(1) demonstrate an “intolerance toward perpetual filing of petitions for relief, which clogs the court system and undermines the finality of convictions.” Pellegrini v. State, 117 Nev. 860, 875, 34 P.3d 519, 529 (2001). For cases that arose before NRS 34.726 took effect on January 1, 1993, the deadline for filing a petition was extended to January 1, 1994. Id. at 869, 34 P.3d at 525.

The one-year time bar of NRS 34.726 is strictly construed. Gonzales v. State, 118 Nev. 590, 593–96, 53 P.3d 901, 902–04 (rejected post-conviction petition filed two days late pursuant to the “clear and unambiguous” provisions of NRS 34.726(1)). Further, the District Courts have a duty to consider whether post-conviction claims are procedurally barred. State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005). This Court has found that “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” noting:

habeas corpus petitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final.

Id. at 231, 112 P.3d at 1074. Additionally, this Court held that procedural bars “cannot be ignored when properly raised by the State.” Id. at 233, 112 P.3d at 1075.

This Court has granted no discretion to the district courts regarding whether to apply the statutory procedural bars. Moreover, parties in a post-conviction habeas proceeding cannot stipulate to disregard the procedural default rules. State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003).

Here, the Judgment of Conviction was filed on July 18, 2008, and an Amended Judgment of Conviction was filed on October 8, 2008. AA at 001273. On March 11, 2010, the Nevada Supreme Court filed an Order affirming Wesley's conviction; remittitur was issued on April 8, 2010. Id. Accordingly, Wesley had until April 8, 2011 to file a Petition. Id. Wesley's Second Petition was not filed until November 12, 2020 – over nine (9) years after the deadline. Id. Therefore, the Second Petition was denied as untimely because Wesley did not show good cause and/or prejudice sufficient to overcome the mandatory procedural bars. Id.

In his Reply Brief, Wesley argues that his Petition is not procedurally time barred. AA at 001259-001262. However, his arguments are based on misstated law and authority that is irrelevant to whether his Petition was procedurally time barred. See id. Further, Wesley reiterates the exact same arguments he made in his Petition. AA at 001237-001242. The district court had considered the arguments as presented in the petition, which were the same as those presented in his reply brief, and rejected the arguments whether or not the district court considered the reply brief. AA at 001269-001277. Therefore, Wesley fails to demonstrate prejudice because the court

did not need to hear oral argument because it was based in misstated and irrelevant authority and his arguments only repeated what was in his Petition. Thus, the district court properly conducted the hearing.

C. The Second Petition was Successive and/or an Abuse of the Writ.

Under NRS 34.810(2) “[a] second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the Wesley to assert those grounds in a prior petition constituted an abuse of the writ.” Second or successive petitions will only be decided on the merits if the petitioner can show good cause and prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994). This Court has stated: “without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950. This Court recognizes that “[u]nlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based solely on the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words, if the claim or allegation was previously available with reasonable diligence, it is an abuse of the

writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497–98 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

Wesley previously filed a Petition on September 9, 2010. AA at 001274. To the extent that any claims raised were raised previously and denied on the merits, the district court held the second claims were successive and would be governed by res judicata and/or law of the case. Id. To the extent that Wesley was raising new claims, this was an abuse of the writ, as the claims could have been raised in the first Petition. Id. Moreover, the district court found that Wesley should have submitted all the arguments at the time the original writ was filed. Id. Therefore, Wesley’s claims were denied because they were procedurally barred. Id.

D. Wesley Failed to Demonstrate Good Cause and Prejudice

A showing of good cause and prejudice may overcome procedural bars. To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate: (1) “[t]hat the delay is not the fault of the petitioner” and (2) that the petitioner will be “unduly prejudice[d]” if the petition is dismissed as untimely. See NRS 34.726(1).

“To establish good cause, appellants must show that an impediment external to the defense prevented their compliance with the applicable procedural rule. A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of default.” Clem v. State, 119 Nev. 615,

621, 81 P.3d 521, 525 (2003) Moreover, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526; see also Hathaway v. State, 119 Nev. 248, 252–53, 71 P.3d 503, 506–07 (2003) (stating that a claim reasonably available to the petitioner during the statutory time period did not constitute good cause to excuse a delay in filing).

In addition to establishing good cause, a petitioner must also show actual prejudice resulting from the errors of which he complains. In other words, in order to establish prejudice, the defendant must show ““not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions.”” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a “substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)).

Claims asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not sufficient, nor are those belied and repelled by the record.

Below, Wesley failed to make any claim that there was good cause to overcome the procedural time bars and could not manufacture good cause. AA at 001275. The factual and legal basis of his claims were always reasonably available to him since the filing of the Amended Judgment of Conviction. Id. Additionally, Wesley could not demonstrate actual prejudice as there were no errors.

First, Wesley claimed there was insufficient evidence to support a finding that a firearm was used in the commission of the crimes charged. AA at 001275; AA at 001259-1265. Specifically, Wesley claimed that “the State failed to establish that the object portrayed as a gun that was not produced at trial could fire a projectile by force of an explosion or combustion...” AA at 001275, AA at 001239 (Referencing Wesley’s Petition). Second, Wesley claimed that the district court erred by instructing the jury that “a firearm is a deadly weapon and proof of its deadly capabilities is not required.” AA at 001275, AA at 001240-001241. Wesley’s claims were meritless. According to NRS 193.165, a deadly weapon is: (a) Any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; (b) Any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death; or (c) A dangerous or deadly weapon specifically

described in NRS 202.255, NRS 202.265, NRS 202.290, NRS 202.320 or NRS 202.350. AA at 001275-001276.

Below, Wesley's claim there was no proof that a firearm was used failed. Wesley's claims failed because the victims testified repeatedly that Wesley had a gun and even threatened to shoot them. AA at 001276; AA at 000898, 000914, 000931, 000981.

The district court found the statute is clear that the State needed to only show one (1) of the three (3) lineated definitions of a deadly weapon. AA at 001276. Nevada case law is clear that a firearm is a deadly weapon. Id. According to Stalley v. State, 91 Nev. 671, 676, 541 P.2d 658, 661–62 (1975) (emphasis added)

by the words 'firearm or other deadly weapon,' the legislature has declared that a firearm is a deadly weapon within the contemplation of the statute. Proof of its deadly capabilities is not required. To require such proof would frustrate the legislative purpose to deter crime by providing a greater penalty when a firearm is used in the commission of a public offense.

Moreover, "whether the gun was actually loaded and capable of firing bullets in a deadly fashion is of no consequence in determining whether it is a deadly weapon." AA at 001276; Barnhart v. State, 122 Nev. 301, 304–05, 130 P.3d 650, 652 (2006). Wesley's claim that there was no proof a firearm was used failed because the victims testified repeatedly that he did have a gun and even threatened to shoot them. AA at 001276; see AA 000898, 000914, 000931, 000981.

Therefore, the district court was correct in finding Wesley did not have good cause and could not show prejudice to overcome the procedural time bar.

IV. WESLEY WAS NOT REQUIRED TO BE PRESENT AT THE HEARING AND WAS NOT PREJUDICED BY HIS ABSENCE

Wesley also claims the district court erred by not ordering Wesley to be transported to the court so he could be present for the hearing on his Petition for Writ of Habeas Corpus. AOB at 10. However, Wesley's claim is meritless.

This claim is not supported by any legal authority and this Court is not required to address it. Maresca, 103 Nev. 669, 673, 748 P.2d 3, 6. Therefore, this Court should not address this claim. However, this claim still fails on the merits.

A criminal defendant does not have an unlimited right to be present at every proceeding. See Gallego v. State, 117 Nev. 348, 367–68, 23 P.3d 227, 240 (2001), *abrogated on other grounds by* Nunnery v. State, 127 Nev. 749, 776 n.12, 263 P.3d 235, 253 n.12 (2011). A “defendant must show that he was prejudiced by the absence.” Kirksey v. State, 112 Nev. 980, 1000, 923 P.2d 1102, 1115 (1996).

A review of the record reveals that no evidence or arguments were presented at the status hearing; rather, the status hearing was limited to the district court stating that the petition was denied. See Kirksey, 112 Nev. 980, 1001, 923 P.2d 1102, 1115; Cf. Gebers v. State, 118 Nev. 500, 50 P.3d 1092 (2002) (concluding that defendant's rights were violated when he was not present at hearing where testimony and evidence were presented). Wesley suggests he could have made “arguments on his

own behalf” by being present at the hearing and the court abused its discretion by “failing to direct that Wesley be transported.” AOB at 9.

Wesley does not assert, nor can he show he was prejudiced by the absence. See Kirksey, 112 Nev. 980, 1001, 923 P.2d 1102, 1115. First, Wesley does not articulate what arguments he would have made or how those arguments would have affected the district court’s ruling. See generally AOB Second, at the hearing, the court stated, “The Court has reviewed the pleadings in this case; it will not take argument from the state.” AA at 001257. The district court did not review any evidence or testimony during this hearing nor hear any argument. Id. Moreover, the transcript indicates the district court did not allow nor hear any argument from the state because it had already concluded based on the pleadings. Id. Lastly, Wesley does not present any arguments in his Reply that were not in his Petition. Therefore, Wesley fails to demonstrate that the outcome of the proceedings would have been different had he been present and this Court should conclude that the district court did not conduct an improper ex parte hearing. Aguilar v. State, 124 Nev. 1448, 238 P.3d 790 (2008)

CONCLUSION

For the foregoing reasons, the district court’s denial of Wesley’s habeas petition should be affirmed.

Dated this 25th day of October, 2021.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this 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 this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 4,359 words and does not exceed 30 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 25th day of October, 2021.

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CERTIFICATE OF SERVICE

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

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