

IN THE SUPREME COURT OF THE STATE OF NEVADA

BO DWIGHT HEGGE,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Jun 11 2022 08:31 a.m.
CASE NO. 83664
Elizabeth A. Brown
Clerk of Supreme Court

MOTION TO STRIKE RESPONDENT'S APPENDIX

The Appellant above-named, BO DWIGHT HEGGE, by and through his counsel of record, BENJAMIN C. GAUMOND, ESQ. of the BEN GAUMOND LAW FIRM, PLLC, hereby moves to object to the Respondent's Appendix that was electronically filed with this Court on April 27, 2022.

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1 This motion is made and based upon the pleadings and papers on
2 file herein, the Points and Authorities attached, and such other evidence
3 as this Court deems just and proper.
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5 DATED this 11th day of June, 2022.

6 BEN GAUMOND LAW FIRM, PLLC

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14 MEMORANDUM OF POINTS AND AUTHORITIES

15 The Respondent's Appendix includes two documents that are
16 arranged alphabetically pursuant to NRAP 30(c)(2). *Appendix to*
17 *Respondent's Brief 2*. One of these documents is the criminal complaint
18 that was filed in Elko Justice Court on a date that is unclear. *Appendix*
19 *to Respondent's Brief 2-3*. Nowhere on that document is there any
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1 indication that it was filed in the Fourth Judicial District Court or that
2 it was admitted as an exhibit in the Fourth Judicial District Court.

3 NRAP 30(b)(2)(A) mandates the inclusion of the “Complaint,
4 indictment, information or petition including all amendments” in the
5 joint appendix. NRAP 30(b)(3) states that “If a joint appendix is not
6 prepared, appellant’s appendix to the opening brief shall include those
7 documents required for inclusion in the joint appendix under this Rule,
8 and any other portions of the record essential to determination of issues
9 raised in the appellant’s appeal.” NRAP 30(b)(4) indicates that
10 respondent’s appendix “may contain any transcripts or documents
11 which should have been but were not included in the appellant’s
12 appendix, and shall otherwise be limited to those documents necessary
13 to rebut appellant’s position on appeal which are not already included
14 in appellant’s appendix.”

15
16 Regarding the manner that documents in appendices are
17 numbered and ordered, NRAP 30(c)(1) articulates:
18

19 All documents included in the appendix shall be placed in
20 chronological order by the dates of filing beginning with the
21 first document filed, and **shall bear the file-stamp of the**

1 **district court clerk**, clearly showing the date the document
2 was filed in the proceedings below. Transcripts that are
3 included in the appendix shall be placed in chronological
4 order by date of the hearing or trial. Each page of the
 appendix shall be numbered consecutively in the lower right
 corner of the document.

5 (Emphasis added.)

6 The criminal complaint that is contained in the Respondent's
7 Appendix does not "bear the file-stamp of the district court clerk." Even
8 worse, the file stamp on that complaint is opaque, at best. As such, this
9 Court should enter an order disallowing the consideration of that
10 complaint for the purposes of this appeal.

11 Undersigned counsel can appreciate that opposing counsel
12 followed some portions of the NRAP (including the provision for
13 alphabetizing documents in the list of documents in an appendix) on
14 this appeal. With that said, the State cannot pick and choose which
15 rules to follow and which ones to disregard.

16 The record does not give us any indication that the district court
17 judge gave consideration of the criminal complaint in making Her
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1 Honor's decision. The inclusion of the complaint is therefore
2 unnecessary.

3 CONCLUSION

4 The Respondent's Appendix violates NRAP 30(c)(1). The criminal
5 complaint contained therein has no district court file-stamp or any clear
6 file-stamp. It is impossible to see how the inclusion of this complaint is
7 necessary. It is likewise impossible to see how its inclusion comports
8 with NRAP 30. The State should not be allowed to cherry pick which
9 parts of NRAP 30 it wants to follow. Hence, this Court should enter an
10 order that such references to the criminal complaint in the appendix
11 and answering brief are disregarded.
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15 DATED this 11th day of June, 2022.

16 BEN GAUMOND LAW FIRM, PLLC

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UNSWORN DECLARATION

I, Benjamin C. Gaumond, hereby declare the following:

(1) I am the attorney of record for Appellant Bo Dwight Hegge on the instant appeal.

(2) I have reviewed the instant motion and all factual contentions are true and correct to the best of my knowledge and belief.

(3) This motion is made in good faith and not for any improper purpose and not for the purpose of delay.

(4) I make this declaration under the penalty of perjury.

(5) I executed this declaration in the City of Elko, County of Elko, State of Nevada.

(6) Further declarant sayeth naught.

DATED this 11th day of June, 2022.


Benjamin C. Gaumond, Esq.

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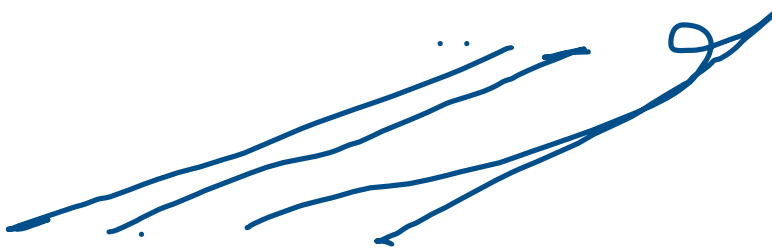
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CERTIFICATE OF SERVICE

I, Benjamin C. Gaumond, certify that I am the owner of the Ben Gaumond Law Firm, PLLC and that on the 11th day of June, 2022, I served a copy of the foregoing MOTION TO STRIKE RESPONDENT'S APPENDIX by:

- (a)electronically serving said document to the Clerk of the Supreme Court, the Office of the Elko County District Attorney, and the Office of the Nevada Attorney General; and
- (b)mailing a copy with postage prepaid to Bo Dwight Hegge, NDOC #1084187, High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070-0650.

DATED this 11th day of June, 2022.



Benjamin C. Gaumond, Esq.