

IN THE SUPREME COURT OF NEVADA
STATE OF NEVADA

JESUS NAJERA,

Petitioner,

vs.

THE EIGHTH JUDICIAL
DISTRICT COURT; THE
HONORABLE CRYSTAL
ELLER,

Respondents,

STATE OF NEVADA,

Real Party in Interest.

Electronically Filed
Apr 08 2022 09:39 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

S. Ct. No.: 83923

DIST. CT. NO. C-21-356361-1

PETITIONER NAJERA'S AMENDED REPLY TO THE STATE'S ANSWER
FILED MARCH 29, 2022

MICHAEL D. PARIENTE, ESQ,
COUNSEL FOR PETITIONER
Nevada Bar Number 9469
JOHN GLENN WATKINS, ESQ,
OF COUNSEL
Nevada Bar Number 1574
3800 Howard Hughes Parkway #620
Las Vegas, Nevada 89169
Telephone: (702) 966-5310
Facsimile: (702) 953-7055
michael@parientelaw.com
johngwatkins@hotmail.com

STEVEN WOLFSON,
DISTRICT ATTORNEY
200 Lewis, Floor 3
Las Vegas, Nevada 89101
Telephone: (702) 671-3847
Facsimile: (702) 385-1687
motions@clarkcountyda.com

CRYSTAL ELLER
DISTRICT COURT JUDGE
200 S. Lewis Street.

PARIENTE LAW FIRM. P.C.

3960 Howard Hughes Pkwy., Suite 615

Las Vegas, NV 89169

PHONE: (702) 966-5310 | FAX: (702) 953-7055

WWW.PARIENTELAW.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Department 19
Las Vegas, Nevada 89101

REP

Michael D. Pariente

Bar No. 9469

The Pariente Law Firm, P.C.

John G. Watkins, Of Counsel

Bar No. 1574

3960 Howard Hughes Parkway

Suite 615

Las Vegas, NV 89169

(702) 966-5310

Attorneys for Petitioner

IN THE SUPREME COURT OF NEVADA

STATE OF NEVADA

JESUS NAJERA,

Petitioner,

vs.

THE HONORABLE CRYSTAL

ELLER, EIGHTH JUDICIAL

DISTRICT COURT JUDGE,

DEPT. NO. 19,

Respondent,

STATE OF NEVADA,

Real Party in Interest.

S. Ct. No.: 83923

DIST. CT. NO. C-21-356361-1

**PETITIONER NAJERA'S AMENDED REPLY TO THE STATE'S
ANSWER FILED MARCH 29, 2022**

MICHAEL D. PARIENTE, ESQ,

COUNSEL FOR APPELLANT

Nevada Bar Number 9469

JOHN GLENN WATKINS, ESQ,

STEVEN WOLFSON,

DISTRICT ATTORNEY

OF COUNSEL

Nevada Bar Number 1574
3960 Howard Hughes Parkway #615
Las Vegas, Nevada 89169
Telephone: (702) 966-5310
Facsimile: (702) 953-7055
michael@parientelaw.com
johngwatkins@hotmail.com

200 Lewis, Floor 3
Las Vegas, Nevada 89101
Telephone: (702) 671-3847
Facsimile: (702) 385-1687
steven.owens@clarkcountyda.com

COMES NOW Petitioner/Appellant JESUS NAJERA, through his counsel
MICHAEL D. PARIENTE, ESQUIRE. and JOHN G. WATKINS, ESQUIRE,
OF COUNSEL and files the instant Amended Reply to the State's Answer filed
March 29, 2022.

DATED this 8th day of April, 2021.



MICHAEL D. PARIENTE, ESQ.
Nevada Bar No. 9469
JOHN G. WATKINS, ESQ., OF
COUNSEL
Nevada Bar No. 1574
3960 Howard Hughes Parkway, Suite 615
Las Vegas, Nevada 89169
(702) 966-5310
Attorneys for Petitioner/Appellant

NRAP 26.1 DISCLOSURE STATEMENTS

The attorneys representing Petitioner/Appellant Jesus Najera herein state,
“there is no such corporation” referred to in NRAP 26.1.

PRELIMINARY REMARKS

NRAP 40B(a) REVIEW IS NOT LIMITED TO THREE FACTORS

The State’s argument that this Court’s review under NRAP 40B is
limited to the three (3) listed factors in Section (a) not only lack merit, it is
disingenuous. NRAP 40B(a) states in relevant part, “[t]he following [the three
(3) listed factors] **while neither controlling nor fully measuring the Supreme
Court’s discretion**, are factors that will be considered in the exercise of that
discretion....” (emphasis added.)(bracketed language added.) The listed three
(3) factors are not the exclusive basis for this Court’s review of a Court of
Appeals (COA) denial, contrary to the State’s assertion. However, these three
factors do apply.

Najera’s NRAP 40B petition showed that the N.R.A.P. 11(1) issue is one
of first impression in this Court as well as of statewide importance.

I.

LAW AND ARGUMENT

A.

THE STATE’S CENTRAL ARGUMENT BEFORE THIS COURT THAT VIOLATIONS OF EDCR 2.25 AND/OR N.R.Cr.P 11(1), HERE THE STATE’S FORTY-FOUR (44) DAY LATE FILING, DO NOT ALLOW THE DISTRICT COURT TO EXCLUDE ITS LATE FILED ANSWER RENDERS EDCR 2.25 AND/OR N.R.Cr.P 11(1) A NULLITY.

a. **The States erroneous interpretation of EDCR 2.25 and/or N.R.Cr.P. 11(1) also renders a court ordered briefing schedule meaningless.**

The State poses a number of “red herring” issues confusing the central issue before this Court – Is a violation of EDCR 2.25 and/or N.R.Cr.P. 11(1) immune from the remedy of exclusion? It is indisputable that a law without a remedy for its violation renders the law a nullity. Thus, the State argument to the contrary lacks merit.

It is illogical for the State to argue that the lower court must determine whether the late filing is excusable neglect and if it is not, the court must allow the late filing.

II.

BRIEF REPLIES TO THE STATE’S “RED HERRING” ISSUES

A.

EDCR 2.25 v. N.R.Cr.P 11(1):

Najera explained why he relied on EDCR 2.25 in n.1 of his NRAP 40B petition. The State in district court believed that EDCR 2.25 applied as well.

B.

NO ADEQUATE REMEDY AT LAW

The State’s argument that Najera has an adequate legal remedy at law contradicts its argument. The State argues that EDCR 2.25 and/or N.R.Cr.P. 11(1) do not allow the district court to exclude the State’s 44-day late filing. If this was true, Najera would not have an appellate issue. In reality, there is no adequate remedy at law. If Najera was convicted at trial, the 44-day late issue will most likely be deemed “cured” or merely “harmless” error.

CONCLUSION

Based upon the foregoing, Najera's NRAP 40B Petition is legally before this Court and should be granted.

Respectfully submitted,



Michael D. Pariente, Esquire
Attorney for Petitioner Martin
John Glenn Watkins, Esquire

VERIFICATION

Under penalty of perjury, the undersigned declares that in the foregoing Motion and knows the contents thereof; that the Motion is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

Respectfully submitted,



Michael D. Pariente, Esquire
Attorney for Petitioner Martin
John Glenn Watkins, Esquire

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 2016 with Times Roman 14 font style

2. I further certify that this brief complies with the page – or type - volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☐ Proportionally spaced, has a typeface of 14 points or more, and contains 1,272 words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains ----- words or ----- lines of text, or

☐ Does not exceed 51 pages.

3. Finally, I hereby certify that I have read this Motion, 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 it 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 Rule of Appellate Procedure.

Dated this 8th day of April, 2022.



Michael D. Pariente, Esquire
Attorney for Petitioner Martin
John Glenn Watkins, Esquire

CERTIFICATE OF SERVICE

I, Christopher Barden, hereby certify and affirm that this document was filed electronically with the Supreme Court on April 8, 2022. Electronic Service of the foregoing Motion shall be made in accordance with the Master Service List as follows:

STEVEN WOLFSON,
DISTRICT ATTORNEY



Christopher Barden,
an employee of
Michael D. Pariente,