

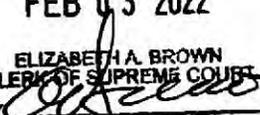
IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN WARREN DRYDEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83233

FILED

FEB 03 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER REGARDING MOTIONS

This is a direct appeal from a judgment of conviction. Attorney Anthony L. Abbatangelo is appointed counsel for appellant. Mr. Abbatangelo previously filed a motion to withdraw as counsel for appellant, which was denied. Thereafter, Mr. Abbatangelo filed a notice of voluntary withdrawal of the appeal. Appellant then filed a pro se letter indicating that he had not had communication from counsel. Accordingly, this court denied the withdrawal of the appeal and directed Mr. Abbatangelo to file an opening brief. Mr. Abbatangelo has now filed a motion for reconsideration of the direction to file the brief in which, for the second time, counsel asks this court for leave to withdraw from representing appellant.

Mr. Abbatangelo explains that appellant seeks to base the direct appeal upon allegations of ineffective assistance of counsel, that appellant has been impugning Mr. Abbatangelo's reputation and the relationship has deteriorated. This court has repeatedly stated that a defendant's loss of confidence or trust in counsel alone is not adequate cause for appointment of new counsel. *See Thomas v. Wainwright*, 767 F.2d 738, 742 (11th Cir. 1985). Moreover, whether appellant seeks to raise issues of ineffective assistance of counsel is of limited relevance to Mr. Abbatangelo's ability to represent appellant on direct appeal. *See Rippo v. State*, 122 Nev.

1086, 1096, 146 P.3d 279, 286 (2006) (recognizing that this court does not address claims of ineffective assistance of counsel on direct appeal unless the district court has held an evidentiary hearing on the question or an evidentiary hearing would be unnecessary). The decision as to what issues to raise in an appeal rests within Mr. Abbatangelo's professional judgment, not appellant's personal desires. *Jones v. Barnes*, 463 U.S. 745, 751-54 (1983). Mr. Abbatangelo fails to demonstrate that reconsideration is warranted. *See McConnell v. State*, 121 Nev. 25, 26, 107 P.3d 1287, 1288 (2005) (moving party bears burden of "demonstrat[ing] that this court overlooked or misapprehended any material points of law or fact"); *see also* NRAP 40. The motion is denied.

Mr. Abbatangelo has filed a motion requesting a second extension of time (90 days) to file the opening brief. Mr. Abbatangelo fails to demonstrate extraordinary and compelling circumstances to warrant such a long extension. NRAP 26(b)(1)(B); NRAP 31(b)(3)(A)(iv). Accordingly, the motion is granted in part. Appellant shall have until March 4, 2022, to file and serve the opening brief and appendix. No further extensions of time shall be permitted absent demonstration of extraordinary and compelling circumstances. *Id.* Counsel's caseload normally will not be deemed such a circumstance. *Cf. Varnum v. Grady*, 90 Nev. 374, 528 P.2d 1027 (1974). Failure to timely file the opening brief and appendix may result in the imposition of sanctions.

It is so ORDERED.

C.J.

cc: Paul Padda Law, PLLC
Attorney General/Carson City
Clark County District Attorney
Bryan Warren Dryden