

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN DRYDEN,
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 83233

**RESPONDENT'S MOTION FOR NEVADA SUPREME COURT ORDER
DIRECTING THE DISTRICT COURT TO ENTER AND TRANSMIT AN
ORDER DENYING DRYDEN'S PRE-SENTENCE MOTION TO
WITHDRAW GUILTY PLEA**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Deputy, JOHN AFSHAR and submits this Motion requesting this the Nevada Supreme Court issue an order directing the district court to file and submit an order denying Dryden's pre-sentence motion to withdraw guilty plea.

This motion is based on the following memorandum, declaration of counsel and all papers and pleadings on file herein.

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Dated this 8th day of March, 2022.

Respectfully submitted,

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

BY /s/ John T. Afshar
JOHN T. AFSHAR
Deputy District Attorney
Nevada Bar #014408
Office of the Clark County District Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

The State seeks an order from this Court directing the district court to enter and transmit to this Court an order denying Dryden's pre-sentence motion to withdraw guilty plea in District Court Case No. C-18-334955-1.

Appellant Bryan Dryden filed an opening brief and appendix on March 7, 2022. Dryden challenges the district court's denial of his pre-sentence motion to withdraw guilty plea and argues that the district court did not "articulate a factual basis for its decision to deny the appellant's motion to withdraw his plea" and that "ample evidence in the record [supported] the appellant's motion to withdraw his plea." *See generally* Appellant's Opening Brief. Appellant's Appendix, however, does not contain an order denying Dryden's pre-sentence motion to withdraw his plea, and citations in the opening brief are to the district court's oral pronouncements from the bench following a three-day evidentiary hearing. It is appellant's responsibility to prepare an appendix which contains all portions of the record essential for determination of issues raised in appellant's appeal, and "[t]he district court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective for any purpose and cannot be appealed." Rust v. Clark County Sch. Dist., 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987).

The State intended to answer Dryden's contentions in its answering brief and include the district court's order denying Dryden's pre-sentence motion to withdraw

guilty plea in a respondent's appendix. In a minute order, the district court appears to have denied the motion on January 28, 2021. However, despite a three-day evidentiary hearing, undersigned's review of Odyssey indicates that the district court never filed a written order denying Dryden's motion. Even assuming this Court has jurisdiction to entertain Dryden's appeal absent such an order, the State cannot meaningfully respond to Dryden's claims about the adequacy of the district court's order when there is no order.

However, rather than dismissing the appeal or affirming the judgment of conviction based on the lack of a written order, given the substantial efforts required to put on a three-day evidentiary hearing and the unique procedural history of this case, the State submits that this Court should order the district court to file and submit an order denying Dryden's pre-sentence motion to withdraw his plea. After submission of such an order, the State can address Dryden's contentions on appeal and this Court can determine whether the district court properly denied the motion. The State additionally requests that this Court suspend the briefing pending the district court's submission of such an order, and that the State be given 30 days after the district court submits the order to respond to Appellant's Opening Brief.

This motion is brought in good faith and not for the purposes of delay.

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Dated this 8th day of March, 2022.

Respectfully submitted,

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

BY */s/ John T. Afshar*

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CERTIFICATE OF SERVICE

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

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Nevada Attorney General

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Counsel for Appellant

JOHN T. AFSHAR
Deputy District Attorney

BY /s/ J. Hall

Employee,
Clark County District Attorney's Office

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