IN THE SUPREME COURT OF THE STATE OF NEVADA

D'VAUGHN KING,
Appellant,

v.

THE STATE OF NEVADA,

Respondent.
_____/

No. 85838

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RESPONDENT'S ANSWERING BRIEF

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RESPONDENT'S ANSWERING BRIEF

I. STATEMENT OF THE CASE

After the district court convicted D'Vaughn King (hereinafter "King") of second-degree murder with the use of a deadly weapon, pursuant to his guilty plea, this Nevada Supreme Court affirmed the judgment of conviction on direct appeal. *King v. State*, Docket No. 64983 (Order of Affirmance, November 12, 2014). King filed a timely postconviction petition for a writ of habeas corpus, and appointed counsel filed a supplemental petition. The district court dismissed the petition without a hearing. On appeal, King alleged that a hearing should have been held regarding his claim that his counsel was ineffective at the sentencing hearing for failing to present testimony from Dr. Martha Mahaffey. King alleged Dr. Mahaffey would

have testified that King was a low risk to reoffend, he was amenable to rehabilitation, and he had ADHD, learning disabilities, and drug abuse issues. The district court dismissed the claim, holding that King failed to make a sufficient showing that his counsel's performance fell below an objective standard of reasonableness.

The Court of Appeals disagreed, finding that the district court erred by not holding an evidentiary hearing on King's claim that trial counsel was ineffective for failing to present expert psychological testimony in mitigation at sentencing. *See* Order of Reversal and Remand, Docket No. 74703-COA, March 14, 2019. In so doing, it relied on prior counsel Troy Jordan's representation that an evaluation had been conducted by Dr. Mahaffey. The Court of Appeals remanded the matter to the district court, and ordered an evidentiary hearing regarding King's claim that counsel was ineffective for failing to present expert mitigating evidence at the sentencing hearing.

On November 21, 2022, the limited evidentiary hearing ordered by the Court of Appeals was held. During the hearing, it was revealed that the evaluation forming the basis for the Court of Appeals reversal, as represented by former counsel Troy Jordan, had never been conducted and that Dr. Mahaffey had never been contacted about the case. However,

another psychological expert testified. Following the hearing, the district court denied King's claim for relief. This appeal followed.

II. ROUTING STATEMENT

This appeal is not presumptively assigned to the Court of Appeals because involves a post-conviction appeal related to category A felonies. *See* NRAP 17(b)(2)(a).

III. ISSUES PRESENTED

1. Where King told the district court that he did not want to represent himself, and wanted a new post-conviction attorney, did the district court err in denying his request to represent himself during the limited evidentiary hearing on remand?

2. Where King's objection to representation by attorney Oldenburg was based on his dissatisfaction with the conclusions in the expert's evaluation, and King did not want to represent himself, did the district court err in allowing Oldenburg to remain counsel for the limited evidentiary hearing?

3. King was not entitled to counsel in this proceeding. Where attorney Oldenburg procured the psychological evaluation contemplated by the Court of Appeals and presented mitigating testimony as contemplated by the remand, is King entitled to a new evidentiary hearing?

4. Whether the cumulative error doctrine entitles King to relief?

IV. STATEMENT OF FACTS

The evidentiary hearing pursuant to the remand was held on November 21, 2022. At the beginning of the hearing, King's court-appointed counsel, Victoria Oldenburg, Esq., informed the district court

that King had just informed her that he had filed a bar complaint against her. AA 111-121. She questioned whether it would be appropriate for her to continue representation of King, and as she tried to address the district court, King began the first of what would be many interruptions during the hearing, asking to "talk without the District Attorney." *Id.*, 112. Oldenburg informed the Court that although prior appointed habeas counsel Troy Jordan had represented that Dr. Mahaffey would provide an evaluation, indicating that King was a low risk to re-offend, Jordan had in fact never talked to Dr. Mahaffey, and no such evaluation had ever been completed. *Id.*, 112-114. This was a problem for Oldenburg, because the entire basis of the Court of Appeals remand was based on Jordan's inaccurate representation regarding some purported evaluation by Dr. Mahaffey. *Id.* Although Oldenburg had secured another evaluation for purposes of the hearing on remand, King "wasn't happy with this one." *Id.* He wanted a second evaluation. *Id.*

King told the district court judge that he was dissatisfied with Oldenburg, because she didn't write the petition or supplemental petition, which had been authored by Jordan, and because he had not previously met with Oldenburg in person. *Id.*, 115-116. King further claimed that he was "blindsided" when, at Oldenburg's request, Dr. Sheri Hixon-

Brenenstall came to the prison to conduct an evaluation. *Id.*, 116-117. King wanted Oldenburg to be removed from the case and that an attorney be appointed "that's receptive to the things that I'm asking, because I am intimate with the case" and because "I'm not getting any motion or movement or movement from my attorney." *Id.*, 118. King did not specify what motions he thought should have been filed in the case. *Id.*

The district court judge noted that the nature of the Court of Appeals remand pertained to a psychological evaluation, that an evaluation had been conducted, and that "according to the psychologist's report, the meeting went very well." *Id.*, 119. King again indicated that he was dissatisfied that he was not given adequate notice that an evaluator would be visiting him at the prison. *Id.*

Oldenburg explained that the course of her representation of King began in the midst of the COVID-19 pandemic, when the district court was not conducting in person hearings. *Id.*, 119-121. King told her he wanted an in-person hearing, so Oldenburg obtained a continuance. *Id.* Then King changed his mind, and wanted a virtual hearing, but that hearing was vacated due to a conflict in the court's calendar. *Id.* Oldenburg further explained that she had spoken with King on the phone many times, but she did not believe there was a cause to fly down to Las Vegas to meet with King

in person. *Id.* She had explained to King that Dr. Mahaffey had never rendered the opinion represented by prior counsel Jordan, but that she had retained another expert, who was coming out to visit King. *Id.* But once the evaluation came back, King was not happy with the results. *Id.* He wanted a second evaluation, so Oldenburg contacted Dr. Mahaffey again, but Dr. Mahaffey was not interested or available. *Id.* Oldenburg also reached out to a Dr. Paglini, but that evaluator did not think a second evaluation was appropriate given the results of the first. *Id.* The district court asked Oldenburg if King's complaints would affect her representation during the evidentiary hearing, which was limited to the evaluation issue. *Id.* Oldenburg indicated that she had no problem going forward. *Id.*

King interrupted and requested a Faretta hearing, complaining that Oldenburg was "going to crash and burn me." *Id.*, 122-127. The judge asked King what he thought had not been done that should have done. *Id.* King replied that he objected to the psychological evaluation focusing on his background prior to the offense, and not "things that have happened since then." *Id.* King then argued that he disagreed with the evaluator's conclusion that his ability to read and write was remedial, and that he was a moderate to high risk to re-offend. *Id.* King wanted the district court to focus on his growth since the offense, and the district court stated that that

type of information was appropriate for the Board of Pardons. *Id.* King disagreed, stating "I believe everything should globally to be taken into account." *Id.* Observing King's demeanor and frequent interruptions, the judge stated "That's what you believe. I understand that. Here's my opinion, my opinion is you enjoy doing this." *Id.*

King stated that "I don't want to be a fool as a client and represent myself, but if I'm under this situation where she refuses to remove herself and you refuse to remove her from my case, yes, I'm left with no other option." *Id.*, 127-129. The State observed that under NRS 34.810, King had no absolute entitlement to counsel, and that King had made no representation indicating that Oldenburg had committed an ethical breach. *Id.* The State observed that Oldenburg was King's third appointed post-conviction counsel, and requested that if the court decided to remove Oldenburg, that no counsel be appointed for purposes of the limited evidentiary hearing. *Id.* The district court asked King if he wanted to represent himself, and King replied, "I do not want or have the desire to represent myself, but--." *Id.*, 130-131. The district court replied, "Then I'm not going to let you represent yourself if you don't want to do it. If you're saying you're forced to do it, I'm not going to do that." *Id.* King then stated that he wanted another counsel appointed. *Id.* The judge indicated that he

would not do that, and King changed his mind again, saying "yes, I would like to represent myself." *Id.* The district court denied his request. *Id.*

Dr. Hixon-Brenenstall testified that she met with King in person in February of 2020 to conduct an evaluation. *Id.*, 138-153. The evaluation lasted about two and half hours. *Id.* She related that King presented with satisfactory executed functioning, and offered goal-directed responses. *Id.* He had symptoms of anxiety and depression. *Id.* His childhood was unstable, and he reported being subject to child abuse and neglect. *Id.* Dr. Hixon-Brenenstall was unable to confirm those details with the California Department of Child Services. *Id.* Substance abuse began at age 13. Theses disruptions could impact a person's emotional and social growth, as well as skill set development. *Id.* The WRAT test demonstrated below average performance in reading and mathematics. *Id.* The PCL test indicated that King had experienced trauma as a child and adolescent. *Id.* The Beck depression test assessed King as moderately depressed. The Beck anxiety test assessed him as moderately anxious. *Id.* Dr. Hixon-Brenenstall assessed King as a moderate to moderately high risk to re-offend due to his substance abuse, drug seeking behaviors, and related lifestyle. *Id.* On cross-examination, she acknowledged that King was a member of the Crips and using methamphetamine at the time he shot two

people in a drug deal gone wrong, and that he was vulnerable to relapse and continuation of maladaptive coping patterns. *Id.* During the interview, King claimed his seven prior felony convictions were wrongful. *Id.*, 161.

John Ohlson, King's attorney at the time of plea and sentencing, was called to testify. *Id.*, 163. Ohlson testified that he did not obtain a psychological evaluation prior to sentencing because "what I knew about Mr. King and what he told me about himself didn't indicate that it was a – would benefit him to do that." *Id.*, 165. Ohlson recalled that King had a long gang affiliation, and that the murder in this case arose out of a drug debt. *Id.*, 166. He further explained that "it was under those circumstances very difficult with a straight face to stand up in court and say that the defendant's motivations were rooted in a psychological or emotional condition." *Id.*

V. SUMMARY OF ARGUMENT

The Court of Appeals remanded this matter for a limited evidentiary hearing regarding ineffective assistance of counsel at sentencing. Specifically, it remanded based on King's claim that a psychological evaluation would have shown he is a low risk to re-offend. Following the remand, new post-conviction counsel Victoria Oldenburg was appointed. A psychological evaluation was conducted by Dr. Hixon-Brenenstall, but the

particular evaluator named in the previous appeal, Dr. Martha Mahaffey, had never evaluated King, and was not interested in evaluating him. Dr. Hixon-Brenenstall's evaluation opined that King was a moderate to moderately high risk to re-offend.

King did not like the evaluation, and demanded that his new post-conviction counsel obtain a second evaluation. She tried but was unsuccessful. Displeased, King sought to have his appointed counsel removed, but maintained that he wanted an attorney during the post-conviction proceedings, because he did not like the evaluation and disagreed with the evaluator's approach. King also claimed he had filed a bar complaint against Oldenburg. Although King also requested self-representation at various points, those requests were equivocal at best. The district court declined to remove Oldenburg, who was confident that she could present evidence regarding the claim that was the subject of the remand.

In this appeal, King does not focus on the merits of the claim that trial counsel was ineffective at sentencing with respect to mitigation evidence. Instead, he asserts that he had an absolute right to represent himself during the habeas proceeding, despite his equivocation regarding his desire to do so. He also claims that Oldenburg had a conflict of interest and that she

was ineffective during the post-conviction proceeding. These arguments are legally infirm and factually unsupported. This Court should affirm the decision of the district court.

VI. STANDARD OF REVIEW

To prevail on a claim of ineffective assistance of counsel, a petitioner must show (1) counsel's performance was deficient because it fell below an objective standard of reasonableness and (2) the deficiency prejudiced the defense. *Strickland v. Washington,* 466 U.S. 668, 687 (1984); *Kirksey v. State*, 112 Nev. 980, 997, 923 P.2d 1102, 1114 (1996) (adopting the *Strickland* test). Trial counsel's performance is prejudicial if "a reasonable probability [exists] that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A petitioner must prove the facts underlying his ineffective assistance claims by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012, 102 P.3d 25, 33 (2004). Both prongs of the ineffective assistance inquiry must be shown. *Strickland*, 466 U.S. at 697.

"[T]he cases in which habeas petitioners can properly prevail [] are few and far between." *Waters v. Thomas*, 46 F.3d 1506, 1511 (11th Cir. 1995). "Counsel's performance is measured by an objective standard of reasonableness which takes into consideration prevailing professional

norms and the totality of the circumstances." *Homick v. State*, 112 Nev. 304, 310, 913 P.2d 1280, 1285 (1996) (*citing Strickland*, 466 U.S. at 688). "[I]n examining a counsel's defense after it has proved unsuccessful, it is easy for a court to conclude that certain acts or omissions by counsel were unreasonable." *Id.* (*citing Strickland*, 466 U.S. at 689). "Therefore, there is a presumption that trial counsel was effective and 'fully discharged' his duties." *Id.* (*citing Davis v. State*, 107 Nev. 600, 601, 817 P.2d 1169, 1170 (1991)). "This presumption can only be overcome by 'strong and convincing proof to the contrary.'" *Id.* (*quoting Davis*, 107 Nev. at 602, 817 P.2d at 1170) (*quoting Lenz v. State*, 97 Nev. 65, 66, 624 P.2d 15, 16 (1981)). Accordingly, counsel's strategic or tactical decisions will be "'virtually unchallengeable absent extraordinary circumstances.'" *Doleman v. State*, 112 Nev. 843, 848, 921 P.2d 278, 280 (1996) (*quoting Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990)).

"No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." *Strickland*, 466 U.S. at 688-89. The Court has noted that "[a]ny such set of rules would interfere with the constitutionally protected independence of counsel and restrict the wide latitude counsel

must have in making tactical decisions." *Id.* "[T]he purpose of the effective assistance guarantee of the Sixth Amendment is not to improve the quality of legal representation, although that is a goal of considerable importance to the legal system. The purpose is simply to ensure that criminal defendants receive a fair trial." *Id.*

"The purpose of ineffectiveness review is not to grade counsel's performance." *Chandler v. U.S.*, 218 F.3d 1305, 1313 (11th Cir. 2000) (*citing Strickland*; *White v. Singletary*, 972 F.2d 1218, 1221 (11th Cir.1992)) ("We are not interested in grading lawyers' performances; we are interested in whether the adversarial process at trial, in fact, worked adequately."). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Strickland*. "Different lawyers have different gifts; this fact, as well as differing circumstances from case to case, means the range of what might be a reasonable approach at trial must be broad. To state the obvious: the trial lawyers, in every case, could have done something more or something different. So, omissions are inevitable. But, the issue is not what is possible or 'what is prudent or appropriate, but only what is constitutionally compelled.'" *Chandler*, 218 F.3d at 1313 (*quoting Burger v. Kemp*, 483 U.S. 776 (1987)).

"[B]ecause counsel's conduct is presumed reasonable, for a petitioner to show that the conduct was unreasonable, a petitioner must establish that no competent counsel would have taken the action that his counsel did take." *Id.* at 1315. "The test has nothing to do with what the best lawyers would have done. Nor is the test even what most good lawyers would have done. We ask only whether some reasonable lawyer at the trial could have acted, in the circumstances, as defense counsel acted at trial." *Waters v. Thomas*, 46 F.3d 1506, 1512 (11th Cir.1995).

"No lawyer can be expected to have considered all of the ways. If a defense lawyer pursued course A, it is immaterial that some other reasonable courses of defense (that the lawyer did not think of at all) existed and that the lawyer's pursuit of course A was not a deliberate choice between course A, course B, and so on. The lawyer's strategy was course A. And, our inquiry is limited to whether this strategy, that is, course A, might have been a reasonable one." *Chandler*, 218 F.3d at 1351 n.16.

VII. ARGUMENT

A. King Told the District Court He Did Not Want to Represent Himself.

King claims that his constitutional rights were violated because he was not permitted to proceed in proper person during the limited evidentiary hearing. In support of this position, King cites various

authorities pertaining to the right to self-representation at a criminal trial. Not one of these authorities stand for the proposition that a petitioner in a post-conviction habeas corpus proceeding has a right to self-representation. Moreover, even at trial, "[a] district court may[...] deny a defendant's request for self-representation where the 'request is untimely, the request is equivocal, the request is made solely for the purpose of delay, the defendant abuses his right by disrupting the judicial process, or the defendant is incompetent to waive his right to counsel.' " *O'Neill v. State*, 123 Nev. 9, 17, 153 P.3d 38 (2007), *quoting Tanksley v. State*, 113 Nev. 997, 1000, 946 P.2d 148, 150 (1997).

Here, the record reflects that King's request to represent himself was equivocal at best, made in order to delay, so that he could get a new evaluation, and to disrupt the judicial process. King's objection to Oldenburg's representation was based on his dissatisfaction with the results of the psychological evaluation, which reflected that he is a moderate to moderately high risk to re-offend. The judge asked King what he thought Oldenburg had not done that should have been done. *Id.*, 122-127. King replied that he objected to the psychological evaluation focusing on his background prior to the offense, and not "things that have happened since then." *Id.* King then argued that he disagreed with the evaluator's

conclusion that his ability to read and write was remedial, and that he was a moderate to moderately high risk to re-offend. *Id.* King wanted the district court to focus on his growth since the offense, and the district court stated that that type of information was appropriate for the Board of Pardons. *Id.* King disagreed, stating "I believe everything should globally to be taken into account." *Id.* Observing King's demeanor and frequent interruptions, the judge stated "That's what you believe. I understand that. Here's my opinion, my opinion is you enjoy doing this." *Id.*

King's argument completely ignores that the nature of his demand was that the district court remove post-conviction attorney Oldenburg and appoint another attorney. Though he vacillated back and forth during the first portion of the post-conviction hearing, it was clear to the judge that King was endeavoring to create a conflict with Oldenburg, and to position himself to later claim that he was "forced" to represent himself during the limited evidentiary hearing. King told the judge that "I don't want to be a fool as a client and represent myself, but if I'm under this situation where she refuses to remove herself and you refuse to remove her from my case, yes, I'm left with no other option." *Id.*, 127-129. King again told the judge that "I do not want or have the desire to represent myself, but--." *Id.*, 130-131. The district court replied discerning this strategy and told King, "Then

I'm not going to let you represent yourself if you don't want to do it. If you're saying you're forced to do it, I'm not going to do that." *Id*. King then stated that he wanted another counsel appointed: "I'm asking the Court to be willing to appoint me another counsel. That's what I'm asking." *Id*., 130.

King relies on not a single authority establishing that he had a right to self-representation during a statutory post-conviction proceeding. Even if the right to self-representation in the post-conviction habeas context mirrored the right to self-representation at trial, King stated multiple times that he wanted to have an attorney represent him. It was apparent that he was trying to delay the proceedings and disrupt the judicial process with the hope of obtaining a new evaluation with a more favorable conclusion. Thus, the district court had no obligation to allow him to represent himself. *O'Neill, supra; Tanksley, supra*.

B. <u>The Mere Filing of a Bar Complaint Does Not Establish a Per Se Conflict of Interest</u>.

Because he did not like that result of his evaluation, King attempted to manufacture a spurious "conflict of interest" by stating that he had filed a bar complaint against Oldenburg so that he could get a new attorney, and a new evaluation with a risk assessment he desired. Oldenburg indicated she had not been contacted by the Nevada bar, and that she was not aware of King's purported complaint. When Oldenburg took on the case, she

learned that the evaluation represented by former post-conviction counsel Jordan had never occurred. She found a new evaluator. After King did not like the evaluator's conclusion, Oldenburg tried to find another evaluator, but was unsuccessful. AA 119-121. Oldenburg indicated that she was prepared to go forward to with the evidentiary hearing and that King's grievance would not affect her representation. *Id.*, 119-121.

King cites no portion of the record demonstrating that his complaint about Oldenburg created an actual conflict of interest. The mere filing of a bar complaint against counsel does not automatically create a per se conflict of interest. *Jefferson v. State*, 133 Nev. 874, 878, 410 P.3d 1000 (2017), *citing State v. Michael*, 161 Ariz. 382, 778 P.2d 1278, 1280 (1989); *Gaines v. State*, 706 So.2d 47, 49 (Fla. Dist. Ct. App. 1998); *Holsey v. State*, 291 Ga. App. 216, 661 S.E.2d 621, 626 (2008).

C. King Was Not Entitled to Effective Assistance of Post-Conviction Counsel, But He Received Excellent Representation.

In this non-capital post-conviction habeas proceeding, King had "no federal constitutional, state constitutional or statutory right to counsel, or effective assistance of counsel." *McKague v. Whitley*, 112 Nev. 159, 163, 912 P.2d 255 (1996); NRS 34.810(3). "Where there is no right to counsel there can be no deprivation of effective assistance of counsel." *Id.* at 165.

Ignoring for a moment that King was not necessarily entitled to effective assistance of post-conviction counsel, the entire basis of his argument that Oldenburg was ineffective was that she did not present an evaluation from Dr. Mahaffey. Alternatively, King suggests that former post-conviction attorney, Troy Jordan, was ineffective for representing that Dr. Mahaffey had evaluated him. However, he cites no authority establishing that he was entitled to the testimony of a particular expert, and the State is aware of no such authority. If King's contention is that he is entitled to effective assistance of counsel for purposes of his habeas claims, and that failure to present a particular expert constitutes ineffective assistance of counsel in this post-conviction context, he is free to argue that in a subsequent petition—not in this direct appeal.

Moreover, Oldenburg explained to King that Dr. Mahaffey had never rendered the opinion represented by prior counsel Jordan, but that she had retained another expert, who was coming out to visit King. AA 119-121. But once the evaluation came back, King was not happy with the results. *Id.* He wanted a second evaluation, so Oldenburg contacted Dr. Mahaffey again, but Dr. Mahaffey was not interested or available. *Id.* Oldenburg also reached out to a Dr. Paglini, but that evaluator did not think a second evaluation was appropriate given the results of the first. *Id.* This

demonstrates that Oldenburg went above and beyond to secure an evaluation, consistent with the Order of Reversal and Remand.

D. No Relief is Warranted Under the Cumulative Error Doctrine.

King also claims that the doctrine of cumulative error entitles him to relief. However, in support of this claim, he cites non-binding authority from the Ninth Circuit. The Nevada Supreme Court has taken a different approach, and has not adopted the doctrine of cumulative error as part of a *Strickland* analysis. In *McConnell v. State*, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009), the Court explained that "we are not convinced this is the correct standard."

More importantly, King urges this Court to examine whether the purported "cumulative errors" examined in Sections A-C above violated his right to a fair trial. Again, this was a limited evidentiary hearing on a post-conviction petition for habeas corpus—not a trial. As the State has demonstrated, no error occurred during the evidentiary hearing, so there are no errors to cumulate. Additionally, no cumulative error claims were raised in the petition or supplemental petition below. Therefore, they may not properly be considered for the first time in this appeal. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

///

VIII. CONCLUSION

Based on the foregoing, the State respectfully submits that the district court's decision should be affirmed.

DATED: October 9, 2023.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: Jennifer P. Noble
Chief Appellate Deputy

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 Georgia 14.

2. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it 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

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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: October 9, 2023

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on October 9, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Theresa Ristenpart, Esq.

/s/ Janet Prestipino
Janet Prestipino