

IN THE SUPREME COURT OF THE STATE OF NEVADA

DALE EDWARD FLANAGAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40232

FILED

APR 25 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DIRECTING FILING OF
SUPPLEMENTAL POINTS AND AUTHORITIES

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus in a death penalty case. The district court entered the order appealed from on August 9, 2002. This appeal was thereafter docketed in this court on September 18, 2002.

After numerous delays in the briefing of this appeal due to appellant's inability to obtain transcripts, this court was advised by Sharleen Nicholson, a court recorder for Department II of the Eighth Judicial District Court, that certain transcripts were not available because tapes and notes had been discarded respecting some of the proceedings conducted in the district court in these death penalty proceedings. See NRS 656.335 (requiring certain notes and records to be maintained for 8 years).¹ Accordingly, on March 2, 2004, this court entered an order of limited remand directing the parties and the court below to settle upon and approve a reconstructed record on or before April 16, 2004. This court directed the district court to conduct such proceedings, on or before May

¹We note that appellant was initially tried, convicted, and sentenced in 1985. Three separate penalty hearings were thereafter conducted in this matter after this court vacated appellant's death sentences and remanded for new penalty hearings.

16, 2004, as were necessary to determine precisely what parts of the record are missing from the original file in the district court and to settle upon and approve a reconstructed record. Moreover, this court further directed the district court to file in this court on or before the end of May 2004, an order setting forth its findings regarding any missing portions of the district court record and the steps taken to reconstruct, settle upon, and approve the record.

Appellant thereafter moved this court for three extensions of time in the remand period; this court granted the motions. Appellant has now requested a fourth extension of time. For the reasons set forth below, we defer ruling on appellant's request.


This court remanded this matter to the district court for the limited purpose of reconstructing an adequate record to support appellant's assignments of error on appeal. Given the delay encountered below, this court is concerned that counsel may be attempting to expand the record in this case beyond what is reasonable and necessary to support any claims on appeal that the district court erred in denying appellant's post-conviction petition. We therefore conclude that no further extensions of time will be granted until appellant demonstrates to this court that additional time is warranted to reconstruct an adequate record to review the order appealed from.


Accordingly, appellant's counsel shall have 20 days from the date of this order within which to file in this court a supplemental motion containing supporting documentation and argument specifically enumerating the records or transcripts he has been unable to obtain. Appellant's supplemental points and authorities shall demonstrate specifically how the records and transcripts he is requesting or attempting to reconstruct reasonably support and correspond to specific assignments

of error appellant intends to assert on appeal respecting the district court's denial of the claims presented in the petition below.² We emphasize that this court expects counsel's response to be a thorough and complete recitation of the records or transcripts that are missing, and why counsel views those documents to be necessary to the prosecution of this appeal.

The State shall have 20 days from the date of service of appellant's supplemental points and authorities within which to file a response. Upon receipt of those filings, this court will determine whether any further proceedings in the court below respecting the reconstruction of the record are warranted.

It is so ORDERED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

²We note in this regard that as a general rule issues not presented to the district court in a post-conviction petition will not be appropriately raised for the first time on appeal. See McNelton v. State, 115 Nev. 936, 990 P.2d 1263 (2000). Additionally, NRAP 30(b) expressly provides that "[b]revity is required" in appendices and that "all matters not essential to the decision of issues presented by the appeal shall be omitted." See also State v. Haberstroh, 119 Nev. 173, 69 P.3d 676 (2003).

cc: Eighth Judicial District Court, Department Seven
Hon. Michelle Leavitt, District Judge
Davis Wright Tremaine LLP
Potter Law Offices
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk