

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 40232

**FILED**

MAY 24 2005

ORDER DIRECTING SUPPLEMENTAL FILING  
AND REINSTATING BRIEFING

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

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.

The briefing in this appeal has been significantly delayed because of questions respecting the availability of an adequate record on appeal, including transcripts of prior proceedings in the district court. Accordingly, this court remanded the appeal to the district court for the limited purpose of compiling and reconstructing an adequate record. On April 25, 2005, after numerous additional delays, this court issued an order directing appellant's counsel to file in this court a supplemental motion containing a thorough and complete recitation of the records or transcripts that are missing, and why counsel viewed those documents to be necessary to the prosecution of this appeal.

On May 13, 2005, appellant's out-of-state counsel in this matter filed a response to our order, indicating that the district court had "signed and entered a stipulation entered into by the parties which completed the efforts to reconstruct the District Court record." The response further requests this court to reestablish a briefing schedule.

As an initial matter, this court notes that, although the response states that a copy of the stipulation of the parties is attached to the response, counsel neglected to append a copy of the stipulation to the response. In addition, the response was signed only by appellant's out-of-state counsel and does not contain the signature of appellant's Nevada counsel of record, Cal. J. Potter, III, Esq. NRAP 25(1)(e) requires in pertinent part that "[a]ll documents submitted to the Supreme Court for filing by a represented party shall include the original signature of at least one (1) attorney of record who is an active member of the bar of this state."

Accordingly, appellant's Nevada counsel of record, Cal J. Potter, III, shall have 10 days from the date of this order within which to file in this court a signed response containing a certified copy of the stipulation referenced by out-of-state counsel. Despite the procedural deficiencies noted above, and in order to forestall any further delay in the prosecution of this matter, we conclude based on the response submitted on May 13, 2005, that further proceedings in the district court respecting reconstruction of the record are not warranted. We further conclude that briefing in this appeal shall be promptly reinstated. Therefore, appellant shall have 60 days from the date of this order within which to file and serve an opening brief and appendix. Thereafter, briefing shall proceed in accordance with the schedule set forth in NRAP 31. See also SCR 250(7).

It is so ORDERED.

Becker \_\_\_\_\_, C.J.

cc: Eighth Judicial District Court Dept. 7, District Judge  
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