

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 40232

FILED

APR 05 2007

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

ORDER GRANTING MOTION

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus in a capital case. Appellant has moved this court for permission to file a 5-page supplemental opening brief addressing whether the district court properly instructed the jury in accordance with this court's holding in Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002). See also Mitchell v. State, 122 Nev. ___, 149 P.3d 33 (2006) (holding that the rule announced in Sharma was a clarification of the law that applies to cases that were final at the time Sharma was decided). The State opposes the motion.

Because Mitchell was not decided until after the initial briefing in this matter was completed, this court has concluded that the supplemental brief may be filed. Therefore, the clerk of this court shall file the supplemental opening brief provisionally submitted by appellant on March 12, 2007. The State shall have 20 days from the date of this order within which to file a supplemental answering brief. The State may renew the argument presented its opposition to the motion that this

court's consideration of the Sharma claim for the first time on appeal may undermine this court's application of procedural bars.

It is so ORDERED.

Mausin, C.J.

cc: Davis Wright Tremaine LLP
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Clark County District Attorney David J. Roger