

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 40232

FILED

MAR 02 2004

ORDER OF LIMITED REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
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. Although this appeal was filed in this court on September 18, 2002, briefing in this matter has been unable to proceed due to the absence of certain transcripts from the record on file with the clerk of the district court.¹ Appellant has requested this court to vacate the latest briefing schedule established by this court until transcripts of several proceedings can be prepared, filed in the district court, and included in appellant's appendix. This court has also been advised by Sharleen Nicholson, a court recorder for Department II of the Eighth Judicial District Court, that tapes and notes have been discarded respecting proceedings conducted in these death penalty proceedings in

¹In a motion filed in this court on April 2, 2003, counsel for appellant represents: "[the district court] record continues to be incomplete in that the district court's clerk's office is unable to locate portions of the file. Despite indications that transcripts were filed with the district court on some of the dates for which appellant has requested transcripts, those transcripts are not in the record and appellant does not have copies of them."

1994. See NRS 656.335 (requiring certain notes and records to be maintained for 8 years).

Due to the incomplete state of the record on file in the district court and the uncertainties regarding the court reporters' or recorders' ability to reproduce any missing transcripts, this appeal is hereby remanded to the district court pursuant to SCR 250(8)(b) for the limited purpose of clarifying, assembling, and settling upon an adequate record. Appellant shall have 10 days from the date of this order within which to prepare, file in the district court, and serve upon counsel for the State a memorandum specifying the transcripts or other parts of the record which are necessary for this appeal, but which appellant has been unable to review or obtain for inclusion in appellant's appendix. The State shall have 10 days thereafter within which to file in the district court and serve upon counsel for appellant a memorandum indicating whether the State is in possession of any of the documents or transcripts comprising the missing parts of the record which appellant has been unable to locate.


Within 30 days from the date of this order, the district court shall conduct such proceedings as are necessary to determine precisely what parts of the original record are missing from the original file in the district court and to settle upon and approve a reconstructed record. The district court may utilize any reasonable means to reconstruct the record including the procedures specified in NRAP 9(d).²

²For example, with the district court's approval, the parties may be able to reconstruct any missing parts of the district court record with copies of any documents or transcripts in the State's possession that the parties agree are accurate copies of the missing originals. Additionally,

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Within 45 days of the date of this order, the district court shall file with the clerk of this court an order setting forth its findings regarding any missing portions of the district court record and the steps taken to reconstruct, settle and approve the record. The briefing schedule in this appeal is hereby suspended until further order of this court.³

It is so ORDERED.

 C.J.

cc: Hon. Stewart L. Bell, 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

...continued

the district court may direct a court reporter or recorder to promptly prepare any missing transcripts that are capable of being reproduced from any available audio tapes or logs. If no other means are available to reconstruct the missing parts of the record, the district court shall direct the parties to prepare to the extent possible a statement of the evidence or proceedings pursuant to NRAP 9(d) and shall settle and approve that statement for inclusion by the clerk of the district court in the trial court record.

³We deny as moot appellant's motion to vacate the briefing schedule.