

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN DANIEL BERGER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55207

SEAN DANIEL BERGER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55212

**FILED**

OCT 11 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Vaena  
DEPUTY CLERK

ORDER AFFIRMING IN DOCKET NO. 55207 AND  
DIRECTING FULL BRIEFING IN DOCKET NO. 55212

These are appeals from orders of the district court denying appellant's post-conviction petitions for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Docket No. 55207

Appellant filed his petition in district court case no. CR04-2972 on March 9, 2006. On appeal, appellant presents no argument that the district court erred in denying his petition in that case. Accordingly, we affirm the district court's order in Docket No. 55207.

Docket No. 55212

Appellant filed his petition in district court case no. CR05-0760 on May 11, 2006. On appeal, appellant argues only that counsel was ineffective in advising him to enter a guilty plea when the charges were barred by NRS 171.095(1)(b)(1).

We have concluded that full briefing of this issue is warranted. Counsel for the parties shall fully brief the issue as provided in NRAP 28, 28.2, 30, 31 and 32.<sup>1</sup> Counsel should specifically consider this court's decision in Bailey v. State, 120 Nev. 406, 409, 91 P.3d 596, 598 (2004) (holding that where NRS 171.095(1)(b) applies, NRS 171.095(1)(a) and NRS 171.085 are inapplicable), when addressing whether trial counsel's advice to plead guilty was objectively unreasonable and, if so, whether there was a reasonable probability that had appellant been provided accurate information, he would not have pleaded guilty.

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<sup>1</sup>Counsel need not file a new appendix and may utilize the fast track appendix previously filed in this court. Counsel should note, however, that every reference in the briefs to matters of record must be supported by a citation to the page of the appendix where the matter is found. See NRAP 28(e). Further, if a party's brief will cite to documents not previously filed in this court, the party must file and serve an appropriately documented supplemental appendix with the brief. See NRAP 3C(j)(2).

Appellant shall have 30 days from the date of this order to file and serve the opening brief.<sup>2</sup> Thereafter, briefing shall proceed in accordance with the schedule set forth in NRAP 31(a)(1).

It is so ORDERED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Jerome Polaha, District Judge  
Mary Lou Wilson  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>2</sup>Neither party has objected to the sufficiency of the rough draft transcripts. See NRAP 3C(d)(5). Accordingly, counsel need not file certified transcripts in this appeal as ordinarily required by NRAP 9. But should either counsel object to the sufficiency of the rough draft transcripts or cite to transcripts not previously prepared, counsel shall file and serve a request for the necessary transcripts pursuant to NRAP 9(a). See NRAP 3C(j)(2). If the necessary transcripts have already been prepared and are on file in the district court, the parties may include such transcripts in the appendix without filing a transcript request form. See NRAP 30(b)(1).