

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
PERFECTO GOMEZ,
Respondent.

No. 74276

FILED

APR 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING MOTION AND DISMISSING APPEAL

This is a pretrial appeal from a district court order granting respondent Perfecto Gomez' motion to suppress witness identifications. On December 28, 2017, we exercised our discretion to entertain this appeal, *see* NRS 177.015(2), and directed the parties to fully brief this appeal. We ordered the State to file the opening brief and any necessary supplemental appendix within 30 days.

On February 1, 2018, the State filed a motion for a 30-day extension of time until February 28, 2018, to file the opening brief.¹ The State informed this court its "Criminal Appeals Unit has reviewed the record and has a working draft of the Opening Brief, but requests additional time to thoroughly review the record, research the issues, and send the draft through the internal review process. Moreover, the Appeals Unit requests additional time to consult with the trial deputy assigned to this case." Gomez did not oppose the motion, and the motion was granted.

¹The motion was deposited in the Las Vegas drop box on January 29, 2018.

On March 7, 2018, the State filed a motion for a second extension of time, requesting a 10-day extension until March 14, 2018, to file the opening brief.² In support of the motion, the State informed this court that the Nevada Supreme Court had recently ordered it to respond to a petition for a writ of mandamus that was filed by Gomez and directed the State to file the response within 20 days. The State also stated that two of the law clerks in the Criminal Appeals Unit were on temporary leave and, due to the unexpected resignation of one of its attorneys, the unit was down an attorney and all of his cases needed to be reassigned. Finally, it stated “The assigned law clerk has reviewed the record for the instant case and has an initial brief, but additional time is needed to complete the internal review process.” Gomez did not oppose the motion. On March 15, 2018, we granted the motion and directed the State to file the opening brief and any appendix within 5 days. Thus, the opening brief was due to be filed by March 22, 2018. *See* NRAP 26(a). We cautioned the State that failure to comply with the order could result in the imposition of sanctions.

On March 16, 2018, the State filed a motion for a third extension of time, asking for an extension of time until April 13, 2018, to file the opening brief.³ The State represents “The assigned law clerk has reviewed the record for the instant case and completed an initial brief, but after undergoing the internal review process a second draft of the brief is

²The motion was deposited in the Las Vegas drop box on February 28, 2018.

³The motion was deposited in the Las Vegas drop box on March 14, 2018.

needed.” The State is seeking the extension of time “to allow additional time to complete the second draft and final review of the State’s brief.”

On March 26, 2018, Gomez filed an opposition to the State’s motion for a third extension of time.⁴ Gomez argues the State has failed to demonstrate extraordinary circumstances or extreme need to justify an additional extension of time. *See* NRAP 31(b)(3)(B). Gomez states, “Simply not finishing an internal review in time to redraft a brief, if necessary, is not extraordinary, but rather, poor planning.” And Gomez points out that he “sits in custody awaiting trial on a crime for which he is presumed innocent.” Gomez asks this court to deny the motion for an extension of time and to dismiss this appeal as a sanction for the State failing to timely file the opening brief. *See* NRAP 31(d)(1).

On March 30, 2018, the State submitted the opening brief and an appendix for filing.⁵ The State has not otherwise filed a reply to Gomez’ opposition and request for sanctions. *See* NRAP 27(a)(4) (“Any reply to a response shall be filed within 5 days after service of the response.”).

NRAP 31(b)(1)(B) provides in relevant part that, after granting an initial extension of time, “The court shall not grant additional extensions of time except upon a showing of extraordinary circumstances and extreme need.” We agree with Gomez that the State has failed to meet the requirements for granting an additional extension of time. We note this is a pretrial appeal, and the record on appeal and the issues that can be raised are very limited. As of March 22, 2018, the State had 84 days to file the

⁴The opposition was delivered to this court by mail on March 23, 2018.

⁵The opening brief and appendix were deposited in the Las Vegas drop box on March 26, 2018.


opening brief, which was sufficient time to prepare and file an opening brief, particularly in light of the limited scope of this appeal. Accordingly, we deny the State's motion for a third extension of time. The clerk of this court shall return, unfiled, the opening brief and appendix received on March 30, 2018.

NRAP 31(d)(1) provides that when an appellant fails to file an opening brief within the time extended, "a respondent may move for dismissal of the appeal or the court may dismiss the appeal on its own motion." Although we recognize this is an extraordinary sanction that should be imposed sparingly, we conclude this sanction is warranted in this case. Specifically, we again note that this is a pretrial appeal. Upon filing this appeal, the State sought, and we granted, a stay of Gomez' trial pending resolution of this appeal. We cannot in good conscience further delay Gomez' trial based on the State's inability to timely file a brief, particularly given the very limited scope of this appeal. Accordingly, we grant Gomez' request and we


ORDER this appeal DISMISSED.⁶

 C.J.

Silver

 J.

Tao

 J.

Gibbons

⁶We lift the stay imposed on November 3, 2017.

cc: Hon. Stefany Miley, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Eighth District Court Clerk