

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

THE CITY OF TULSA,	FILED)	Appeal Case No. S-2023-715
Appellant;	COURT OF CRIMINAL APPEALS		
	MAR 28 2024)	Mun. Ct. Nos. 720766
v.	JOHN D. HADDEN)	720766 A
NICHOLAS RYAN O'BRIEN,	CLERK)	720766 B
)	720766 C
Appellee.)	720766 D

APPELLEE'S MOTION TO STRIKE BRIEF FILED WITHOUT AUTHORIZATION

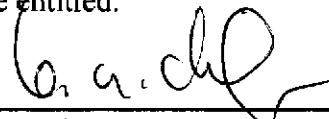
COMES NOW the Appellee, through his counselor of record, Brett Chapman, and objects to an instrument filed of record on March 27, 2024, by Appellant's appeal counsel, Becky Johnson, purporting to be a reply to the Appellee's brief-in-chief by the title thereon. Specifically, the Appellee objects on the grounds that said filing was wholly unauthorized pursuant to Rule 3.4(F)(1), *Rules of the Court of Criminal Appeals*, Title 22, Ch. 18, App. (2024), and further moves this Court to enter an order striking the same as not properly before the Court.

Specifically, Rule 3.4(F)(1) only authorizes the discretionary filing of a reply brief as a matter of right by appellants bringing direct appeals of cases successfully prosecuted to conviction in the trial court. *Id.* (effective May 21, 2003). The express language of the rule clearly delimits authorization to direct appellants by virtue of the fact that no other types of review are listed. *See In re Rev. of Portion of the Rules*, 2003 OK CR 9 (revising superseded version of Rule 3.4(F)(1) solely by adding the single word "direct" as new language as a limiting modifier prior to the existing word "appeal" in the first sentence). The clear purpose of Rule 3.4(F)(1) is to limit replies to appellants directly challenging convictions arising from successfully prosecuted cases in trial courts; if it were intended otherwise, the rule would have been left as it was prior to the inclusion of "direct" as a modifier for the existing word "appeal" back in 2003. *Compare* Rule 3.14(E)

(limiting petitions for rehearing through use of modifier “regular” before “appeals,” a term inclusive of both direct appeals and state appeals).

Appeals under 22 O.S.Supp. 2022, § 1053 are not direct appeals due to the notable fact that the case failed to reach conviction. Additional support is found when considering that state appeals and direct appeals are both governed by rules for “regular” appeals pursuant to Rule 1.2(A)(C), using “regular” as a modifier to describe both to the exclusion of other types. Thus, the use of solely “direct” under Rule 3.4(F)(1) necessarily excludes any possibility of a state appellant filing a reply brief in a § 1053 appeal by limiting the right to direct appeals, where the accused is always the appellant, and the prosecution is always the appellee. As such, the Appellee moves to strike this unauthorized filing because the only filings of right entitled to the parties in a § 1053 appeal are the appellant’s brief-in-chief and the appellee’s answer brief. The *Rules* are so clear on the issue that the honest approach would have been to seek leave. Here, there exists no request for leave contemporaneously filed with the purported reply brief, or at all.

WHEREFORE, the Appellee objects to the Appellant’s unauthorized filing of record and moves that it be stricken and not taken into consideration by the Court. All this in addition to any other relief to which the Court may deem the Appellee entitled.



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1. CERTIFICATE OF SERVICE

I, Brett Chapman, certify that on March 28, 2024, the date of filing, I deposited an envelope containing one filed copy of the same in the United States mail, with first-class postage prepaid, and properly addressed to the Appellant's designated appellate counsel of record at the City of Tulsa's Legal Department, 175 E. Second St., Suite No. 685, Tulsa, Oklahoma 74103-3205.

