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ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

THE SUPREME COURT

REPUBLIC OF THE MARSHALL ISLANDS

REPUBLIC OF THE MARSHALL ISLANDS,)	Criminal Case 2017-001
Appellee/Plaintiff,)	Supreme Court Case 2018-003
)	
VS.)	ORDER STRIKING BRIEFING
)	
ALEE PHILLIP)	
Appellant/Defendant.)	
)	
)	
)	

TO ALL PARTIES HEREIN THROUGH THEIR RESPECTIVE COUNSEL OF RECORD:

On June 29, 2018, Appellant, Alee Phillip, filed what is construed as a motion to allow the filing of a second or amended Reply Brief. Appellant argues he was not properly served with Appellee’s Answer Brief prior to filing his Reply. Thus, Appellant seeks an order giving him the opportunity to “properly file a Reply Brief to the Appellee’s Answer Brief.”

On July 2, 2018, Appellee, Republic of the Marshall Islands, filed an opposition to Appellant’s motion.

The undersigned denies Appellant’s motion for two reasons: (1) the Rules do not allow the filing of multiple Reply Briefs. If the delayed or late service of Appellee’s Answering Brief impaired the ability of Appellant to timely prepare an appropriate Reply then Appellant could have simply requested an extension of time; and (2) none of the briefing filed by either party complies with the Supreme Court Rules of Procedure. Neither parties’ briefing contains references to the record or relevant transcripts of the proceedings below. Because there is yet to be a record certified and there is presently no transcript of the trial and sentencing proceedings, allowing the filing of a second Reply Brief would merely perpetuate the inadequacy of the present briefing. The remedy, as discussed below, is to strike the present briefing and allow the submission of briefs in compliance with the Rules.

The parties’ present briefing does not comply with the Rules.

Rule 10(b)(1) states "Within 10 days after filing the notice of appeal the appellant shall order from the clerk of the court appealed from a transcript of such parts of the proceedings as the appellant deems necessary that are not already on file.... If no such parts of the proceedings are to be ordered, with the same period the appellant must file a certificate to that effect." Appellant did not comply with this Rule. Appellant did not order a transcript. Appellant did not file a certificate that no transcript was requested or ordered.

Rule 10(b)(2) further provides "If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to such finding or conclusion." Unless Appellant is conceding that the evidence supports the High Court's findings and conclusions, Appellant has failed to comply with this Rule. Again, no transcript was ordered.

The time for filing Appellant's Opening Brief is triggered by the clerk's filing of the record on appeal. Rule 28(b)(1) provides "Within 40 days after the filing of the record on appeal, the appellant shall file an opening brief" In the instant matter, Appellant prematurely filed his opening brief on April 6, 2018, prior to the clerk's preparation and filing of the record on appeal. This by-passing of procedure has resulted in inadequate briefing by both parties.

Rule 28(b)(3) requires a concise statement of the case "with record references supporting each statement of fact or mention of trial proceedings. In presenting those material facts all supporting and contradictory evidence must be presented in summary fashion and with appropriate record references." There being no record and Appellant being unable to cite to the record, Appellant's Opening Brief does not comply with this Rule.

Rule 28(b)(4)(A) states "When the point involves the admission or rejection of evidence, there must be included a quotation of the grounds urged at the trial for the objection and the full substance of the evidence admitted or rejected." Unless Appellant does not challenge the evidence offered against him the Opening Brief is defective because the information (quotations) required by this Rule is not provided. Such quotations would be found in a transcript of the proceedings. There is presently no transcript of the trial or other proceedings below. Again, no transcript was ordered by Appellant or certified as not needed or requested.

Similarly, Appellee's Answering Brief is to conform to the requirements of Rule 28 regarding citation to the record. See Rule 28(c). Appellee's Answering Brief does not contain references to the record or transcript (because there is none) although Appellant does reference the Court to a tape recording.

When it became apparent to the Court that no record or transcript had been prepared as required by Rule 10 and Rule 11, the Court issued an Order on or about June 19, 2018, that the clerk prepare a record and transcript. The record and transcript are in the process of being prepared.

Rule 30 provides "When the brief of an appellant is otherwise not in conformity with these rules, the appeal may be dismissed or the brief stricken and sanctions including a fine may be levied by the Court." The Rule provides the same options for an Answering Brief which is not in conformity with the Rules.

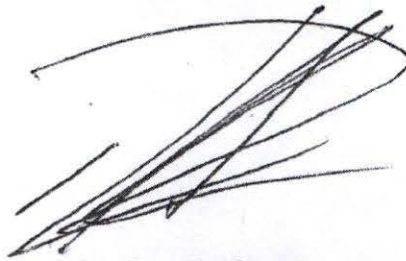
The Court should not be expected to scour the record and/or transcript for the information required to have been provided by the parties in their briefing. The remedy for the instant procedural snafu is to strike the parties' briefing, await the certification/transmission of the record on appeal and transcript, then allow the parties to again submit their briefing in compliance with the Rules. The parties may choose to resubmit what they have already submitted but such resubmission must contain references to the record/transcript where required by Rule.

It is **ORDERED** that Appellant's motion to allow the filing of a second Reply Brief is **DENIED**.

It is **FURTHER ORDERED** that Appellant's opening brief, Appellee's answering brief and Appellant's reply brief are **STRICKEN** as per Rule 30 for failure to comply with the requirements of Rule 10 and Rule 28 as discussed above.

The parties are **DIRECTED** to await the clerk's filing of the record on appeal at which time Appellant may file its opening brief within 40 days as per Rule 28(b); Appellee may then file its answering brief within 40 days as per Rule 28(c); and Appellee may file his reply brief within 10 days of service of the answering brief as per Rule 28(d). All briefing shall conform with the requirements of Rule 28 including references to the record and/or transcript.

Dated July 4, 2018(AST)

A handwritten signature in black ink, consisting of several overlapping, sweeping lines that form a stylized, somewhat abstract shape.

Daniel Cadra, Chief Justice

IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

RMI)
_____)
Appellee/Plaintiff)
v)
_____)
ALEE PHILLIP)
_____)
Appellant/Defendant)
_____)

Appeal Case No. 2018-003

CERTIFICATE OF SERVICE

I, Maureen Milne, Asst. Clerk of the Courts, hereby certify that on 7/5/18

I served the Order Striking Briefing

filed 07/04/2018 in the above captioned matter on:

1. Russell Kun by Email Fax Personal Hand Delivery
2. Falai Tafaaki by Email Fax Personal Hand Delivery
3. Meuton Laidren by Email Fax Personal Hand Delivery
4. Cutty Wase by Email Fax Personal Hand Delivery

Attached is a copy of my Sent Email / Fax Confirmation.

Maureen Milne
Maureen Milne
Asst. Clerk of the Courts
Marshall Islands Judiciary

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JUL 05 2018

[Signature]
ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS



Marshall Islands Judiciary <marshall.islands.judiciary@gmail.com>

Cr Cs 2017-001/Supreme Court Cs.2018-003

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Thu, Jul 5, 2018 at 10:43 AM

To: Russell Kun <rkun2405@gmail.com>, Falai Riva Taafaki <ftaafaki@gmail.com>, Meuton Laiden <meutonlaiden@gmail.com>, Cutty Wase <cuttywase@gmail.com>

Iakwe Counsels,

Please find attached:

"Order Striking Briefing"

Kindly confirm receipt.

Komol tata

Maureen

—

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**Supreme Court Case 2018-003.pdf**

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