## ORIGINAL

# IN THE SUPREME COURT OF THE STATE OF NEVADA DONTE JOHNSON, Appellant, Vs. THE STATE OF NEVADA, Respondent.

# FOURTH MOTION FOR EXTENSION OF TIME TO FILE OPENING BRIEF

COMES NOW, Appellant, DONTE JOHNSON, by and through his attorney, LEE-ELIZABETH McMAHON, Deputy Special Public Defender, and moves this Court for an Order granting an extension of time of one week, up to and including December 12, 2005, to file Appellant's Opening Brief. This Motion is made and based upon Supreme Court Rule 250 (6)(e) and the Affidavit of counsel filed herewith.

DATED this 5th day of December, 2005.

SUBMITTED BY:

SPECIAL PUBLIC DEFENDER

LEE-ELIZABETH McMAHON
NEVADA BAR #1765
330 SOUTH THIRD ST., Ste. 800
LAS VEGAS, NV 89155-2316
(702)455-6265
Attorney for Appellant

### POINTS AND AUTHORITIES

SCR 250 6(e) Extension of time reads as follows:

"The supreme court may grant an initial extension of time of up to 60 days to file a brief upon a showing of good cause, but shall not grant additional extensions of time except upon a showing of extraordinary circumstances and extreme need "

This Court granted the Motion for Extension of Time of Two Weeks to File the Opening Brief in this matter, up to and including November 28, 2005. On or about November 28, 2005, Appellant sent a Motion to this Court for an extension of one week, up to and including December 5, 2005, due to preplanned vacation and the move of the office.

Appellant requests an additional week based on the reasons set forth in Counsel's Affidavit attached hereto. In addition, pursuant to SCR 250(1)

"This court places the highest priority on diligence in the discharge of professional responsibility in capital cases. The purposes of this rule are: to ensure that capital defendants receive fair and impartial trials, appellate review...."

In order for Counsel for Appellant to diligently ensure JOHNSON receives the most thorough appellate review possible, it is necessary that all possible issues be researched and raised before this Court.

Based on the Affidavit, it is requested that an extension of one week, up to and including December 12, 2005, be granted to file Appellant's Opening Brief.

DATED this 5th day of December, 2005.

Respectfully submitted, SPECIAL PUBLIC DEFENDER

LEE-ELIZABETH McMAHOÑ NEVADA BAR #1765 330 SOUTH THIRD ST., Ste. 800 LAS VEGAS, NV 89155-2316 (702)455-6265

Attorney for Appellant

### AFFIDAVIT OF COUNSEL

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

LEE-ELIZABETH McMAHON, being first duly sworn, deposes and says:

- 1. That Affiant is an attorney duly licensed to practice law in the State of Nevada, and court-appointed counsel for Appellant DONTE JOHNSON.
- 2. That the Record on Appeal was docketed in the Nevada Supreme Court on July 5, 2005 and pursuant to the Order of this Court the Opening Brief was due November 28, 2005. Affiant sent a Motion for an extension of time of one week which has not yet been granted.
- 3. While reviewing the Record on Appeal prepared by the clerk's office it was discovered that the transcripts are not in sequential order of hearing date, nor are some days even in order of morning first and afternoon second. In addition, volumes stop in the middle of witnesses' trial testimony with the following page stating "continued in next volume". Unbelievably the continued transcript is not the first page of the next volume but contained somewhere therein. There is a notation that the transcript of the verdict is contained in volume VIII-B, but Affiant is unable to locate Volume VIII-B in the Record on Appeal. Therefore, in the Brief any cites to the verdict will be to the Minute Order of the Court and not the transcript of the court hearing.
- 4. Affiant has spent the last several days, including Saturday and Sunday, taking the Record on Appeal apart and putting it back together in sequential order so that a logical review can be conducted of the ROA for facts and issues to raise in the Opening Brief.
  - 5. Additionally, Affiant believes that there is an issue of

first impression to be raised and is researching same to find case law in other jurisdictions to support the issue.

6. Due to the extreme and unforseen difficulty in completing the review of the Record on Appeal, the issue of first impression, and based on the fact that this is a capital case, it is requested this Court grant the motion for extension of time of one week to file the Opening Brief, up to and including December 12, 2005.

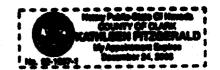
This Motion is made in good faith and not for the purpose of delay.

Further Affiant sayeth naught.

LEE-ELIZABETH MCMAHON

SUBSCRIBED and SWORN to before me this 5 day of December, 2005.

NOTARY PUBLIC



### CERTIFICATE OF MAILING

I, KATHLEEN FITZGERALD, do hereby certify that on the \_\_\_\_\_ day of December, 2005, did deposit in the United States Post Office at Las Vegas, Nevada, a copy of the above and foregoing Motion, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to the following:

Clark County District Attorney 200 Lewis Avenue, 3rd Floor Las Vegas NV 89155 Nevada Attorney General 100 N. Carson Carson City NV 89701-4717

KATHLEEN FITZGERALD an employee of The Special Public Defender