

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \*

DONTE JOHNSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

FILED

MAR 27 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

Case No. 45456

MOTION TO ALLOW LATE FILING  
OF PETITION FOR REHEARING

COMES NOW, Appellant, DONTE JOHNSON, by and through his attorneys, DAVID M. SCHIECK, The Special Public Defender and RANDALL H. PIKE, Deputy Special Public Defender, and moves this Court for an Order allowing the late filing of the Petition for Rehearing (sent simultaneously with this Motion).

This Motion is made and based upon NRAP 26, the Affidavit filed herewith, and the Points and Authorities attached hereto.

DATED this 23 day of March, 2007.

SUBMITTED BY:

DAVID M. SCHIECK

SPECIAL PUBLIC DEFENDER

RANDALL H. PIKE  
NEVADA BAR #1940  
330 SOUTH THIRD ST., #800  
LAS VEGAS, NV 89155-2316  
(702) 455-6265  
ATTORNEY FOR JOHNSON

STATEMENT OF THE CASE

The Opinion of the Court affirming the death sentence after a remanded penalty hearing in the instant case was filed on December

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1 28, 2006. Appellant DONTE JOHNSON filed his Motion to Stay  
2 Remittitur in order to file his Petition for Writ of Certiorari to  
3 the United States Supreme Court on January 4, 2007. An Order  
4 staying the Remittitur was filed on January 5, 2007.

5 POINTS AND AUTHORITIES

6 NRAP 26(b) states in pertinent part:

7 "The court for good cause shown may upon motion enlarge  
8 the time prescribed by these rules or by its order for  
9 doing any act to be done after the expiration of such  
time....."

10 Based upon the record and facts that have come to the attention  
11 of Appellant DONTE JOHNSON after the issuance of the Opinion and  
12 Order to stay Remittitur in this matter, there are sufficient facts  
13 to warrant a confidential investigation by either the Attorney  
14 General's office, the Nevada Commission on Judicial Discipline,  
15 and/or the Supreme Court regarding the actions of departing Justice  
16 Nancy Becker and her subsequent employment with the District  
17 Attorney's Office. Her actions between the time of her loss of the  
18 election and her subsequent employment appear to have violated the  
19 Canons of Judicial Conduct. It would seem, however, that the best  
20 use of limited Judicial time is best served by a rehearing of the  
21 present Court, en banc, which lacks the potential taint of the  
22 appearance of impropriety attendant with the previous opinion issued  
23 by the Court.

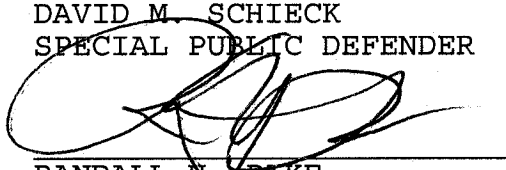
24 Therefore, as set forth in the Affidavit of Counsel attached  
25 hereto, Appellant requests this Court allow him to file a Petition  
26 for Rehearing and grant the instant Motion and allow the late filing  
27 of the Petition.  
28 . . .

1 CONCLUSION

2 It is respectfully requested that this Court grant the Motion  
3 for Late Filing and allow DONTE JOHNSON to file the Petition for  
4 Rehearing (which is sent simultaneously with this Motion).

5 DATED this 23 day of March, 2007.

6 SUBMITTED BY:  
7 DAVID M. SCHIECK  
8 SPECIAL PUBLIC DEFENDER

9   
10 RANDALL H. PIKE  
11 NEVADA BAR #1940  
12 330 SOUTH THIRD ST., #800  
13 LAS VEGAS, NV 89155-2316  
14 (702) 455-6265  
15 ATTORNEYS FOR JOHNSON

16 AFFIDAVIT OF COUNSEL

17 STATE OF NEVADA)  
18 ) ss:  
19 COUNTY OF CLARK)

20 RANDALL H. PIKE, being first duly sworn, deposes and says:

21 That Affiant is an attorney duly licensed to practice law in  
22 the State of Nevada and the Assistant Special Public Defender.

23 That the Opinion of the Court was filed on December 28, 2006.  
24 That the Remittitur was stayed pursuant to the Order of this Court  
25 on January 5, 2007. That a Petition for Rehearing was due January  
26 15, 2007. That Affiant is informed and believes a Writ of  
27 Certiorari is being prepared and will be filed in the United States  
28 Supreme Court.

That certain facts have come to the attention of Appellant  
after the issuance of the Opinion in this matter. That Affiant  
believes there are sufficient facts to warrant a confidential  
investigation by either the Attorney General's office, the Nevada  
Commission on Judicial Discipline, and/or the Supreme Court

1 regarding the actions of departing Justice Nancy Becker and her  
2 subsequent employment with the District Attorney's Office. Her  
3 actions between the time of her loss of the election and her  
4 subsequent employment appear to have violated the Canons of Judicial  
5 Conduct. The appearance of impropriety directly falls under Canon  
6 3E(1) of the Nevada Code of Judicial Conduct.

7       That Affiant is employed in the capacity of an Assistant  
8 Department Head with Clark County. That in order to allow for a new  
9 employee to be hired at the top salary level that is indicated  
10 within the article of John Smith in the Las Vegas Review Journal,  
11 there has to be approval above that of the District Attorney, and  
12 that based upon Affiant's experience with the County, that process  
13 would have involved communications within the County which are not  
14 capable of being discovered by Affiant within the confines of the  
15 instant case.

16       That Affiant did not see the John Smith Article published the  
17 week after the signature on the offending Decision, and only became  
18 aware of the publication after the actual announcement of  
19 employment. Similarly, the general dissemination of the Amendment  
20 to the Judicial canon was located by Affiant only after the  
21 announcement of employment.

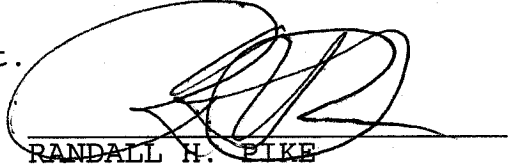
22       That if, in fact, there were ongoing negotiations either formal  
23 or informal, prior to the signing of the offending Decision, Justice  
24 Becker should have sua sponte disqualified herself, and/or made the  
25 conflict known to the Defense.

26       That it is Affiant's belief that the best use of limited  
27 Judicial time would best be served by a rehearing by the present  
28 Court, en banc, which lacks the potential taint of the appearance of

1 | impropriety attendant with the previous opinion issued by the Court.

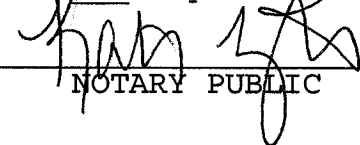
2 | That Affiant makes this request in good faith and not for  
3 | purposes of delay.

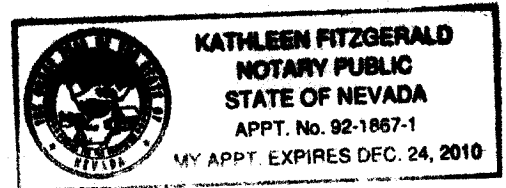
4 | Further Affiant sayeth naught.

5 |   
6 | RANDALL H. PIKE

7 | SUBSCRIBED AND SWORN to before me


8 | this 23 day of March, 2007.

9 |   
10 | NOTARY PUBLIC



11 | CERTIFICATE OF MAILING

12 | The undersigned employee of The Special Public Defender's  
13 | Office, does hereby certify that on the 23 day of March, 2007, I  
14 | did deposit in the United States Post Office at Las Vegas, Nevada,  
15 | a copy of the above and foregoing Motion, enclosed in a sealed  
16 | envelope upon which first class postage was fully prepaid, addressed  
17 | to the following: Clark County District Attorney, 200 Lewis Ave.,  
18 | 3rd Floor, Las Vegas NV 89155; and Nevada Attorney General, 100 N.  
19 | Carson St., Carson City NV 89701-4717.

20 |   
21 | KATHLEEN FITZGERALD  
22 | an employee of  
23 | The Special Public Defender  
24 |  
25 |  
26 |  
27 |  
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