

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

SEP 12 2005

DONTE JOHNSON,

Case No. 45456

Appellant,

vs.

MOTION FOR EXTENSION OF
TIME TO FILE OPENING
BRIEF AND APPENDIX

THE STATE OF NEVADA,


Respondent.

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 sixty (60) days to file Appellant's Opening Brief up to and including November 14, 2005. This Motion is made and based upon Supreme Court Rule 250 (6) (e) and the Affidavit of counsel filed herewith.

DATED this 09 day of September, 2005.

SUBMITTED BY:

SPECIAL PUBLIC DEFENDER


LEE-ELIZABETH McMAHON
NEVADA BAR #1765
333 SOUTH THIRD ST., 2ND FLOOR
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."

The Record on Appeal in this matter was filed July 5, 2005 and

SEP 12 2005

Appellant's Opening Brief is due on September 13, 2005.

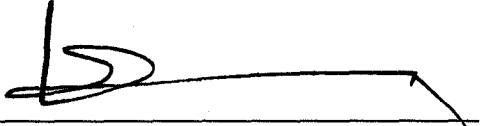
05-18110

1 Based on the reasons set forth in counsel's affidavit attached
2 hereto, it is requested that an extension of 60 days be granted to
3 file Appellant's Opening Brief, up to and including November 14, 2005.

4 DATED this 25 day of September, 2005.

5 Respectfully submitted,

6 SPECIAL PUBLIC DEFENDER

7 

8 LEE-ELIZABETH McMAHON
9 NEVADA BAR #1765
10 333 SOUTH THIRD ST., 2ND FLOOR
11 LAS VEGAS, NV 89155-2316
12 (702)455-6265
13 Attorney for Appellant

14 AFFIDAVIT OF COUNSEL

15 STATE OF NEVADA)
16) ss:
17 COUNTY OF CLARK)

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

19 1. That Affiant is an attorney duly licensed to practice law in
20 the State of Nevada, and court-appointed counsel for Appellant DONTÉ
21 JOHNSON.

22 2. That on direct appeal, DONTÉ JOHNSON'S conviction was
23 affirmed as to guilt and his sentence of death was reversed and
24 remanded for a new penalty hearing. The remanded penalty hearing
25 lasted 12 days with the Jury returning a verdict of death.

26 3. That the Judgement of Conviction was filed on June 6, 2005
27 and the Record on Appeal ("ROA") was prepared by the Clark County
28 Clerk's Office and docketed in the Nevada Supreme Court on July 5,
2005. That Appellant's Opening Brief is due on September 13, 2005.

4. That Affiant is informed and believes that upon receipt of
the Nevada Supreme Court notice of the docketing of the appeal, the

1 appellate secretary contacted the Clark County Clerk's Office to check
2 on the status of Appellant's copy of the ROA. The clerk in the
3 appeal's division stated that when she was being trained, she was told
4 "she only needed to give a copy of the Record on Appeal to the
5 District Attorney".

6 5. That although this Honorable Court does not specifically
7 articulate a requirement that a capital case Defendant be given a
8 complete copy of the Record on Appeal in order to pursue appellate
9 relief, such is clearly mandated by United States and Nevada
10 Constitutional guarantees.

11 6. That after explaining the above-stated premise to the clerk
12 in the appellate division, a copy of the ROA was prepared for
13 Appellant on or about July 14, 2005. That it then took over a week
14 to verify that all documents in the District Court file were included
15 in the second ROA.

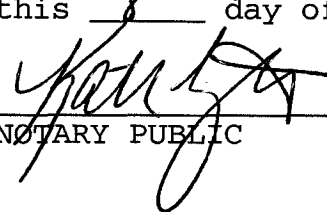
16 7. That the ROA after the trial and first penalty hearing was
17 almost 6,000 pages and the ROA relating to the second penalty hearing
18 is approximately an additional 2,700 pages. That Affiant must review
19 the full ROA in part to ascertain the testimony adduced at the second
20 penalty hearing conforms with testimony adduced at the trial.

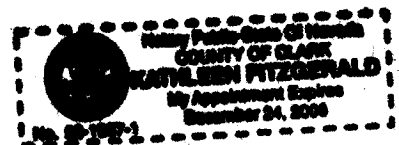
21 This Motion is made in good faith and not for the purpose of
22 delay.

23 Further Affiant sayeth naught.

24
25 
LEE-ELIZABETH MCMAHON

26 SUBSCRIBED and SWORN to before me
27 this 8 day of September, 2005.

28 
NOTARY PUBLIC



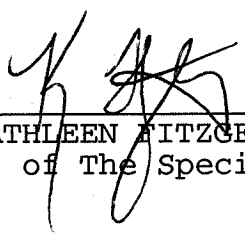
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

I, KATHLEEN FITZGERALD, do hereby certify that on the 8 day of September, 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 S. Third Street
Las Vegas NV 89155

Nevada Attorney General
100 N. Carson
Carson City NV 89701-4717



KATHLEEN FITZGERALD an employee
of The Special Public Defender