

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

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KIRSTIN BLAISE LOBATO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Case No. 49087

FILED

APR 16 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

RECEIVED
Las Vegas Drop Box
CLERK OF SUPREME COURT
2007 APR 13 AM 11:00

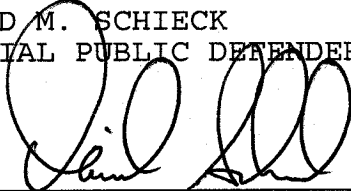
MOTION FOR STAY OF FAST TRACK APPEAL

COMES NOW Appellant, KIRSTIN BLAISE LOBATO, by and through her attorney, DAVID M. SCHIECK, Special Public Defender, and hereby requests that this Honorable Court exercise its discretion and stay the Fast Track Appeal pending its decision on the Motion to Waive Application of NRAP 3C and the Court Reporter's motion for an extension of time to file the transcripts.

This Motion is based NRAP 27, the Points and Authorities contained herein, and Affidavit of Counsel attached hereto.

DATED this 13 day of April, 2007.

DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER



By _____
DAVID M. SCHIECK
Nevada Bar #0824
330 S. Third St., 8th Floor
Las Vegas, Nevada 89155
(702) 455-6265

POINTS AND AUTHORITIES

NRAP 27 sets forth the procedure to follow when requesting relief by this Court made by Motion.

RECEIVED
APR 16 2007
JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

1 LOBATO) was convicted of Count I - Voluntary Manslaughter with use of
2 a Deadly Weapon and Count 2 - Sexual Penetration of a Dead Human Body.
3 Even though the instant case involves a category A felony, it is
4 subject to NRAP 3C, the Fast Track Criminal Appeal Process, as LOBATO
5 was sentenced as follows: Count 1 - 48 months to 120 months plus an
6 equal and consecutive 48 months to 120 months; and Count 2 - 60 months
7 to 180 months (Count 2 to run concurrent with Count 1). The Court
8 granted 1,544 days credit time served.

9 The Notice of Appeal was filed on March 12, 2007 and the Request
10 for Rough Draft Transcripts was served on the Court Reporter.
11 Simultaneously with the filing of the Notice of Appeal in District
12 Court a Motion for Waiver of Application of NRAP 3C and Request for
13 Full Briefing was forwarded to the Nevada Supreme Court. The Motion
14 was filed on March 16, 2007. On that same date the appeal was
15 docketed in this Court and notice that the appeal was to proceed as
16 a fast track was forwarded to counsel for Appellant.

17 On or about March 17, 2007 counsel for Appellant was served with
18 a Motion for Extension of Time to Prepare and File Transcript by Court
19 Lisa Lizotte. Although there is a Supreme Court caption (with the
20 case number from the previous direct appeal by Kirstin Lobato), the
21 motion was filed in District Court. It is unclear whether this Court
22 has received the Motion. A copy is attached hereto. The Court
23 Reporter is requesting up to and including June 1, 2007 to prepare and
24 file the transcripts.

25 The previous direct appeal (No. 40370) was exempted from the Fast
26 Track Rules due to the complexity of the case and nature of the
27 charges.

28 NRAP 3C recognizes and automatically excludes from the Fast Track

1 Process the class of cases involving a category A offense of First
2 Degree Murder, but only if death or life with or without parole is
3 actually imposed, and not cases where the third possible penalty
4 consisting of a term of years, has been imposed.

5 LOBATO'S case was a complicated, high profile case lasting almost
6 a full month. It presented novel pre-trial as well as post-trial
7 legal issues; and numerous appealable issues arose during trial as
8 well.

9 Treatment under the Fast track rules with a 10 page limit would
10 be unduly restrictive and burdensome in this particular case. The 10
11 page limitation could not provide this Court with sufficient
12 information to adequately review the record.

13 Therefore, it is respectfully requested that this Court grant the
14 Motion to Stay the Fast Track Appeal until this Court has reached a
15 decision on the Motion for Waiver of Application of NRAP 3C and
16 Request for Full Briefing.

17 Respectfully submitted,

18 DAVID M. SCHIECK
19 SPECIAL PUBLIC DEFENDER

20
21 By 

22 DAVID M. SCHIECK
23 Special Public Defender
24 Nevada Bar #0824
25 330 S. Third St., 8th Floor
26 Las Vegas, Nevada 89155
27 (702) 455-6265
28 Attorney for LOBATO

AFFIDAVIT OF COUNSEL

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STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

DAVID M. SCHIECK, being first duly sworn, deposes and says:

That Affiant is an attorney duly licensed to practice law in the State of Nevada and is appointed to represent Appellant Kirstin Lobato on her direct appeal from her judgement of conviction and sentence.

That Kirstin Lobato was convicted of Voluntary Manslaughter with use of a Deadly Weapon and Sexual Penetration of a Dead Human Body. Even though the instant case involves a category A felony, it is subject to NRAP 3C, the Fast Track Criminal Appeal Process, as Appellant's sentence is 48 months to 120 months plus an equal and consecutive 48 months to 120 months; and concurrent time of 60 months to 180 months. The Court granted 1,544 days credit time served.

That Affiant is informed and believes the Notice of Appeal was filed on March 12, 2007 and the Request for Rough Draft Transcripts was served on the Court Reporter. The Motion for Waiver of Application of NRAP 3C and Request for Full Briefing was filed on March 16, 2007 in this Court. That the appeal was docketed on March 16, 2007 and notice it would proceed as a fast track appeal was received by Affiant.

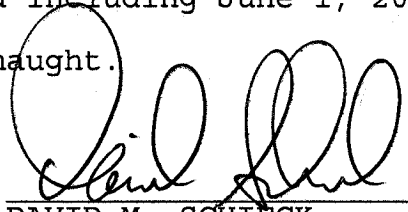
On or about March 17, 2007 Affiant was served with a Motion for Extension of Time to Prepare and File Transcript by Court Lisa Lizotte, a copy of which is attached hereto. The Court Reporter filed the Motion in District Court and used the previous direct appeal Supreme Court case number. The Court Reporter is requesting up to and including June 1, 2007 to prepare and file the transcripts.

That the previous direct appeal (No. 40370) was exempted from the

1 Fast Track Rules due to the complexity of the case and nature of the
2 charges.

3 That Affiant requests this Court grant the instant motion and
4 stay the Fast Track appeal until a ruling is made on the Motion to
5 Waive the Fast Track Appeal and proceed to full briefing. In
6 addition, Affiant requests this Court grant an extension of time to
7 file the transcripts up to and including June 1, 2007.

8 FURTHER, Affiant sayeth naught.

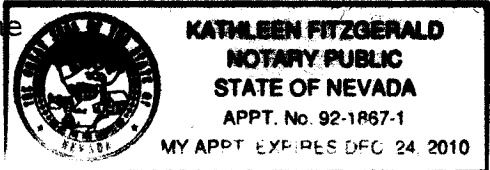


DAVID M. SCHIECK

11 SUBSCRIBED AND SWORN to before me
12 this 13 day of April, 2007.



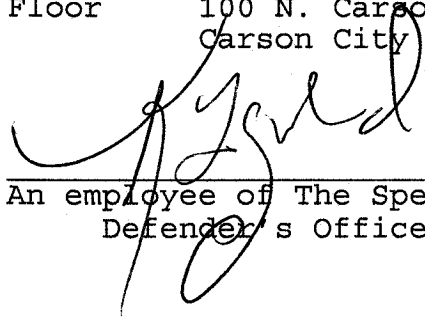
NOTARY PUBLIC



16 CERTIFICATE OF MAILING

17 The undersigned does hereby certify that on the 13 day of April,
18 2007, I deposited in the United States Post Office at Las Vegas,
19 Nevada, a copy of the foregoing Motion, postage prepaid, addressed to
20 the following:

21 District Attorney's Office Nevada Attorney General
22 200 Lewis Ave., 3rd Floor 100 N. Carson
23 Las Vegas NV 89155 Carson City NV 89701-4717



An employee of The Special Public
Defender's Office

COPY

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

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KIRSTEN BLAISE LOBATO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

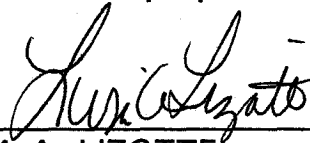
Case No. 40370
District Court Case No.: C177394

MOTION FOR EXTENSION OF TIME TO PREPARE AND FILE TRANSCRIPT

Lisa A. Lizotte, Court Recorder, Department 2, Eighth Judicial District Court, hereby respectfully moves this Court for an order granting an extension of 60 days up to and including June 1, 2007, in which to prepare and file certified rough draft transcripts.

This motion is made and based on the Affidavit of Lisa A. Lizotte attached hereto and is made in good faith and not for purposes of delay.

DATED this 14th day of March, 2007.



LISA A. LIZOTTE
Eighth Judicial District Court, Dept. 2
200 Lewis Avenue
Las Vegas, NV 89155
(702) 671-4321

1
2 **AFFIDAVIT OF LISA A. LIZOTTE**

3 STATE OF NEVADA)
4) ss.
5 COUNTY OF CLARK)

6 Lisa A. Lizotte, being first duly sworn, deposes and says:

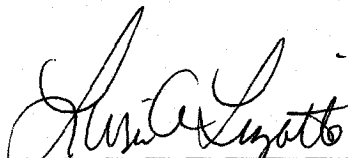
7 1. I am the Court Recorder in Department 2 of the Eighth Judicial
8 District Court, and as such responsible for the preparation of the rough draft
9 transcripts in Case No. C177394, State of Nevada versus Kirsten Blaise Lobato.

10 2. A Request for Rough Draft Transcripts was filed with District Court
11 on March 12, 2007.


12 3. Because of our department's heavy motion calendar and trial
13 schedule, I assigned the typing of the transcripts to an outside transcription
14 service.

15 4. Gayle Lutz, owner of said transcription service, has advised me that
16 because of the length of the request, approximately 20 days of trial and 17
17 motions, the rough draft transcript will not be completed within the 20 days
18 allowed by Rule 3C of the Nevada Rules of Civil Procedure.

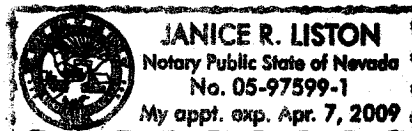
19 6. Therefore, affiant respectfully request that this Court enter an order
20 granting an extension of time for said transcripts to be filed to and including
21 June 1, 2007.

22 
23 _____
LISA A. LIZOTTE

24 SUBSCRIBED AND SWORN to
before me this 14th day of March, 2007.

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Notary Public




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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of March, 2007, I served the foregoing Motion for Extension of Time on the following persons, by the method indicated:

District Attorney's Office - Appellate Division
[by thousand miler]

David M. Schieck
Special Public Defender
(by thousand miler)



LISA A. LIZOTTE