

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAIMON MONROE,

Appellant,

VS.

THE STATE OF NEVADA,

Respondent.

Case No. 52788

Electronically Filed
Dec 08 2009 10:56 a.m.
Tracie K. Lindeman

APPELLANT'S APPLICATION FOR EXTENSION OF TIME
IN WHICH TO FILE REPLY BRIEF

COMES NOW Appellant , by and through MARTIN HART ESQ., and moves this Honorable Court to grant a sixty (60) extension of time from December 5, 2009, through and including February 4, 2010, within which to file the Reply Brief in the above entitled case.

This Motion is based upon the Memorandum of Authorities and the Affidavit of Counsel attached hereto.

DATED this 7th day of Dember, 2009.

THE LAW OFFICES OF MARTIN HART LLC

By

MARTIN HART, #5984
229 So. Las Vegas Blvd, Suite #200
Las Vegas, Nevada 89101
(702) 380-4278

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 NRAP 26 governs computing and extending time, and reads, in pertinent part:

3 For good cause, the court may extend the time prescribed by these
4 Rules or by its order to perform any act, or may permit an act to be
 done after that time expires. NRAP 26 (b)(1)(A).

5 Appellant can demonstrate good cause, as described in further detail herein below and in the
6 attached Affidavit of Counsel.

7 Appellant currently has three direct appeals, in three different case (Nos. 52916, 52234 and
8 52788) pending before this Court. The convictions in the instant matter arise from a gun recovered
9 as a result of an executed search warrant. However, the information which was the basis for the
10 warrants was obtained from recorded phone conversions while Petitioner was in custody on charges
11 currently under appeal in Nevada Supreme Court Docket No. 52234.

12 In Supreme Court Docket No. 52234, Petitioner contends that the district erred in failing to
13 suppress the evidence obtained from a warrantless search of his van. In the instant matter, it is
14 Petitioner's contention that Petitioner's imprisonment was unlawful and therefore, the remaining
15 evidence obtained as a result of his detention is "fruit of the poisonous tree."

16 In Supreme Court Docket No. 52234, this Court reversed and remanded the case on
17 September 10, 2009. Respondent filed a Petition for Rehearing on September 25, 2009 which was
18 denied on October 26, 2009. Thereafter, on November 4, 2009, Respondent filed a Petition for
19 Rehearing en Banc, which is currently pending before this Court.


20 Any decision in Docket No. 52234 will affect Petitioner's argument in the instant case as
21 the issues of both cases are so interwoven. Furthermore, there is a distinct chance that the outcome
22 of Docket No. 52234 will render the appeal in the instant matter moot. As such, in the interest of
23 judicial economy and county resources, appellate requests that this Court suspend the briefing in this
24 appeal until the decision is rendered in Docket No. 52234.

25 Alternatively, counsel for Appellate requests an extension of time. In this matter, the State
26 received at least three extensions of time in which to file their Response. The multiple cases and
27 continuances caused confusion resulting in a calendaring error; a reply date was not calendared in
28 this matter. Counsel, a sole practitioner currently has several Appellate and trial court deadlines

1 during the motion of December, therefore, counsel for Appellant asserts that there is good cause for
2 an extension of time from December 5, 2009 to February 4, 2010 and would request an extension
3 until that time.

4 DATED this 7th day of December, 2009.

5 THE LAW OFFICES OF MARTIN HART LLC

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7 By 
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9 229 So. Las Vegas Blvd, Suite #200
10 Las Vegas, Nevada 89101
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1 **AFFIDAVIT OF COUNSEL**

2 STATE OF NEVADA)
3 COUNTY OF CLARK) ss:

4 I, Marty Hart being first duly sworn, and upon information and belief, deposes and says:

5 1. That I am an attorney duly licensed to practice law in the State of Nevada and represent
6 DAIMON MONROE A/K/A DAIMON DEVI HOYT on three appeals currently pending before this
7 Court.

8 2. That the Reply Brief was due to be filed on or before December 5, 2009.

9 3. The convictions in the instant matter arise from a gun recovered as a result of an executed
10 search warrant. However, the information which was the basis for the warrants was obtained from
11 recorded phone conversions while Petitioner was in custody on charges currently under appeal in
12 Nevada Supreme Court Docket No. 52234.

13 4. In the aforementioned appeal (Supreme Court Docket No. 52234), Petitioner contends
14 that the district erred in failing to suppress the evidence obtained from a warrantless search of his
15 van.

16 5. In the instant matter, it is Petitioner's contention that Petitioner's imprisonment was
17 unlawful and therefore, the remaining evidence obtained as a result of his detention is "fruit of the
18 poisonous tree."

19 6. In Supreme Court Docket No. 52234, this Court reversed and remanded the case on
20 September 10, 2009. Respondent filed a Petition for Rehearing on September 25, 2009 which was
21 denied on October 26, 2009. Thereafter, on November 4, 2009, Respondent filed a Petition for
22 Rehearing en Banc, which is currently pending before this Court.

23 7. Any decision in Docket No. 52234 will affect Petitioner's argument in the instant case
24 as the issues of both cases are so interwoven. Furthermore, there is a distinct chance that the
25 outcome of Docket No. 52234 will render the appeal in the instant matter moot. As such an
26 extension of time is necessary.

27 8. Alternatively, counsel for Appellate requests an extension of time. In this matter, the
28 State received at least three extensions of time in which to file their Response. The multiple cases

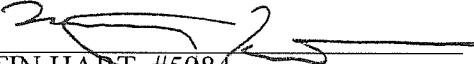
1 and continuances caused confusion resulting in a calendaring error; a reply date was not calendared
2 in this matter.

3 9. Counsel, a sole practitioner currently has several Appellate and trial court deadlines during
4 the motion of December, therefore, counsel for Appellant asserts that there is good cause for an
5 extension of time from December 5, 2009 to February 4, 2010 and would request an extension until
6 that time.

7 8. This request for extension of time is made in good faith and not for the purposes of
8 delay.

9 DATED this 7th day of December, 2009.

10 THE LAW OFFICES OF MARTIN HART LLC

11
12 By 
13 MARTIN HART, #5984
14 229 So. Las Vegas Blvd, Suite #200
15 Las Vegas, Nevada 89101
(702) 380-4278

16 SUBSCRIBED AND SWORN to before me
17 this 7th day of December, 2009.

18
19 NOTARY PUBLIC in and for
20 said County and State.

