

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3           BRIAN KERRY O'KEEFE,

4                           Appellant,

5                           vs.

6           THE STATE OF NEVADA,

7                           Respondent.

Case No. 53859

District Court Case No. C250630

Electronically Filed  
Aug 03 2009 01:55 p.m.

Tracie K. Lindeman

8  
9                                   **MOTION FOR EXTENSION OF TIME TO FILE**  
   **FAST TRACK STATEMENT AND APPENDIX**

10           COMES NOW, Appellant, BRIAN O'KEEFE, by and through his attorneys, DAVID M.  
11   SCHIECK, Special Public Defender and JoNELL THOMAS, Deputy Special Public Defender,  
12   and moves this Court for an Order granting an extension of time to file Appellant's Fast Track  
13   Statement and Appendix. Counsel is requesting 2 weeks, up to and including August 17, 2009.

14           This Motion is made and based upon NRAP 31, and the Declaration attached hereto.

15           DATED this 3<sup>rd</sup> day of August, 2009.

16                                   SUBMITTED BY:  
17                                   DAVID M. SCHIECK  
18                                   SPECIAL PUBLIC DEFENDER

19                                   \_\_\_\_\_  
20                                   JoNell THOMAS  
21                                   Deputy Special Public Defender  
22                                   330 S. Third St., Ste. 800  
23                                   Las Vegas, Nevada 89155  
24                                   702-455-6265  
25                                   Attorney for Appellant

26                                   **STATEMENT OF FACTS**

27           This appeal was docketed in the Nevada Supreme Court on May 26, 2009 and the Fast  
28   Track Notice was mailed to counsel on the same date. Appellant filed a Motion for Waiver of  
Application of NRAP 3C and Request for Full Briefing on May 29, 2009. This Court issued its  
Order Denying Motion on June 4, 2009 and granted Appellant 60 days from the date of the  
Order to file the Fast Track Statement and Appendix. In addition, they granted Appellant leave

1 to file a Motion for Excess Pages, if deemed necessary

2 The Fast Track Statement and Appendix are due August 3, 2009.

3 POINTS AND AUTHORITIES

4 NRAP 3C(h)(2) states "...Subsequent extensions of time for filing fast track  
5 statements...shall be granted only upon motion to the Supreme Court....." The Court has granted  
6 an initial extension and Appellant is requesting an extension of 2 weeks to file the Fast Track  
7 Statement based on the Declaration of Counsel attached hereto. The granting of this Motion  
8 would not prejudice the State.

9 CONCLUSION

10 An extension of time of 2 weeks, up to and including August 17, 2009, is requested to  
11 file the Fast Track and Appendix.

12 DATED this 3<sup>rd</sup> day of August, 2009.

13 SUBMITTED BY:

14 DAVID M. SCHIECK  
15 SPECIAL PUBLIC DEFENDER

16 JoNell THOMAS  
17 Deputy Special Public Defender  
18 Nevada Bar No. 4771  
19 330 S. Third St., Ste. 800  
Las Vegas, Nevada 89155

20 DECLARATION OF JONELL THOMAS

21 JONELL THOMAS makes the following declaration:

22 I am the Deputy Special Public Defender representing Mr. O'Keefe on his direct  
23 appeal in the instant case.

24 The Fast Track Statement and Appendix is due August 3, 2009.

25 The online research program, Lexis Nexis, used by the Special Public Defender's  
26 office has been unavailable since last week. That the program has come back online this  
27 morning but due to the reasons set forth hereinbelow I would be unable to complete and file  
28 the Fast Track Statement today and will need an extension of 2 weeks to complete the Fast

1 Track Statement.

2 I am the deputy assigned James Harrison v. State of Nevada; that Mr. Harrison's oral  
3 argument on his appeal to Ninth Circuit Court of Appeals is being heard on Monday August  
4 10, 2009 in San Francisco CA. As I expected to have completed Mr. O'Keefe's Fast Track  
5 Statement by today, I had already committed this week to appointments and mock sessions  
6 with deputies of the Federal Public Defender's Office and for preparation for the oral  
7 argument in the Ninth Circuit.

8 In addition, Mr. O'Keefe was convicted of a category A offense but his case is not  
9 automatically excluded from Fast Track treatment under Rule 3C(a) because he did not  
10 receive either a sentence of death or imprisonment in the state prison for life with or without  
11 the possibility of parole. The Motion to remove the case from the Fast Track treatment was  
12 denied by this Court.

13 Mr. O'Keefe's was prosecuted as a First Degree Murder Case, therefore the trial  
14 issues and evidence were more complicated than a standard felony prosecution. Given the  
15 nature of the case, the issues to be raised are extensive and there is still quite a bit of research  
16 needed to be done. Without Lexis Nexis this was impossible. Therefore, I am requesting an  
17 extension of time of 2 weeks to finish and file the Fast Track Statement.

18 I declare under penalty of perjury that the foregoing is true and correct. (NRS  
19 53.045).

20 EXECUTED this 3<sup>rd</sup> day of August, 2009.

21  
22  
23 \_\_\_\_\_  
24 JONELL THOMAS  
25  
26  
27  
28

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 SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 3<sup>rd</sup> day of August, 2009. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO, Nevada Attorney General

STEVE OWENS, Deputy District Attorney

an employee of the Special Public Defender's Office