

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. 53859

District Court Case No. C250630

FILED

MAY 29 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

**MOTION FOR WAIVER OF APPLICATION OF NRAP 3C
AND REQUEST FOR FULL BRIEFING**

COMES NOW Appellant, BRIAN O'KEEFE, by and through his attorney, DAVID M. SCHIECK, Special Public Defender, and JONELL THOMAS, Deputy Special Public Defender, and hereby requests that this Honorable Court exercise its discretion and waive the application of NRAP 3C and the Fast Track Criminal Appeals rules, thus allowing O'Keefe to complete a full briefing.

This Motion is based upon the Points and Authorities attached hereto.

DATED this 27th day of May, 2009.

DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER

[Signature]
JONELL THOMAS
Nevada Bar #4771
330 S. Third St., 8th Floor
Las Vegas, Nevada 89155
(702) 455-6265

POINTS AND AUTHORITIES

Appellant BRIAN O'KEEFE (hereinafter referred to as O'Keefe) was convicted of Second Degree Murder with Use of a Deadly Weapon. Even though the instant case involves a category A felony, it is subject to NRAP 3C, the Fast Track Criminal Appeal Process, as O'Keefe was sentenced as follows: maximum twenty-five (25) years with a minimum parole eligibility of ten (10) years plus a consecutive term of two hundred forth (240) months with a

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1 minimum parole eligibility of ninety-six (96) months for the use of a deadly weapon; with one
2 hundred eighty-one (181) days credit for time served.

3 NRAP 3C(a) reads as follows:

4 This Rule is applicable to an appeal from a judgment or order of a
5 district court entered in a criminal or post-conviction proceeding
6 commenced after September 1, 1996, whether the appellant is the
7 State or the defendant. A proceeding is commenced for the
8 purposes of this Rule upon the filing of an indictment, information,
9 or post-conviction application in the district court. The Supreme
10 Court may exercise its discretion and apply this Rule to appeals
11 arising from criminal and post-conviction proceedings that are not
12 subject to this Rule. Unless the court otherwise orders, an appeal
13 is not subject to this Rule if:

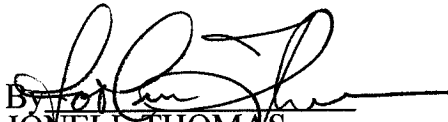
- 14 (1) the appeal challenges an order or judgment in a case
15 involving a category A felony, as described in NRS
16 193.130(2)(a), in which a sentence of death or imprisonment
17 in the state prison for life with or without the possibility of
18 parole is actually imposed, or
- 19 (2) the appeal is brought by a proper person defendant or
20 petitioner.

21 O'Keefe was convicted of a category A offense but his case is not automatically excluded
22 from Fast Track treatment under Rule 3C(a) because he did not receive either a sentence of death
23 or imprisonment in the state prison for life with or without the possibility of parole. Although
24 O'Keefe was not sentenced to life in prison, that was a possible sentence, and an 18-45 year
25 sentence to a 45 year old man is, in all likelihood a life sentence. This was prosecuted as a First
26 Degree Murder Case, therefore the trial issues and evidence were more complicated than a
27 standard felony prosecution. Given the nature of the case, the jury selection process must also
28 be reviewed in greater detail, requiring additional time to cull out only the necessary portions
of the record on appeal. There were over 300 photographs admitted into evidence due to the
Hepatitis C contamination of the physical evidence; and the joint decision of the State and
Defense to not require the biologically dangerous items to be brought to court will require
additional time within the evidence vault in the Courthouse to determine what exhibit
photographs should be included. The medical and psychological records of the deceased, being
offered but denied, must be compared closely to the actual testimony at trial, not just for overall
prejudice.

1 O'Keefe's case is a complicated case. Treatment under the Fast track rules with a 10 page
2 limit would be unduly restrictive and burdensome in this particular case. The 10 page limitation
3 could not provide this Court with sufficient information to adequately review the record.

4 Therefore, it is respectfully requested that this Honorable Supreme Court waive the
5 requirements of Rule 3C and allow the parties in this appeal to present a full briefing of the
6 issues presented.

7 DAVID M. SCHIECK
8 SPECIAL PUBLIC DEFENDER

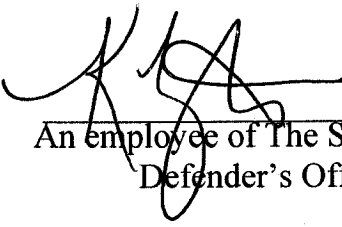
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11 
12 JONELL THOMAS
13 Nevada Bar #4771
14 330 S. Third St., 8th Floor
15 Las Vegas, Nevada 89155
16 (702) 455-6265

17 **CERTIFICATE OF MAILING**

18 The undersigned does hereby certify that on the 21 day of May, 2009, I deposited in the
19 United States Post Office at Las Vegas, Nevada, a copy of the foregoing Motion, postage
20 prepaid, addressed to the following:

21 District Attorney's Office
22 200 Lewis Ave., 3rd Floor
23 Las Vegas NV 89155

24 Nevada Attorney General
25 100 N. Carson
26 Carson City NV 89701-4717

27 
28 An employee of The Special Public
Defender's Office