

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Aug 27 2010 09:37 a.m.
Tracie K. Lindeman

LUIS A, HIDALGO, JR.

Appellant,

CASE NO. 54209

vs.

THE STATE OF NEVADA

Respondent.

LUIS A, HIDALGO, III

Appellant,

CASE NO. 54272

vs.

THE STATE OF NEVADA

Respondent.

**LUIS A. HIDALGO, JR.'S AND LUIS HILDALGO. III'S JOINT MOTION FOR A
FOURTH EXTENSION OF TIME TO FILE OPENING BRIEF**

COMES NOW Appellants, Luis A. Hidalgo, Jr. (hereinafter "Hidalgo Jr."), by and through his counsel, Dominic P. Gentile, Esq., and Paola M. Armeni, Esq., of the law firm of Gordon Silver, and Luis A. Hidalgo, III. (hereinafter "Hidalgo III"), by and through his counsel, John L. Arrascada, Esq. of the law firm of Arrascada & Arrascada Ltd., and jointly file this Motion for Extension of Time to file Opening Brief based upon NRAP 31(a)(1) and NRAP 26(d).

NRAP 26(d) states, in pertinent part, that "time provided in any of theses rules within which an act shall be done, may be extended or shortened . . . by order of the court or a justice thereof upon good cause shown. NRAP 26(d). Further, NRAP 31(a)(1) states, in pertinent part, that "[a]pplications for extensions of time beyond that which the parties are permitted to stipulate

1 . . . will be considered only on motion for good cause clearly shown, or ex parte in cases of
2 extreme and unforeseeable emergency." NRAP 31(a)(1).

3 This Motion is made and based on the following:

4 **REGARDING HIDALGO Jr. Counsel's good cause for an extension of time:**

5 1. Counsel for Appellant Hidalgo Jr. has now spent close to 160 hours reading,
6 digesting and assimilating the record and conducting preliminary research into the legal issues
7 and most of this 160 hours has been spent since the last request for extension from June 28,
8 2010, through today, to focus on this appeal and prepare the Opening Brief in the instant matter,
9 currently due on August 27, 2010.

10 2. In the course of reading through the transcripts in this matter, counsel has
11 discovered that there are errors in certain transcripts that must be corrected by the District Court
12 to make the record clear. The issues that need to be corrected are important to the instant appeal.

13 a. Anabel Espindola, an accomplice who sat for over thirty months prior to
14 'cooperating' and did so only after this Honorable Court ordered the Death Penalty
15 stricken; but while the State had a Petition for Rehearing pending; participated in a post-
16 deal interview. This interview was not recorded despite the fact that her original
17 interview which took place May 24, 2005, was both video and audio recorded as were the
18 original interviews of all of her alleged co-conspirators/accomplices recorded via video
19 and audio. Despite, there being no video or audio of Espindola's post-deal interview,
20 notes from the interview existed which memorialized what was said by her. The defense
21 demanded the notes¹ and the District Court denied the request². The defense renewed the
22 request on January 29, 2009³. After a thorough review of the transcripts, there is
23 absolutely no record that the Court (1) denied the Motion; (2) ordered the notes to be
24 made a Court's exhibit and (3) NOW cannot be found. It leaves counsel to believe that
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26 ¹ The defense filed a Motion to Compel Production of Handwritten Notes or Other Recordings of Statements of
Defendant Anabel Espindola filed on February 8, 2008.

27 ² Transcript of Motions - February 14, 2008, p. 44-45.

28 ³ Transcript of Trial - January 29, 2009 transcript, p. 235-236.

1 that these events have either not yet been transcribed or were never recorded. It is
2 imperative that this issue is clarified with the District Court and in turn the transcript be
3 corrected so that the record is clear. It may be necessary for defense counsel to review
4 the video system utilized by the district court so as to assist the district court in
5 memorializing what in fact occurred in regard to the post-deal interview notes relating to
6 Anabel Espindola and in turn allowing a corrected transcript to be produced.

7 b. In addition, there is a very important aspect of the transcript that needs
8 correction as to the Jury Instruction Settlement Conference on February 12, 2009, page
9 70 lines 12 through 19. At line 13 the words "is in the" should read "isn't" and at line 16
10 the word "not" was never said at all.

11 3. Counsel flew to Kansas City, Missouri, on July 11, 2010 to attend depositions in a
12 federal civil matter and did not return to Las Vegas until late in the evening on July 13, 2010.

13 4. Counsel was involved in an evidentiary hearing from July 26, 2010 through July
14 29, 2010, and is still continuing on in the matter of *State of Nevada v. Tamara and Michael*
15 *Farrell*, Department XV, District Court, Clark County, Nevada Case No. C258223.

16 5. Counsel was involved in several depositions in the matter of *Tannoury v.*
17 *Fernandez*, Department XIII, District Court, Clark County, Nevada, Case No. C258223 since the
18 last motion for extension of time.

19 6. Counsel believes that at least an additional 150 hours must be spent on this
20 project, including time to research and write two issues of constitutional magnitude and first
21 impression in the State of Nevada, time to collaborate with, John Arrascada, counsel for
22 Defendant/Appellant, Luis Hidalgo, III, in Appeal No. 54272, and time to travel to Southern
23 Desert Correctional Center in Indian Springs, Nevada to visit and discuss same with counsel's
24 client.

25 7. Counsel Gentile committed to attend and participated on the panel of presenters
26 for the Trial Academy hosted by the Young Lawyers Section of the Nevada State Bar at the State
27 Bar Conference in Monterrey, California from June 24, 2010 through and including June 27,
28 2010. Specifically, counsel was a Presenter during sessions involving Closing Arguments and

1 Jury Instructions as well as a Team Instructor. Counsel committed to participate in this
2 Conference and related activities months in advance.

3 8. The jury trial in the instant matter lasted for three (3) weeks and the record
4 contains fifteen (15) volumes with approximately 3359 pages, exclusive of pretrial and post-trial
5 motions which appellate issues are also involved.

6 9. Because of the above, Counsel has been unable to adequately and competently
7 perform his appellate services for Hidalgo Jr. due to the immensity of the trial transcripts and
8 complexity of the appealable issues.

9 **REGARDING HIDALGO III's Counsel's good cause for an extension of time:**

10 10. Counsel for Appellant Hidalgo III. budgeted similar time as Hidalgo Jr.'s counsel
11 for this brief. Counsel for Hidalgo III has previously advised this Court in a prior motion for
12 extension of time that there exists mutual issues from this joint trial of both Appellants. The
13 mutual issues include (2) key issues in these Appeals involving two (2) jury instructions.
14 Counsel for Hidalgo III and counsel for Hidalgo Jr. have been working jointly on these two (2)
15 key issues and due to Hidalgo Jr.'s counsel's unforeseen events outlined above, both counsel
16 have been unable to adequately prepare these joint arguments which pertain to issues of first
17 impression with this Court or changes in the law that this court has never addressed.

18 11. These issues are jointly asserted by Hidalgo Jr. and Hidalgo III. and should be
19 consolidated. Accordingly, for the convenience to the Court and the best interests of Appellants,
20 this Court will best be served if it reviews these joint issues simultaneously for consistency
21 purposes and for purposes of reviewing a voluminous record from a single trial.

22 12. This motion is made in good faith and not for purposes of delay.

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1 13. Counsel respectfully asks this Court to grant an additional 90 days from August
2 27, 2010, within which to file Appellants' Opening Brief.

3 Dated this 26th day of August, 2010.

4 GORDON SILVER

5 

6 DOMINIC P. GENTILE

7 Nevada Bar No. 1923

8 PAOLA M. ARMENI, ESQ.

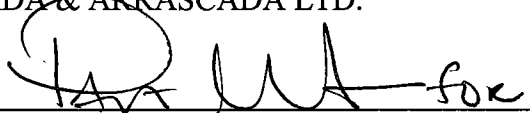
9 Nevada Bar No. 8357

3960 Howard Hughes Pkwy., 9th Floor

Las Vegas, Nevada 89169

Attorney for Appellant Luis A. Hidalgo, Jr.

10 ARRASCADA & ARRASCADA LTD.

11 

12 JOHN L. ARRASCADA

13 Nevada Bar No. 4517

14 145 Ryland St.

15 Reno, Nevada 89501

16 Attorney for Appellant Luis A. Hidalgo, III.

AFFIDAVIT OF PAOLA M. ARMENI, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

PAOLA M. ARMENI, ESQ., having first been duly sworn, deposes and states that:

1. I am an attorney duly licensed to practice before all Courts in the State of Nevada.

2. Dominic Gentile is the court-appointed attorney representing the Appellant/Defendant, Luis Hidalgo, Jr., in the instant matter. John L. Arrascada, Esq. of law firm of Arrascada & Arrascada Ltd. is the court-appointed attorney representing Co-Appellant/Defendant, Luis A. Hidalgo, III, in the instant matter.

3. I am an associate of the law firm of Gordon Silver, located at 3960 Howard Hughes Parkway, 9th Floor, Las Vegas, Nevada 89169. I primarily work under the supervision of Dominic Gentile and work closely with him on the majority of his criminal cases. In that capacity, I was co-counsel for Luis Hidalgo Jr. during his trial.

4. I filed my Notice of Association with this Honorable Court on August 25, 2010 so as to assist Mr. Gentile with the appeal in this matter.

5. Currently, Mr. Gentile is out of the jurisdiction and is unable to sign an affidavit in support of this Motion but nevertheless wanted to file an affidavit. All information provided below was either provided to me by Mr. Gentile or that information in which I have personal knowledge:

a. Mr. Gentile has now spent close to 160 hours reading, digesting and assimilating the record and conducting preliminary research into the legal issues and most of these 160 hours has been spent since the last request for extension from June 28, 2010, through today, to focus on this appeal and prepare the Opening Brief in the instant matter, currently due on August 27, 2010.

b. In the course of reading through the transcripts in this matter, counsel has discovered that there are errors in certain transcripts that must be corrected by the District Court to make the record clear. The issues that need to be corrected are important to the

1 instant appeal.

2 i. For example, Anabel Espindola, an accomplice who sat for over
3 thirty months prior to 'cooperating' and did so only after this Honorable Court
4 ordered the Death Penalty stricken; but while the State had a Petition for
5 Rehearing pending; participated in a post-deal interview. This interview was not
6 recorded despite the fact that her original interview which took place May 24,
7 2005, was both video and audio recorded as were the original interviews of all of
8 her alleged co-conspirators/accomplices recorded via video and audio. Despite,
9 there being no video or audio of Espindola's post-deal interview, notes from the
10 interview existed which memorialized what was said by her. The defense
11 demanded the notes and the District Court denied the request. The defense
12 renewed the request on January 29, 2009. After a thorough review of the
13 transcripts, there is absolutely no record that the Court (1) denied the Motion; (2)
14 ordered the notes to be made a Court's exhibit and (3) NOW cannot be found. It
15 leaves counsel to believe that that these events have either not yet been
16 transcribed or were never recorded. It is imperative that this issue is clarified with
17 the District Court and in turn the transcript be corrected so that the record is clear.
18 It may be necessary for defense counsel to review the video system utilized by the
19 district court so as to assist the district court in memorializing what in fact
20 occurred in regard to the post-deal interview notes relating to Anabel Espindola
21 and in turn allowing a corrected transcript to be produced.

22 ii. In addition, there is a very important aspect of the transcript that
23 needs correction as to the Jury Instruction Settlement Conference on February 12,
24 2009, page 70 lines 12 through 19. At line 13 the words "is in the" should read
25 "isn't" and at line 16 the word "not" was never said at all.

26 c. Mr. Gentile flew to Kansas City, Missouri, on July 11, 2010 to attend
27 depositions in a federal civil matter and did not return to Las Vegas until late in the
28 evening on July 13, 2010.

1 d. Mr. Gentile and I were both involved in an evidentiary hearing from July
2 26, 2010 through July 29, 2010, in the matter of *State of Nevada v. Tamara and Michael*
3 *Farrell*, Department XV, District Court, Clark County, Nevada, Case No. C258223. The
4 evidentiary hearing is not completed and will continue during the week of September 7,
5 2010.

6 e. Mr. Gentile was involved in several depositions in the matter of *Tannoury*
7 *v. Fernandez*, Department XIII, District Court, Clark County, Nevada, Case No.
8 A571770, since the last motion for extension of time.

9 f. Mr. Gentile also committed to attend and participated on the panel of
10 presenters for the Trial Academy hosted by the Young Lawyers Section of the Nevada
11 State Bar at the State Bar Conference in Monterrey, California from June 24, 2010
12 through and including June 27, 2010. Specifically, he was a Presenter during sessions
13 involving Closing Arguments and Jury Instructions as well as a Team Instructor. He
14 committed to participate in this Conference and related activities months in advance.

15 g. The jury trial in the instant matter lasted for three (3) weeks and the record
16 contains fifteen (15) volumes with approximately 3359 pages, exclusive of pretrial and
17 post-trial motions which appellate issues are also involved.

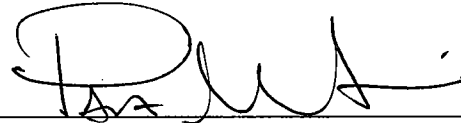
18 h. Mr. Gentile believes that at least an additional 150 hours must be spent on
19 this project, including time to research and write at least two issues of constitutional
20 magnitude and first impression in the State of Nevada, in addition to additional
21 evidentiary issues that arose at trial, time to collaborate with John Arrascada, counsel for
22 Defendant/Appellant, Luis Hidalgo, III, in Appeal No. 54272, and time to travel to
23 Southern Desert Correction Center at Indian Springs, Nevada to visit and discuss same
24 with my client.

25 i. Because of the above, Mr. Gentile has been unable to adequately and
26 competently perform his appellate services for Hidalgo Jr. due to the immensity of the
27 trial transcripts and complexity of the appealable issues.

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1 j. Furthermore, two (2) key issues in this Appeal involve two (2) separate
2 jury instructions. These issues are jointly asserted by Hidalgo III and Hidalgo Jr. and
3 should be consolidated. Accordingly, the convenience to the Court and the interests of
4 Appellants will best be served if the Court reviews these joint issues simultaneously for
5 consistency purposes.


6 Further, Affiant sayeth naught.

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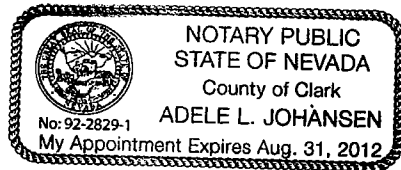
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10 PAOLA M. ARMENI

11 **SUBSCRIBED and SWORN** to before me

12 this 26th day of August, 2010.

13 

14 **NOTARY PUBLIC** in and for said County
15 And State

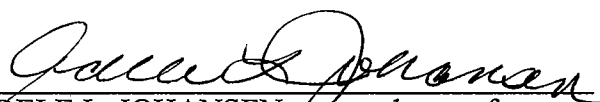


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CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 26th day of August, 2010, she served a copy of the LUIS A. HIDALGO, JR.'S and LUIS A. HIDALGO, III'S JOINT MOTION FOR A FOURTH EXTENSION OF TIME TO FILE OPENING BRIEF, by facsimile, and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Nancy A. Becker
Chief Deputy District Attorney
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155


ADELE L. JOHANSEN, an employee of
GORDON SILVER