

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS A, HIDALGO, JR.

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

CASE NO. 54209

Electronically Filed
Nov 16 2012 02:22 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

MOTION TO STAY REMITTUR

COMES NOW, Appellant, Luis A. Hidalgo, Jr., by and through his counsel of record, Dominic P. Gentile, Esq., of the law firm of Gordon Silver, and respectfully requests this Court stay issuance of the remittitur pending application to the United States Supreme Court for a Petition for Writ of Certiorari.

NRAP 41(b)(1) states that Petitioner may file a motion to stay the remittitur pending application to the United States Supreme Court for a Petition for Writ of Certiorari. Pursuant to the rules of the United States Supreme Court, the petition for writ of certiorari must be filed within 90 days from the date of denial.

The Order Denying *En Banc* Reconsideration was filed November 13, 2012. Counsel requests that the time to issue the Remittitur be enlarged and respectfully

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requests this Court enter an Order to Stay Issuance of the Remittitur pending the application to the United States Supreme Court for a Petition for Writ of Certiorari.

DATED this 16 day of November, 2012.

GORDON SILVER



DOMINIC P. GENTILE, ESQ.

State Bar No. 1923

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(702) 796-5555

Attorneys for Appellant

POINTS AND AUTHORITIES

Nevada Rules of Appellate Procedure Rule 41 provides in pertinent part:

(a) When issued. The court's remittitur shall issue 25 days after the entry of judgment unless the time is shortened or enlarged by order. Unless an appeal or other proceeding is dismissed under Rule 42, a formal remittitur shall issue. The timely filing of a petition for hearing or en banc reconsideration stays the remittitur until disposition of the petition, unless the court orders otherwise. If the petition is denied, the remittitur shall issue 25 days after entry of the order denying the petition, unless the time is shortened or enlarged by order.

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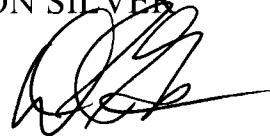
“(b) Stay of remittitur pending application for certiorari. (1) A party may file a motion to stay the remittitur pending application to the Supreme Court of the United States. The motion must be served on all parties. (2) The stay shall not exceed 120 days unless the period is extended for cause shown. If during the period of the stay there is filed with the clerk of the Supreme Court of Nevada a notice from the

clerk of the Supreme Court of the United States that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court of the United States. (3) The court may require a bond or other security as a condition to granting or continuing a stay of the remittitur. (4) The Court shall issue the remittitur immediately when a copy of an order of the United States Supreme Court denying the petition for writ of certiorari the remittitur shall issue immediately.

Good cause exists for stay of remittitur in this case due to the nature of the issues intended to be raised in the application for certiorari. The November 13, 2012 decision necessitates the propriety of the decision should be scrutinized by the highest Court in the land. A stay of remittitur is therefore respectfully requested.

Dated this 16th day of November, 2012.

GORDON SILVER



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Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 16 day of November, 2012, she served a copy of the Motion to Stay Remittur, by Electronic Service, in accordance with the Master Service List as follows:

Steven S. Owens
Chief Deputy District Attorney
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