

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

2
3
4 LESEAN TARUS COLLINS,

5 Appellant,

6 vs.

7 THE STATE OF NEVADA,

8 Respondent.
9
10

Electronically Filed
Jun 24 2011 10:02 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No. 55716

11 **APPELLANT'S MOTION FOR EXTENSION OF TIME**
12 **DUE TO MISSING TRANSCRIPT**

13 COMES NOW Appellant LESEAN TARUS COLLINS, by and through
14 Deputy Public Defender, P. DAVID WESTBROOK, and moves this Honorable Court to
15 grant a thirty (30) day extension of time from Thursday, June 23, 2011, through and
16 including Monday, July 25, 2011, within which to file the Opening Brief in the above
17 entitled case.
18

19 This Motion is based upon the attached declaration of counsel.

20 DATED this 23rd day of June, 2011.

21
22 PHILIP J. KOHN
23 CLARK COUNTY PUBLIC DEFENDER

24 By 

25
26 P. DAVID WESTBROOK, #9278
27 Deputy Public Defender
28 309 So. Third Street, Suite #226
 Las Vegas, Nevada 89155-2610
 (702) 455-4685

1 **DECLARATION OF P. DAVID WESTBROOK**

2 1. I am an attorney duly licensed to practice law in the State of Nevada and
3 the Deputy Public Defender assigned to represent LESEAN TARUS COLLINS on
4 appeal currently pending before this Court.
5

6 2. As the Court is aware, the instant case was last continued because of a
7 missing transcript. On November 2, 2009, defense attorneys Tierra Jones and Abbey
8 Parolise moved to continue Mr. Collins' trial because they were unready to proceed.
9 Also present on that day was defense attorney, Ivette Maningo. Ms. Maningo represents
10 Mr. Collins in a pending First Degree Murder case.
11

12 Ms. Jones and Ms. Parolise made an extensive record detailing the grounds for the
13 continuance. In order to perfect their record, they were forced to reveal their trial
14 strategy. The District Attorney was therefore excluded from the courtroom during the
15 argument and the transcript was sealed.
16
17

18 3. On or about May 17, 2009, I filed a "Motion to Allow Attorneys for
19 Lesean Collins to Review Sealed Video November 2, 2009 Motion Argument in
20 Camera." I made it clear in the motion that I believed the sealed transcript was necessary
21 to the instant appeal, but that I wanted to review it in camera with Ms. Maningo *before* it
22 was unsealed. Ms. Maningo was concerned that the transcript may contain details of the
23 defense strategy in Mr. Collins' pending murder case. Obviously, releasing such details
24 to the district attorney would prejudice Mr. Collins' right to a fair trial.
25
26

27 My motion was argued in District Court XII on June 2, 2011. Judge Michelle
28 Leavitt said that she listened to a recording of the November 2nd and that, in her opinion,

1 it did not contain any information that would prejudice Mr. Collins' murder case. The
2 Court felt the transcript would be necessary for appeal, and orally ordered that the
3 argument be unsealed. The State was asked to prepare a written order.
4

5 4. According to court records, an order was prepared and filed on June 15,
6 2011. I was not given the opportunity to review the order prior to filing, nor did I receive
7 a copy of the order after it was filed.
8

9 5. On June 21, 2011, I asked my secretary to check the status of the transcript.
10 She left a message with court recorder, Kerry Esparza. Ms. Esparza returned the call the
11 next day. Ms. Esparza said that she never received the court's order. Additionally, the
12 order prepared by the State only referenced the video recording of the argument; it said
13 nothing about preparing a transcript for use in the appeal.
14

15 6. After receiving this information, we immediately filed a request for
16 transcript of proceedings.
17

18 7. I have absolutely no desire to delay the instant appeal, and Mr. Collins is
19 certainly anxious for the case to move forward. However, I simply cannot complete the
20 opening brief without this transcript. Though I have still never been afforded the
21 opportunity to review the record, Judge Leavitt made it clear during the recent motion
22 argument that the transcript would be relevant for purposes of appeal.
23

24 8. To proceed without the transcript would deny Lesean Collins effective
25 assistance of counsel and due process. I am therefore requesting a 30 day continuance to
26 allow the court reporter to prepare and deliver the transcript.
27
28

1 I declare under penalty of perjury that the foregoing is true and correct to
2 the best of my information and belief.

3 EXECUTED on the 23rd day of June, 2011.

4
5 
6 P. DAVID WESTBROOK
7

8
9 **CERTIFICATE OF SERVICE**

10 I hereby certify that this document was filed electronically with the Nevada
11 Supreme Court on the 23rd day of June, 2011. Electronic Service of the foregoing
12 document shall be made in accordance with the Master Service List as follows:
13


14 CATHERINE CORTEZ MASTO
15 STEVEN S. OWENS

P. DAVID WESTBROOK
HOWARD S. BROOKS

16 I further certify that I served a copy of this document by mailing a true and
17 correct copy thereof, postage pre-paid, addressed to:

18 LESEAN TARUS COLLINS
19 NDOC No. 85039
20 c/o High Desert State Prison
21 P.O. Box 650
22 Indian Springs, NV 89070

23
24 BY


Employee, Clark County Public
Defender's Office