

IN THE SUPREME COURT OF THE STATE OF NEVADA

NORMAN FLOWERS

Electronically Filed
Oct 09 2018 04:15 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 53159 Consolidated with 55759

Direct Appeal From A Judgment of Conviction.
Amended Judgment of Conviction, and
Order Denying Motion for New Trial
Eighth Judicial District Court
The Honorable Kathy Hardcastle, District Judge
and The Honorable Linda Bell, District Judge
District Court No. C228755

**MOTION FOR EXTENSION OF TIME TO REFILE THE
APPENDICES IN VOLUMES 1 THROUGH 3 (FIRST REQUEST)**

JoNell Thomas
State Bar #4771
Special Public Defender
330 South 3rd Street
Las Vegas, NV 89155
(702) 455-6265
Attorneys for FLOWERS

Comes now the Appellant Norman Flowers, by and through his attorney Special Public Defender JoNell Thomas, and respectfully moves this Honorable Court for an extension of time to refile Appellant's appendices as directed in this Court's Order dated August 16, 2018. Flowers is requesting 2 weeks, up to and including October 24, 2018. This is Flowers' first request for an extension of time to refile volumes 1 through 3 of the appendices.

This Motion is made and based on NRAP 26(b)(1) and Counsel's Declaration attached hereto.

DATED this 9th day of October, 2018, 2018.

SUBMITTED BY:

/s/ JONELL THOMAS

JONELL THOMAS
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 4771
330 S. Third St., Ste. 800
Las Vegas, Nevada 89155
702-455-6265
Attorney for Appellant Flowers

STATEMENT OF FACTS

Flowers' appeal in Case No. 53159 was consolidated with his appeal in Case No. 55759. The appeals were dismissed on September 28, 2011. On April 18, 2018,

this Court reinstated the appeals. Pursuant to the Court's Order of August 16, 2018, the appendices in Volumes 1 through 3 would need to be refiled as the Court no longer had a complete copy of the appendices (the Court did have Supplemental Volume 4). The Order was directed to counsel for Flowers at that time, the Federal Public Defender's Office, to refile the appendices within 30 days. The Federal Public Defender filed 2 motions on August 23, 2018: to withdraw as attorney for Appellant and to remand the case for appointment of new counsel. On September 14, 2018, the Federal Public Defender filed a motion for extension of time to refile the appendices until after the Court had ruled on the 2 pending motions. The Special Public Defender filed its notice of withdrawal as counsel in case No. 53159, to remove the attorneys of the Special Public Defender from the service lists of the Court, noting that the district court had granted counsel's motion to withdraw as the appeals had been dismissed. On September 20, 2018, this Court filed its Order denying the motion without prejudice, reappointing the Special Public Defender as attorney of record, and ordering that the Special Public Defender had 20 days to comply with the Court's Order of August 16, 2018. Additionally, this Court in its Order of September 27, 2018 removed C.B. Kirschner and the Office of the Federal Public Defender as attorney of record for Appellant Flowers and denied the motion to remand for appointment of counsel.

The instant motion for an extension of time to file the appendices is based on NRAP 26(b)(1)(A), stating in pertinent part: “the court may extend the time prescribed...by its order to perform any act.....”

For the reasons set forth in the declaration attached hereto, counsel for Flowers is requesting a first extension of time to refile volumes 1 through 3 of the appendices. It is respectfully requested that this Court grant this request for a continuance of 14 days for Appellant to refile the appendices, up to and including October 24, 2018.

CONCLUSION

Based on the Declaration attached hereto, Mr. Flowers requests the Court grant his motion for an extension of time to refile the appendices.

DATED this 9th day of October, 2018.

RESPECTFULLY SUBMITTED:

/s/ JONELL THOMAS

JONELL THOMAS
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 4771
330 S. Third St., Ste. 800
Las Vegas, Nevada 89155
702-455-6265
Attorney for Appellant

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DECLARATION OF JONELL THOMAS

JONELL THOMAS, hereby declares as follows:

I am an attorney duly licensed to practice law in the State of Nevada, and the Clark County Special Public Defender. I am also handling Mr. Flowers' appeal in Case No. 53159 consolidated with Case No. 55759. Pursuant to this Court's Order dated September 20, 2018, Appellant has 20 days to refile volumes 1 through 3 of the appendices.

After the appeals in cases 53159 and 55759 were dismissed in 2011, Mr. Flowers requested his file from the Special Public Defender and copies were provided to him in March of 2012. He thereafter filed Post Conviction proceedings against the Special Public Defender, attorney Karen Connelly was appointed in the district court, and she requested Flowers' files, which were provided to her in February, 2014. After his post conviction proceedings were denied, Mr. Flowers filed proceedings in the United States District Court and the Federal Public Defender was appointed. In March of 2017, the remaining files of the Special Public Defender were turned over to the Federal Public Defender, including his appeal files.

The Special Public Defender is attempting to recreate the appendices of Volumes 1 through 3 that were filed with this Court in 2011. At the time of the previous filing, the Special Public Defender was not yet scanning their documents

and therefore we do not have an electronic version of the volumes that were filed.

We were able to download from the court's filing system the pleadings and transcripts, and have just recently received copies of the minutes (which were sealed due to the age of the case) and the exhibits which we believe were submitted as part of the appendices. The page numbers are not coinciding with the documents we have received and the index which we prepared and had saved electronically. It appears that not all the minutes or exhibits were included and that some of the pagination of the pleadings was incorrect which is causing difficulty in recreating the volumes. This has created substantial doubt that the recreated appendix is the same as the original appendix.

We have reached out to the Clark County District Attorney to see if they kept a copy of the appendices but as this case is more than 7 years old, they have destroyed their paper copy. We have called and written to the Federal Public Defender to request that they turn over their files to us as they have been removed as counsel for Appellant and the Special Public Defender has been reappointed. To date, we have not had a response to our request.

It is respectfully requested that this Court grant a continuance of 14 days for counsel to refile the appendices, up to and including October 24, 2018. This should be enough time for counsel to either get the original filed appendices or submit the

3 volumes with updated/corrected pagination based upon my best attempt to recreate the appendix based upon the existing index.

I declare that I make this request in good faith and not for purposes of delay.

/s/ JONELL THOMAS

JONELL THOMAS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 9th day of October, 2018, a copy of the foregoing Motion for Extension of Time to ReFile the Appendices in Volume 1 through 3 (first request) was served as follows:

BY ELECTRONIC FILING TO

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

Nevada Attorney General
100 N. Carson St.
Carson City NV 89701

/s/ JONELL THOMAS

JONELL THOMAS