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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

JASON MCCARTY

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

S.C. CASE NO. 58101

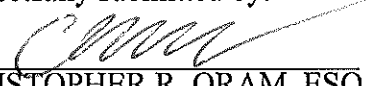
Electronically Filed
Jan 30 2012 04:52 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

MOTION FOR EXTENSION OF TIME TO FILE OPENING BRIEF

COMES NOW, Christopher R. Oram, Esq., attorney for Appellant, JASON MCCARTY, and moves this Court for an Order granting an extension of time of ninety (90) days from the date the Opening Brief is now due, to wit: January 31, 2012, and extend the time to and including, April 30, 2012, for the filing of the Opening Brief. This motion is made and based upon NRAP 27 and 31(a), the Affidavit of Christopher R. Oram, Esq., filed herewith, and the Points and Authorities attached hereto.

DATED this 30th day of January, 2012.

Respectfully submitted by:


CHRISTOPHER R. ORAM, ESQ.
Nevada Bar No. 004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
(702) 384-5563

Attorney for Appellant
JASON MCCARTY

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

POINTS AND AUTHORITIES

Time for Serving and Filing Briefs.

The appellant shall serve and file the OPENING brief within one hundred and twenty (120) days after the date on which the appeal is docketed in the Supreme Court. The respondent shall serve and file his answering brief within thirty (30) days after service of the brief of the appellant. After service of respondent's brief, any OPENING brief must be served and filed within thirty (30) days. . . . By written stipulation timely filed with the Supreme Court, the parties may extend the time for filing any brief for a total of thirty (30) additional days unless the court otherwise orders. Applications for extensions of time beyond that to which the parties are permitted to stipulate are not favored, and will be considered only on motion for good cause clearly shown, or ex parte in cases of extreme and unforeseeable emergency. The Supreme Court may shorten the periods prescribed above for serving and filing briefs, either by rule for all cases or for classes of cases, or by order for specific cases."

Mr. McCarty's Opening Brief is currently due on January 31, 2012. The instant case is an appeal from a murder conviction, and Mr. McCarty is sentenced to death. This request is necessary and not for the purpose of delay.

Mr. McCarty's co-defendant's trial has recently begun (State of Nevada v. Domic Malone, C224572). As this is a capital case, perfecting Mr. McCarty's direct appeal is especially important. The undersigned is concerned about issues of ineffective assistance of counsel on direct appeal. There are several issues on appeal that may arise or be connected to the co-defendant's trial that need to be raised on direct appeal.

Additionally, Mr. Malone's sentence is of great importance for an issue concerning the eighth amendment to the United States Constitution. There are several important factors in the co-defendant's trial that are important to this argument. Moreover, there may be critical differences in the co-defendant's trial from Mr. McCarty's trial that are crucial to the eighth amendment argument.

Mr. McCarty's trial lasted over a month and it is expected that Mr. Malone's will as well. Thereafter, the undersigned will need to review the co-defendant's trial transcripts and sentence to further determine if additional issues are necessary.

Mr. McCarty has attached a copy of the co-defendant's minutes (Exhibit A). Mr. Malone began trial on January 10, 2012. As of the date of this request, Mr. Malone continues in the guilt phase of his trial.

The undersigned has communicated with both defense counsel for Mr. Malone and the

1 prosecutors. During these communication, the undersigned has been trying to obtain as much
2 information as possible regarding the status of Mr. Malone's trial. In fact, Mr. McCarty has made
3 efforts to obtain the daily transcripts from Mr. Malone's trial.

4 The State maintained that Mr. McCarty was guilty of two counts of first degree murder
5 alleging aiding and abetting. The State did not dispute that Mr. McCarty suffered from cerebral
6 palsy and has significant physical handicaps. The two victims were beaten to death with rocks, a
7 golf club, and stabbed with a knife. The State has extensively argued that Mr. Malone provided
8 the "muscle" for the instant case. Mr. McCarty was sentenced to death and is obviously interested
9 in the final resolution of Mr. Malone's trial.

10 Mr. McCarty requests permission to draft an Opening Brief with cites to Mr. Malone's
11 trial transcripts. Mr. McCarty desires to compare the extensive testimony of witnesses in his trial
12 to the witnesses in Mr. Malone. Mr. McCarty desires to compare the arguments made by the State
13 in both trials. Mr. McCarty may raise issues regarding proportionality depending on the jury's
14 verdict and sentence of Mr. Malone.

15 Pursuant to Nevada Rules of Appellate Procedure (NRAP) 3(b)(2), a party may move to
16 consolidate cases. Originally, Mr. McCarty's case was consolidated with Mr. Malone. Thereafter,
17 the district court granted severance. However, for purposes of appeal, this matter should be
18 consolidated. The facts of the case are almost identical. However, according to the rules of
19 appellate procedures, both parties are required to have filed a timely notice of appeal (See, NRAP
20 3(b)(2)). Mr. Malone has not been convicted. Hence, a notice of appeal has not been filed for Mr.
21 Malone.

22 For purposes of judicial economy, Mr. McCarty anticipates citing to Mr. Malone's trial
23 transcripts Yet, Mr. Malone's trial transcripts are not part of the record, nor does Mr. McCarty
24 have access to these transcripts, at this point in time. Mr. Malone's trial is ongoing and it would
25 be very difficult for Mr. McCarty to file the issues necessary without these trial transcripts.

26 Additionally, proportionality between these two defendants must be carefully considered
27 in a capital case. Mr. McCarty does not file this motion for the purpose of delay but out of
28 necessity. Unfortunately, counsel did not foresee this difficulty. It became apparent when the
undersigned realized that Mr. Malone was proceeding to trial that these issues must be properly
developed to avoid accusations of ineffective assistance of counsel.

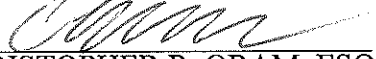
Simultaneously, Mr. McCarty will file a motion to consolidate the two cases (However,

1 Mr. McCarty recognizes that this Court may deem the motion for consolidation premature).

2 Therefore, counsel respectfully request that this Court permit him ninety (90) days in order
3 to properly brief these issues.

4 DATED this 20th day of January, 2012.

5 Respectfully submitted by:

6 
CHRISTOPHER R. ORAM, ESQ.
Nevada Bar #004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada, 89101

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8 Attorney for Appellant
9 JASON MCCARTY
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AFFIDAVIT OF CHRISTOPHER R. ORAM
IN SUPPORT OF MOTION FOR EXTENSION OF TIME
TO FILE OPENING BRIEF

STATE OF NEVADA }
COUNTY OF CLARK } ss:

CHRISTOPHER R. ORAM, ESQ., being first duly sworn, deposes and states:

1. I am an attorney duly licensed to practice law in the State of Nevada. I am counsel for the Appellant in the above-entitled matter. I have personal knowledge of all matters contained herein and am competent to testify thereto.

2. Mr. McCarty's Opening Brief is currently due on January 31, 2012. The instant case is an appeal from a murder conviction, and Mr. McCarty is sentenced to death. This request is necessary and not for the purpose of delay.

3. Mr. McCarty's co-defendant's trial has recently begun (State of Nevada v. Domonic Malone, C224572). As this is a capital case, perfecting Mr. McCarty's direct appeal is especially important. The undersigned is concerned about issues of ineffective assistance of counsel on direct appeal. There are several issues on appeal that may arise or be connected to the co-defendant's trial that need to be raised on direct appeal.

4. Additionally, Mr. Malone's sentence is of great importance for an issue concerning the eighth amendment to the United States Constitution. There are several important factors in the co-defendant's trial that are important to this argument. Moreover, there may be critical differences in the co-defendant's trial from Mr. McCarty's trial that are crucial to the eighth amendment argument.

5. Mr. McCarty's trial lasted over a month and it is expected that Mr. Malone's will as well. Thereafter, the undersigned will need to review the co-defendant's trial transcripts and sentence to further determine if additional issues are necessary.

Mr. McCarty has attached a copy of the co-defendant's minutes (Exhibit A). Mr. Malone began trial on January 10, 2012. As of the date of this request, Mr. Malone continues in the guilt phase of his trial.

6. The undersigned has communicated with both defense counsel for Mr. Malone and the prosecutors. During these communication, the undersigned has been trying to obtain as much

1 information as possible regarding the status of Mr. Malone's trial. In fact, Mr. McCarty has made
2 efforts to obtain the daily transcripts from Mr. Malone's trial. The State maintained that Mr.
3 McCarty was guilty of two counts of first degree murder alleging aiding and abetting. The State
4 did not dispute that Mr. McCarty suffered from cerebral palsy and has significant physical
5 handicaps. The two victims were beaten to death with rocks, a golf club, and stabbed with a knife.
6 The State has extensively argued that Mr. Malone provided the "muscle" for the instant case. Mr.
7 McCarty was sentenced to death and is obviously interested in the final resolution of Mr.
8 Malone's trial.

9 7. Mr. McCarty requests permission to draft a Opening Brief with cites to Mr.
10 Malone's trial transcripts. Mr. McCarty desires to compare the extensive testimony of witnesses in
11 his trial to the witnesses in Mr. Malone. Mr. McCarty desires to compare the arguments made by
12 the State in both trials. Mr. McCarty may raise issues regarding proportionality depending on the
13 jury's verdict and sentence of Mr. Malone.

14 8. Pursuant to Nevada Rules of Appellate Procedure (NRAP) 3(b)(2), a party may
15 move to consolidate cases. Originally, Mr. McCarty's case was consolidated with Mr. Malone.
16 Thereafter, the district court granted severance. However, for purposes of appeal, this matter
17 should be consolidated. The facts of the case are almost identical. However, according to the rules
18 of appellate procedures, both parties are required to have filed a timely notice of appeal (See,
19 NRAP 3(b)(2)). Mr. Malone has not been convicted. Hence, a notice of appeal has not been filed
20 for Mr. Malone.

21 9. For purposes of judicial economy, Mr. McCarty anticipates citing to Mr. Malone's
22 trial transcripts Yet, Mr. Malone's trial transcripts are not part of the record, nor does Mr.
23 McCarty have access to these transcripts, at this point in time. Mr. Malone's trial is ongoing and it
24 would be very difficult for Mr. McCarty to file the issues necessary without these trial transcripts.

25 10. Additionally, proportionality between these two defendants must be carefully
26 considered in a capital case. Mr. McCarty does not file this motion for the purpose of delay but
27 out of necessity. Unfortunately, counsel did not foresee this difficulty. It became apparent when
28 the undersigned realized that Mr. Malone was proceeding to trial that these issues must be
properly developed to avoid accusations of ineffective assistance of counsel.

1 Simultaneously, Mr. McCarty will file a motion to consolidate the two cases (However,
2 Mr. McCarty recognizes that this Court may deem the motion for consolidation premature).

3 11. Therefore, counsel respectfully request that this Court permit him ninety (90) days
4 in order to properly brief these issues.

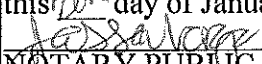
5 12. That this motion is made in good faith and not for purposes of delay.

6 FURTHER YOUR AFFIANT SAYETH NAUGHT.

7 DATED this 20th day of January, 2012.

8 
CHRISTOPHER R. ORAM, ESQ.

9 SWORN and SUBSCRIBED before me
10 this 20th day of January, 2012.

11 
NOTARY PUBLIC in and for
said County and State



CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on January 30th 2012. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ-MASTO
Nevada Attorney General

STEVE OWENS
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Vargas
An Employee of Christopher R. Oram, Esq.

EXHIBIT A

EXHIBIT A

15.MURDER.	200.010	Felony	01/01/1900
15.DEGREES OF MURDER	200.030	Felony	01/01/1900
15.USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
16.ROBBERY WITH A DEADLY WEAPON	200.380	Felony	01/01/1900
16.DEGREES OF MURDER	200.030	Felony	01/01/1900
16.USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
17.ROBBERY	200.380	Felony	01/01/1900
17.USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
18.ROBBERY	200.380	Felony	01/01/1900
18.USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900

EVENTS & ORDERS OF THE COURT

01/10/2012 Jury Trial (10:00 AM) (Judicial Officer Villani, Michael)
01/10/2012, 01/11/2012, 01/12/2012, 01/13/2012, 01/17/2012, 01/18/2012, 01/19/2012, 01/20/2012, 01/23/2012, 01/24/2012,
01/25/2012, 01/26/2012, 01/27/2012, 01/30/2012, 01/31/2012

Minutes

01/09/2012 1:00 PM

01/10/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:48 a.m. Jury Trial commenced. Court and counsel begin Voir Dire examination of the Prospective Jurors. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Prospective Juror No. 021 canvassed. This Prospective Juror is familiar with some of the witnesses that may be called to testify in this matter; therefore, Court released him. PROSPECTIVE JURORS PRESENT: Voir Dire examination of the Prospective Jurors continued. 5:54 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/11/12 9:15 AM

01/11/2012 9:15 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:04 a.m. Jury Trial resumed. Court and counsel continued with the Voir Dire examination of the Prospective Jurors. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Prospective Juror No. 312 canvassed; he may have been sleeping. State advised the Court of its concerns; colloquy. PROSPECTIVE JURORS PRESENT: Voir Dire examination of the Prospective Jurors continued. 5:36 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/12/12 10:00 AM

01/12/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:15 a.m. Jury Trial resumed. Court and counsel continued with the Voir Dire examination of the Prospective Jurors. 5:45 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/13/12 8:30 AM

01/13/2012 8:30 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 9:06 a.m. Jury Trial resumed. Court and counsel continue Voir Dire examination of the Prospective Jurors. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Prospective Juror No. 540 canvassed. This Prospective Juror has been sleeping through the Voir Dire process. Court released him. PROSPECTIVE JURORS PRESENT: Voir Dire examination of the Prospective Jurors continued. Jury and four (4) alternates selected and sworn. Court released the Jury at 5:15 p.m. OUTSIDE THE PRESENCE OF THE JURY: Mr. Pike made a Batson Challenge; Prospective Juror No. 469 and Prospective Juror No. 312 were excluded via Peremptory Challenge by the State. Arguments by counsel. COURT ORDERED, the Jury Questionnaires for the above-named Prospective Jurors shall be marked for identification as Court's Exhibits 1 and 2 respectively. 5:45 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/17/12 10:00 AM

01/17/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:31 a.m. Jury Trial resumed. EXCLUSIONARY RULE invoked. JURY PRESENT: Clerk read the Second Amended Information to the Jury and stated the Deft.'s plea thereto. Opening statements by Mr. DiGiacomo and Mr. Pike. Testimony and exhibits presented (see worksheets). 5:00 p.m. Court ADJOURNED, COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/18/12 9:45 AM

01/18/2012 9:45 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:03 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets). 4:09 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/19/12 10:15 AM

01/19/2012 10:15 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:31 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets). OUTSIDE THE PRESENCE OF THE JURY: The witness, Nicolin Broderway, was examined with regard to her testimony for trial today. JURY PRESENT: Testimony and exhibits presented (see worksheets). 5:25 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/20/12 9:30 AM

01/20/2012 9:30 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 9:43 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets). 3:36 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/23/12 9:30 AM

01/23/2012 9:30 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 9:30 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets). 2:38 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/24/12 10:00 AM

01/24/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:04 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets). 4:47 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/25/12 10:00 AM

01/25/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. 10:09 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets). 11:40 a.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/26/12 10:00 AM

01/26/2012 10:00 AM

- Christopher Lalli, Chf Dep DA, and Marc DiGiacomo, Chf Dep DA, present on behalf of the State; Randall Pike, Asst SPD, and Charles Cano, Dep SPD, present on behalf of Deft. Malone, who is also present. Malone's Objections to the State's Proposed Trial Phase Jury Instructions FILED IN OPEN COURT. 11:01 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets). OUTSIDE THE PRESENCE OF THE JURY: Mr. DiGiacomo orally moved to introduce the taped statement of a non-testifying co-deft. Arguments by counsel; colloquy regarding redactions. COURT ORDERED, decision DEFERRED. JURY PRESENT: Testimony and exhibits presented (see worksheets). 4:40 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED. CUSTODY CONTINUED TO: 01/27/12 10:00 AM

01/27/2012 10:00 AM

01/30/2012 10:00 AM

01/31/2012 10:00 AM

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