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IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRSTIN BLAISE LOBATO,

Petitioner,

vs.

STATE OF NEVADA,

Respondents.

* * *

Case No.:

Electronically Filed
Aug 25 2011 04:42 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

**MOTION FOR WAIVER OF APPLICATION OF NRAP 3C
AND REQUEST FOR FULL BRIEFING**

COMES NOW Petitioner, Kirsten Blaise Lobato, by and through her pro bono counsel, Travis N. Barrick, Esq., and hereby requests that this Honorable Court exercise its discretion and waive the application of NRAP 3C and the Fast Track Criminal Appeals rules, thus allowing Ms. Lobato to complete a full briefing.

This Motion is based upon the Points and Authorities attached hereto.

DATED this 25 day of August, 2011.

By: 

Travis N. Barrick, SBN 9257

Gallian Wilcox Welker Olson & Beckstrom, LC

540 E St. Louis Avenue

Las Vegas, Nevada 89104

(702) 892-3500

Facsimile: (702) 386-1946

tbarrick@gwwwo.com

Pro bono counsel for Petitioner

POINTS AND AUTHORITIES

I. BACKGROUND FACTS.

Petitioner, Kirstin Blaise Lobato was convicted of Count I - Voluntary Manslaughter with use of a Deadly Weapon and Count 2 - Sexual Penetration of a Dead Human Body. Ms. Lobato's case was a complicated, high profile trial lasting almost a full month that was

1 broadcast live nationally by Court TV. It presented novel pre-trial as well as post-trial legal
2 issues; and numerous appealable issues arose during trial as well.

3 Ms. Lobato was sentenced as follows: Count 1 - 48 months to 120 months plus an equal
4 and consecutive 48 months to 120 months; and Count 2 - 60 months to 180 months (Count 2 to
5 run concurrent with Count 1). The Court granted 1,544 days credit time served.
6

7 Ms. Lobato's direct appeal (No. 49087) was exempted from the Fast Track Rules due to
8 the complexity of the case and nature of the charges. A copy of the previous Order is attached
9 hereto.

10 Subsequently, Ms. Lobato filed a 770-page Petition for a Writ of *Habeas Corpus* that
11 includes 79 grounds for relief supported by 101 exhibits, and her 205-page Answer to the
12 State's Response is supported by an additional 5 exhibits. The District Court's FINDINGS OF
13 FACT, CONCLUSIONS OF LAW AND ORDER summarily denying Ms. Lobato's Petition
14 raises a plethora of substantive legal and factual issues for appeal by Ms. Lobato.
15

16 **II. ARGUMENT.**

17 NRAP 3C(a) reads as follows:
18

- 19 (1) This Rule is applicable to an appeal from a judgment or order of a district court
20 entered in a criminal or post-conviction proceeding commenced after September 1,
21 1996, whether the appellant is the State or the defendant. A proceeding is
22 commenced for the purposes of this Rule upon the filing of an indictment,
23 information, or post-conviction application in the district court.
- 24 (2) The Supreme Court may exercise its discretion and apply this Rule to appeals arising
25 from criminal and post-conviction proceedings that are not subject to this Rule.
- 26 (3) Unless the court otherwise orders, an appeal is not subject to this Rule if:
27 (A) the appeal challenges an order or judgment in a case involving a
28 category A felony, as described in NRS 193.130(2)(a), in which a
sentence of death or imprisonment in the state prison for life with or
without the possibility of parole is actually imposed;
(B) the appeal is brought by a defendant or petitioner who was not
represented by counsel in the district court; or
(C) the appeal is filed in accordance with Rule 4(c).

1 NRAP 3C recognizes and automatically excludes from the Fast Track Process the class
2 of cases involving a category A offense of First Degree Murder, but only if death or life with or
3 without parole is actually imposed, and not cases where the third possible penalty consisting of
4 a term of years, has been imposed.

5 Here, Ms. Lobato was convicted of a category A offense, but her case is not
6 automatically excluded from Fast Track treatment under Rule 3C(a) because she did not receive
7 either a sentence of death or imprisonment in the state prison for life with or without the
8 possibility of parole. Rather, Ms. Lobato received a sentence of twenty to fifty years, plus an
9 equal and consecutive sentence of twenty to fifty years.
10

11 Nevertheless, treatment under the Fast track rules with a 10 page limit would be unduly
12 restrictive and burdensome in this particular case. The 10 page limitation could not provide this
13 Court with sufficient information to adequately review the record.
14

15 **III. CONCLUSION.**

16 Therefore, it is respectfully requested that this Honorable Supreme Court waive the
17 requirements of Rule 3C and allow the parties in this appeal to present a full briefing of the
18 issues presented.
19

20 ~~Respectfully submitted,~~

21
22 By: 

23 Travis N. Barrick, SBN 9257

24 Gallian Wilcox Welker Olson & Beckstrom, LC

25 540 E St. Louis Avenue

26 Las Vegas, Nevada 89104

27 (702) 892-3500

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tbarrick@gwwwo.com

Pro bono counsel for Petitioner

IN THE SUPREME COURT OF THE STATE OF NEVADA

1
2
3 KIRSTIN BLAISE LOBATO,
4 Appellant,
5 vs.
6 THE STATE OF NEVADA,
7 Respondent.

Case No. 49087

FILED District Court C17394

MAR 16 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *A. Alvarado*
DEPUTY CLERK

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2007 MAR 12 PM 4:32

MOTION FOR WAIVER OF APPLICATION OF NRAP 3C
AND REQUEST FOR FULL BRIEFING

10 COMES NOW Appellant, KIRSTIN BLAISE LOBATO, by and through her
11 attorney, DAVID M. SCHIECK, Special Public Defender, and hereby
12 requests that this Honorable Court exercise its discretion and waive
13 the application of NRAP 3C and the Fast Track Criminal Appeals rules,
14 thus allowing LOBATO to complete a full briefing.

15 This Motion is based upon the Points and Authorities attached
16 hereto.

17 DATED this 1 day of March, 2007.

18 DAVID M. SCHIECK
19 SPECIAL PUBLIC DEFENDER

20 By *David M. Schieck*
21 DAVID M. SCHIECK
22 Nevada Bar #0824
23 330 S. Third St., 8th Floor
Las Vegas, Nevada 89155
(702) 455-6265

POINTS AND AUTHORITIES

24
25 Appellant KIRSTIN BLAISE LOBATO (hereinafter referred to as
26 LOBATO) was convicted of Count 1 - Voluntary Manslaughter with use of
27 a Deadly Weapon and Count 2 - Sexual Penetration of a Dead Human Body.
28 Even though the instant case involves a category A felony, it is

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By _____
DEPUTY CLERK

1 subject to NRAP 3C, the Fast Track Criminal Appeal Process, as LOBATO
2 was sentenced as follows: Count 1 - 48 months to 120 months plus an
3 equal and consecutive 48 months to 120 months; and Count 2 - 60 months
4 to 180 months (Count 2 to run concurrent with Count 1). The Court
5 granted 1,544 days credit time served.

6 NRAP 3C(a) reads as follows:

7 This Rule is applicable to an appeal from a
8 judgment or order of a district court entered in
9 a criminal or post-conviction proceeding
10 commenced after September 1, 1996, whether the
11 appellant is the State or the defendant. A
12 proceeding is commenced for the purposes of this
13 Rule upon the filing of an indictment,
14 information, or post-conviction application in
15 the district court. The Supreme Court may
16 exercise its discretion and apply this Rule to
17 appeals arising from criminal and post-conviction
18 proceedings that are not subject to this Rule.
19 Unless the court otherwise orders, an appeal is
20 not subject to this Rule if:

- 21 (1) the appeal challenges an order or judgment
22 in a case involving a category A felony, as
23 described in NRS 193.130(2)(a), in which a
24 sentence of death or imprisonment in the
25 state prison for life with or without the
26 possibility of parole is actually imposed,
27 or
- 28 (2) the appeal is brought by a proper person
defendant or petitioner.

LOBATO was convicted of a category A offense but her case is not
automatically excluded from Fast Track treatment under Rule 3C(a)
because she did not receive either a sentence of death or imprisonment
in the state prison for life with or without the possibility of
parole. LOBATO was previously convicted of first degree murder with
use of a deadly weapon and received a sentence of twenty to fifty
years, plus an equal and consecutive sentence of twenty to fifty
years. The previous direct appeal (No. 40370) was exempted from the
Fast Track Rules due to the complexity of the case and nature of the

1 charges. A copy of the previous Order is attached hereto.

2 NRAP 3C recognizes and automatically excludes from the Fast Track
3 Process the class of cases involving a category A offense of First
4 Degree Murder, but only if death or life with or without parole is
5 actually imposed, and not cases where the third possible penalty
6 consisting of a term of years, has been imposed.

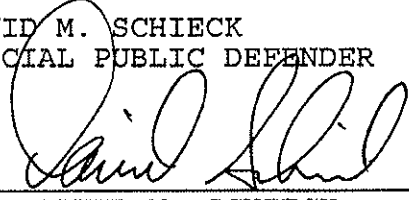
7 LOBATO'S case was a complicated, high profile case lasting almost
8 a full month. It presented novel pre-trial as well as post-trial
9 legal issues; and numerous appealable issues arose during trial as
10 well.

11 Treatment under the Fast track rules with a 10 page limit would
12 be unduly restrictive and burdensome in this particular case. The 10
13 page limitation could not provide this Court with sufficient
14 information to adequately review the record.

15 Therefore, it is respectfully requested that this Honorable
16 Supreme Court waive the requirements of Rule 3C and allow the parties
17 in this appeal to present a full briefing of the issues presented.

18 Respectfully submitted,

19 DAVID M. SCHIECK
20 SPECIAL PUBLIC DEFENDER

21 
22 By _____

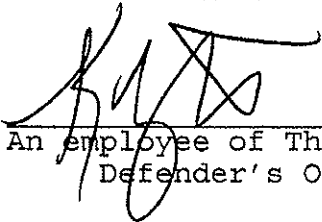
23 DAVID M. SCHIECK
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25 Nevada Bar #0824
26 330 S. Third St., 8th Floor
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28 (702) 455-6265
Attorney for LOBATO

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CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 12 day of MARCH, 2007, I deposited in the United States Post Office at Las Vegas, Nevada, a copy of the foregoing Motion, postage prepaid, addressed to the following:

District Attorney's Office	Nevada Attorney General
200 Lewis Ave., 3rd Floor	100 N. Carson
Las Vegas NV 89155	Carson City NV 89701-4717


An employee of The Special Public
Defender's Office

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRSTIN BLAISE LOBATO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40370

FILED

NOV 13 2002

ORDER DIRECTING FULL BRIEFING

DANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
DEPUTY CLERK

This appeal is subject to the provisions of Nevada Rule of Appellate Procedure 3C. On October 18, 2002, counsel for appellant filed a motion for full briefing of this appeal.

Cause appearing, the motion is granted. Accordingly, we order the parties to brief this court in compliance with NRAP 28, 28A, 30, 31 and 32. The appellant shall file and serve the opening brief within one hundred twenty (120) days from the date of this order. The answering brief and reply brief shall be filed in compliance with NRAP 31.

It is so ORDERED.

Maupin, C.J.

cc: Special Public Defender
Attorney General/Carson City
Clark County District Attorney