

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRSTIN BLAISE LOBATO,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. 58913

Electronically Filed
May 30 2014 09:20 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S MOTION TO POSTPONE ORAL ARGUMENT

COMES NOW, J. BEDIAKU AFOH-MANIN, pro bono counsel for the Appellant, Kirstin Blaise Lobato, and respectively moves this Honorable Court to grant the APPELLANT'S MOTION TO POSTPONE ORAL ARGUMENT. This Motion is based on NRAP 34(a), the following Memorandum of Points and Authorities, counsel's Declaration, and all papers and pleadings on file herein.

Dated this 29th day of May, 2014.

Respectfully submitted,

By: /s/ J. Bediaku Afoh-Manin

J. BEDIAKU AFOH-MANIN

Pro bono attorney for Appellant

Associate Counsel per NSC Order

By: /s/ Phung H. Jefferson

PHUNG H. JEFFERSON

Pro bono attorney for Appellant

Nevada Bar Number 7761

MEMORANDUM OF POINTS AND AUTHORITIES

The Appellant, Kirstin Blaise Lobato (“Ms. Lobato”), respectfully requests that this Court grant the APPELLANT’S MOTION TO POSTPONE ORAL ARGUMENT (“Motion”) for the following reasons.

A. Ms. Lobato’s motion to postpone is timely pursuant to NRAP 34(a).

NRAP 34(a) states in pertinent part: “A motion to postpone the argument must be filed reasonably in advance of the date fixed for hearing.”

This Court’s issued a NOTICE OF ORAL ARGUMENT SETTING (“Notice”) on April 23, 2014, notifying counsel that *en banc* oral argument in Ms. Lobato’s case had been set for 10:30 a.m. on July 1, 2014 in Carson City, with Ms. Lobato and the State each allowed 30 minutes.

This Motion is more than a month before the scheduled oral argument, and this Court has not notified counsel of the synopsis for the argument, thus it is “filed reasonably in advance of the date fixed for hearing.”

B. Ms. Lobato’s counsel J. Bediaku Afoh-Manin has a conflicting court appearance in Luxembourg.

As set forth in the DECLARATION OF J. BEDIAKU AFOH-MANIN (“Declaration”) that accompanies this Motion as Exhibit A, Ms. Lobato’s *pro bono* associate counsel J. Bediaku Afoh-Manin will be presenting her oral argument. At the time of this Court’s Notice Mr. Afoh-Manin had committed to his court appearance for a case he is working on in Luxembourg City, in Luxembourg in

Continental Europe that is scheduled for July 15, 2014. [Declaration, at 1] Mr. Afoh-Manin will be preparing for the hearing in Luxembourg City prior to his departure from the United States to Luxembourg the first part of July. [Declaration, at 2] Consequently, Mr. Afoh-Manin's preparation for his prior commitment to the court case in Luxembourg City will conflict with preparation for the oral argument in Ms. Lobato's case. [Declaration, at 2]

C. Ms. Lobato's counsel J. Bediaku Afoh-Manin is relocating his residence and legal practice to Southern California after returning from Luxembourg.

As set forth in Mr. Afoh-Manin's Declaration he is relocating his residence and law practice from New York City to the Los Angeles area after his return from Luxembourg. Under those circumstances, to ensure Ms. Lobato receives the effective assistance of counsel during her oral argument that her habeas corpus petition asserts she didn't receive during her trial and direct appeal, Mr. Afoh-Manin doesn't expect to be prepared for her oral argument before early August 2014. [Declaration, at 2]

Conclusion

For all the foregoing reasons it is respectfully requested that this Court grant this Motion, and order postponement of the oral argument in Ms. Lobato's case and reschedule them for early August 2014 or later at this Court's convenience.

Dated this 29th day of May, 2014.

Respectfully submitted,

By: /s/ J. Bediaku Afoh-Manin
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EXHIBIT A

DECLARATION OF J. BEDIAKU AFOH-MANIN
NRS 53.045

I, J. BEDIAKU AFOH-MANIN, *pro bono* associate counsel for Kirstin Blaise Lobato as authorized by the Nevada Supreme Court's Order of June 7, 2013, do affirm and state as follows:

1. I am aware the Nevada Supreme Court's issued a NOTICE OF ORAL ARGUMENT SETTING ("Notice") on April 23, 2014, that *en banc* oral argument in Ms. Lobato's habeas corpus case had been set for 10:30 a.m. on July 1, 2014 in Carson City, with Ms. Lobato and the State each allowed 30 minutes.

2. I am aware the Nevada Supreme Court reserves 30 minute *en banc* oral argument for those few cases that have one or more issues considered important enough to merit the attention of the full court, and it is very significant for Ms. Lobato that the Court *sua sponte* selected her case for *en banc* oral argument.

3. At the time of the Supreme Court's Notice I had been working for some time on a legal case in Luxembourg City, in Luxembourg in Continental Europe.

4. At the time of the Supreme Court's Notice I had tentative plans to travel from the United States to Luxembourg the first part of July in preparation for a hearing scheduled for the case in Luxembourg City on July 15, 2014, however, it wasn't until about May 20, 2014 that I was certain the hearing would not be continued and thus my appearance necessary.

5. I will begin preparing for the hearing in the Luxembourg City case in June 2014 prior to leaving the United States.

6. After I return from Luxembourg I am planning to move my family and law practice from New York City to the Los Angeles area, so for a period of time after my return my time and attention will be occupied relocating my family and setting up my office in Southern California.

7. I will be presenting Ms. Lobato's oral argument, and considering the hearing in Luxembourg City will be followed by my relocation to Southern California, I do not expect that I will be able to begin to prepare for her oral argument until the end of July 2014.

8. Ms. Lobato's habeas corpus petition includes 52 grounds related to ineffective assistance of her trial and direct appeal counsel, and to ensure that she will receive the effective assistance of counsel during her oral argument that she asserts she hasn't previously received, I don't expect to be adequately prepared for oral argument before early August 2014.

Dated this 29th day of May, 2014.

By: /s/ J. Bediaku Afoh-Manin
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917-270-6321
Pro bono attorney for Appellant
Associate Counsel per NSC Order

CERTIFICATE OF SERVICE

I hereby certify and affirm that the APPELLANT'S MOTION TO POSTPONE ORAL ARGUMENT was filed electronically with the Nevada Supreme Court on the 29th day of May, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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By: /s/ Edna Ballesteros
An employee of Phung H. Jefferson