

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONTE JOHNSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36991

**FILED**

**JUL 18 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

O R D E R

This is an appeal from a judgment of conviction imposing a sentence of death. The record on appeal was filed in this court on December 11, 2000. Accordingly, the opening brief was due to be filed and served by February 19, 2001. See SCR 250(6)(d) (opening brief shall be filed and served within 70 days from the date that the record on appeal is filed in the supreme court). On February 21, 2001, appellant filed a motion to extend time to file and serve the opening brief. On February 28, 2001, this court entered an order granting that motion and allowing appellant until April 18, 2001. See SCR 250(6)(e) (on direct appeal from a judgment of conviction and sentence of death, supreme court may grant an extension of up to 60 days upon showing of good cause).

On May 9, 2001, this court entered an order noting that appellant had not filed an opening brief as directed in our February 28, 2001, order. That order directed counsel for appellant, Deputy Special Public Defender Dayvid Figler, to file and serve the opening brief by May 20, 2001, or to show cause why sanctions should not be imposed.

On May 17, 2001, a motion for an extension of time to June 19, 2001, to file and serve the opening brief was filed on appellant's behalf by Deputy Special Public Defender Lee-

01-12197

Elizabeth McMahon. In the interest of judicial economy, we elect to treat the filing of that motion as a substitution of Ms. McMahon, in the place of Mr. Figler, as counsel for appellant. The clerk of this court shall modify the docket in this appeal accordingly.

In support of that motion, Ms. McMahon avers in an affidavit that this appeal was reassigned to her "when Dayvid Figler, who was assigned the case on direct appeal had not begun work on same." Further, Ms. McMahon noted that "the Opening Brief was due before February 19, 2001, but that was not . . . [Ms. McMahon's] responsibility, but that of Mr. Figler." Because the extension of time requested in Ms. McMahon's motion has passed, we deny the motion as moot. Additionally, because of the delay caused in this appeal by Mr. Figler's failure to commence preparation of the opening brief, and failure to respond to orders of this court,<sup>1</sup> we conclude that the imposition of sanctions is appropriate. Accordingly, Mr. Figler shall personally pay the sum of five hundred dollars (\$500) to the Clark County Library within fifteen (15) days from the date of this order. Mr. Figler shall, within that same time period, file with the clerk of this court a certificate or affidavit informing this court that the sanction has been paid.

On June 28, 2001, Ms. McMahon filed a motion to file a seventy-four (74) page opening brief, and submitted the brief

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<sup>1</sup> Our May 9, 2001, order directed Mr. Figler to file the opening brief in ten days or show cause why sanctions should not be imposed. Mr. Figler did not respond to that order. While another Deputy Special Public Defender did file a motion for an extension of time to file the opening brief in response to our May 9, 2001, order, the affidavit in support of that motion clearly shows that sanctions against Mr. Figler are appropriate.

along with the motion. Good Cause appearing, we grant that motion. The clerk of this court shall file the opening brief received on June 28, 2001. Respondent shall file and serve the answering brief within sixty (60) days from the date of this order. Thereafter, briefing shall proceed according to the provisions of SCR 250(6)(d).

It is so ORDERED.

Young, J.  
Young  
Leavitt, J.  
Leavitt  
Becker, J.  
Becker

cc: Attorney General  
Clark County District Attorney  
Special Public Defender  
Clark County Law Library