

1
2
3 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

4 ★ ★ ★ ★ ★

Electronically Filed
Dec 13 2013 01:34 p.m.

Tracie K. Lindeman
Clerk of Supreme Court

5
6 ERNESTO MANUEL GONZALEZ

Case No. 64249

7 Appellant,

8 vs.

9 THE STATE OF NEVADA,

10 Respondent.

11 **MOTION FOR LEAVE TO FILE FAST TRACK STATEMENT LATE**

12 COMES NOW, Appellant, Ernesto Gonzalez, by and through the
13 undersigned counsel, David R. Houston, Esq., and moves this Honorable Court
14 for an Order permitting him to file the attached Fast Track Statement, even
15 though it is being filed out of time.

16 In support of the Motion, Mr. Houston states under penalty of perjury:

17 1. The undersigned was retained counsel for Mr. Gonzalez at time of trial.
18 Prior to my retention Mr. Gonzalez was determined to be indigent and was
19 represented by the Washoe County Public Defender's Office. By the time of
20 sentencing, Mr. Gonzalez was out of money. After he was sentenced, Judge
21 David Hardy of the Second Judicial District appointed the undersigned
22 provisionally as counsel for Mr. Gonzalez, with the understanding that the
23 undersigned's role was limited to the proper, orderly filing of paperwork
24 necessary for Mr. Gonzalez to prosecute his appeal to the Supreme Court of the
25 State of Nevada. At no time did the undersigned intend or expect that the
26 undersigned would be the actual appellate counsel for Mr. Gonzalez. The
27

1 undersigned believed that upon filing a Notice of Appeal, Case Appeal Statement,
2 and Motion for Transcripts and Court Files at Public Expense, and upon filing a
3 Motion to Withdraw as Counsel and to Appoint the Washoe County Public
4 Defender in the Second Judicial District, the undersigned would be relieved as
5 provisional appointed counsel of record and the Washoe County Public
6 Defender's Office would be appointed.

7 2. In the meantime, Mr. Gonzalez has called this office on a number of
8 occasions to indicate that his family was in the process of retaining Richard F.
9 Cornell, Esq. as his counsel of record. However, as of December 11, 2013 it is
10 the undersigned's understanding that the Gonzalez family has not retained Mr.
11 Cornell, but is actively working on raising the money necessary to do so.

12 3. The undersigned actually filed timely the Notice of Appeal, Case
13 Appeal Statement, and Motion for Trial Transcripts and Court File at Public
14 Expense on behalf of Mr. Gonzalez.

15 4. The undersigned subsequently filed with the Second Judicial District the
16 Motion to Relieved as Appointed Counsel and to appoint the Washoe County
17 Public Defender. That Motion was not filed with the Notice of Appeal, for the
18 reason that the undersigned was led to believe that Mr. Gonzalez's family would
19 shortly be retaining Mr. Cornell, and thus the Motion would not be necessary.

20 5. When it became clear that Mr. Gonzalez's family was not in the position
21 immediately to retain Mr. Cornell, the undersigned did in fact prepare and file a
22 Motion to be Relieved as Appointed Counsel and to Appoint the Public
23 Defender's Office in November, in the Second Judicial District.

24 6. The Motion to be Relieved as Counsel of Record and the Motion for
25 Trial Transcript and Court File at Public Expense have been submitted to the
26 Second Judicial District for orders. To the undersigned's knowledge, those
27 orders have not been entered, but both are unopposed and there is no legal reason
28

1 not to grant them.

2 7. The undersigned has been informed and believes that as of December
3 11, 2013 the Gonzalez family will be in a likely position to retain Mr. Cornell to
4 substitute in for whoever counsel of record may be, as the actual counsel of
5 record.

6 8. In any case, so as not to slow the appellate process, the undersigned has
7 prepared and tendered for filling the Fast Track Statement and also the Request
8 for Transcripts. However, the Court needs to grant permission to file the Fast
9 Track Statement late in order for it to be filed. Hence, this Motion.

10 9. This Motion is not brought for purposes of delay, but for the reasons set
11 forth herein.

12 DATED this 13th day of December, 2013.

13 Respectfully submitted,

14 LAW OFFICE OF DAVID R. HOUSTON
15 432 Court St.
16 Reno, NV 89501

17 By: s/ David R. Houston
18 David R. Houston

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of David R. Houston, Esq.
3 and that on this date I caused an electronic filing with the Nevada Supreme Court a true and
4 correct copy of the foregoing document, addressed to:

5 Washoe County District Attorney's Office
6 Appellate Division
7 One South Sierra Street
8 Reno, Nevada 89501

9 **DATED** this 13th day of December, 2013

10 
11 Emily A. Heavrin