

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEANGELO R. CARROLL, ) No. 64757

Appellant, )

v. )

THE STATE OF NEVADA, )

Respondent. )

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Tracie K. Lindeman  
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MOTION FOR EXTENSION OF TIME  
TO FILE THE OPENING BRIEF  
(Second Request)

Pursuant to NRAP 26(b)(1)(A) and 31(b)(3), appellant DeAngelo R. Carroll moves for a 60-day extension of time to file the opening brief. This is Carroll's second request for an extension. The opening brief is currently due July 7, 2014. If this motion is granted, the brief will be due September 5, 2014.

Supporting Memorandum

I. *Procedural background*

This case began in June 2005. At that time, there were four defendants involved (Kenneth Counts, Luis Alonso Hidalgo, III, Anabel Espindola, and DeAngelo Carroll). The State charged the defendants with Count 1 – Conspiracy to Commit Murder, Count 2 – Murder with

Use of a Deadly Weapon, Count 3 – Solicitation to Commit Murder, and Count 4 – Solicitation to Commit Murder. The State sought the death penalty against all four defendants.

In December 2005, the State added a fifth defendant, Jayson Taoipu. They charged him with Count 1 – Conspiracy to Commit Murder and Count 2 – Murder with Use of a Deadly Weapon. Taoipu was 16 years old at the time, a juvenile. The State did not seek the death penalty against him.

On June 6, 2007, the State filed an Amended Information against Taoipu, charging him with Count 1 – Conspiracy to Commit Murder and Count 2 – Voluntary Manslaughter with Use of a Deadly Weapon. That same day, Taoipu pleaded guilty to both of the charges in the Amended Information. He was sentenced to 48 to 120 months on count 1, and to 16 to 60 months on count 2 with an equal and consecutive sentence of 16 to 60 months for the deadly weapon enhancement. Count 2 was to run concurrently with count 1. Taoipu's sentences were suspended and he was placed on probation for not more than 5 years.

On February 4, 2008, the State filed a Third Amended

Information against Anabel Espindola, charging her with one count of Voluntary Manslaughter with Use of a Deadly Weapon. That same day, Espindola pleaded guilty to the one count in the Third Amended Information. Espindola's plea agreement and the Third Amended Information were filed and made public. The attachments were filed under seal. It appears these sealed documents relate to Espindola's agreement with the State to testify against her codefendants. The court did not set a date for Espindola's sentencing hearing or refer the matter to parole and probation. Instead, the judge set a status check for April 15, 2008. There are no public records available regarding this status conference, or Espindola's sentencing hearing. It appears her judgment of conviction was entered on February 17, 2011, but it too is not available to the public.

Counts took his case to trial in January and February 2008. The jury found him guilty of Count 1 – Conspiracy to Commit Murder, but found him *not* guilty of Count 2 – Murder with Use of a Deadly Weapon. This despite all the parties agreeing, and all the evidence showing, Counts is the individual who shot and killed the victim in this

case, Timothy Jay Hadland. Counts was sentenced to 96 to 240 months in prison. He was given credit for 1,029 days.

In February 2008, the State charged the sixth defendant in this case, Luis Hidalgo, Jr. They charged him with the same Conspiracy to Commit Murder and Murder with Use of a Deadly Weapon but under a different case number, C241394. In June 2008, the State moved to consolidate case C241394 with case C212667. The court granted the State's motion.

In January and February 2009, Luis Hidalgo, Jr. and Luis Hidalgo, III took their cases to trial. The jury found Luis Hidalgo, III guilty of Count 1 – Conspiracy to Commit a Battery with a Deadly Weapon or Battery Resulting in Substantial Bodily Harm, Count 2 – Second Degree Murder with Use of a Deadly Weapon, Count 3 – Solicitation to Commit Murder, and Count 4 – Solicitation to Commit Murder. He was sentenced to 12 months on count 1, to 120 months to LIFE on count 2 with an equal and consecutive sentence of 120 months to LIFE for the deadly weapon enhancement, Count 2 to run concurrent to count 1, to 24-72 months on count 3, count 3 to run concurrent to

counts 1 and 2, and to 24-72 months on Count 4 with count 4 to run concurrent to counts 1, 2 and 3.

The jury found Luis Hidalgo, Jr. guilty of Count 1 – Conspiracy to Commit a Battery with a Deadly Weapon and of Count 2 – Second Degree Murder with Use of a Deadly Weapon. Hidalgo, Jr. was sentenced to 12 months on count 1, and to 120 months to LIFE on count 2 with an equal and consecutive term of 120 months to LIFE for the deadly weapon enhancement; count 2 is to run concurrent to count 1.

Carroll took his case to trial in May 2005. The jury found him guilty of Count 1 – Conspiracy to Commit Murder and of Count 2 – First-Degree Murder with Use of a Deadly Weapon. Since the State was seeking the death penalty, Carroll's case then proceeded to the penalty phase of the trial in front of the same jury.

The jury found one aggravating circumstance: the murder was committed by a person, for himself or another, to receive money or any other thing of monetary value.

The jury found the following mitigating circumstances: Deangelo did not come up with the idea to kill Timothy Hadland; Deangelo was

not the shooter; Deangelo's cooperation led to charges being filed against other defendants; Deangelo has a low IQ; Deangelo suffers from dependent personality disorder; Deangelo can still be a significant part of his grandmother's life; Deangelo can still be a significant part of his son's life; The killing did not involve torture or mutilation of the victim; The killing was not a case of multiple homicides; and other persons involved in the offense received punishments significantly lower than the punishments Deangelo is facing. The jury found that the mitigating circumstances outweighed the aggravating circumstance, and did not impose the death penalty. Instead, they sentenced Carroll to LIFE in prison with the possibility of parole after a minimum of 40 years has been served.

Carroll asked his trial attorneys to appeal his conviction and sentence. The trial attorneys, however, failed to do so. They then withdrew from his case.

On December 17, 2010, the district court appointed Patrick E. McDonald, Esq. to represent Carroll in his post-conviction proceedings. On December 29, 2011, McDonald filed Carroll's post-conviction

petition raising, among other arguments, a claim of ineffective assistance of counsel for failing to file a timely direct appeal.

On July 30, 2012, the district court granted Carroll's petition on the ground that trial counsel was ineffective for failing to file a timely direct appeal for Carroll. The district court then gave Carroll the right to pursue a direct appeal. For some reason, the district court clerk did not file the notice of appeal.

On March 14, 2013, McDonald's law firm moved to withdraw from the case because the law firm of McDonald Adras LLC was being dissolved, and because of McDonald's "medical condition" and the fact that he is "unable to proceed with representation of clients due to personal reasons." The court granted McDonald's motion.

On April 13, 2014, the court appointed undersigned counsel to represent Carroll in his direct appeal. Counsel notified the court that the court clerk had not yet filed the notice of appeal.

On May 1, 2013, the district court clerk filed the notice of appeal. Carroll's direct appeal was docketed as appeal No. 63115. The State then moved to dismiss the appeal, arguing Carroll's post-conviction

petition was untimely. Carroll opposed the motion. This Court then remanded the case to the district court for further findings on the issue.

The district court held an evidentiary hearing on October 21, 2013 to determine whether Carroll's post-conviction petition was timely filed or whether he had good cause to excuse the delay.

On January 3, 2014, the district court found that Carroll had shown good cause to excuse the delay in filing his post-conviction petition, and again gave him the right to pursue his direct appeal.

The notice of appeal was filed on January 6, 2014, and this appeal was docketed as appeal No. 64757.<sup>1</sup>

II. *Counsel's efforts to get the necessary file materials and transcripts for this appeal*

Counsel requested the transcripts necessary for this appeal on February 20 and 21, 2014. He received some of the transcripts on or

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<sup>1</sup> It's important to note that, up until this point, court-appointed counsel (Mr. Valencia) had not designated transcripts for the appeal, requested the district court files, nor had he started reviewing of the file materials from previous counsel because, up until this time, counsel had been focused on opposing the State's motion to dismiss the direct appeal, on finding out what happened procedurally with Carroll's post-conviction petition and what happened to McDonald, and on preparing for the evidentiary hearing to make sure Carroll was allowed to pursue a direct appeal.



about March 24, 2014, others he did not receive until April 21, 2014 and May 7, 2014. There are about 140 hearing and trial transcripts in this case.

Counsel also requested a copy of the district court filings from the district court clerk's office. By April 2014, counsel had received two CDs from the clerk's office, containing the documents filed in this case. The district court record consists of about 757 filings.

As far as Carroll's file, his trial attorneys represented that they turned their file materials over to McDonald. The file materials counsel received from McDonald's office consist of about 5 bankers boxes.

In light of the volume of material to review in order to familiarize himself with the facts and the legal issues in this case, and to identify appealable issues, counsel requested an extension of time of 60 days on May 8, 2014 to file the opening brief.

### III. *What counsel has done since requesting the first extension*

Counsel has read through many of the 757 documents that are part of the district court record, quite a few of the hearing transcripts prior to trial, the transcripts of Carroll's trial, and the testimony of

Kenneth Counts in his own trial. He also has reviewed what is in the boxes he received from McDonald's office. This has taken a enormous amount of time, and this is not counsel's only case.

Counsel has also discussed Carroll's case with one of his trial attorneys to talk about potential appealable issues.

#### IV. *What still needs to be done*

It's clear from reading through the trial transcripts that certain rulings were made and some evidence was admitted based on reasons the court had articulated in previous trials, like the trial for Hidalgo, III and Hidalgo, Jr. It's also clear the State's evidence consisted in large part on certain recorded statements and on some audio recordings law enforcement obtained from wires DeAngelo Carroll wore on a few occasions when he was cooperating with law enforcement in this case. These audio recordings from the wires Carroll wore helped the State build their case against Espindola, Hidalgo, III and Hidalgo, Jr.

Unfortunately, these recordings are not in the file materials counsel has. The file materials are also missing much of the evidence admitted at trial. Undersigned counsel therefore must get these

recordings, the transcripts admitted into evidence, and the other evidence admitted at trial from the district court's evidence vault. He has contacted them and will be meeting with them this week to review and get copies of the evidence.

Counsel also will have to read through some of the trial transcripts from the codefendants' trials in order to understand some of the district court's reasoning behind some of its rulings. This too will require some additional time in order to go through those transcripts to determine when those issues were addressed and how they were resolved.

Counsel will then have to determine what must go into the appendix, he must prepare the appendix, research the issues to be raised on appeal, and draft the opening brief.

V. *This will take more than 30 additional days*

It will take counsel more than 30 days to do all of the above and get the appendix and opening brief filed in 30 days. Counsel is a sole practitioner. He has no other employees. He has been working diligently on this case, and will continue to do so, but he also has many

other professional obligations. As a matter of fact, counsel had two appeal briefs due today, July 7, 2014: the opening brief in this case and the reply brief in *Ponce v. State* (No. 64541). He was able to get the reply brief filed on time, but for the reasons stated above it was simply impossible for him to get the appendix and opening brief filed in this case.

Counsel also believes it is important to inform the court of some health issues he is struggling with lately. Counsel was hospitalized in 2013 with blood clots in his lungs and with a saddle embolism (a blood clot in the artery that leads from the heart to the lungs). This caused other issues with counsel's heart and lungs. Over the past month, some related issues, as well as some issues with counsel's throat (constant pressure and a lump), have required counsel to be out of the office at least once a week for doctors' appointments.

Counsel will be gone with his family for two weeks in July 2014, but has more appointments in August with some medical specialists. These person issues also have been a strain on the amount of time counsel has to dedicate to this and other cases. Nevertheless, as noted

above, counsel has diligently been working on this case and on his other cases.

VI. *Conclusion*

Good cause exists for this request for the reasons stated above. Accordingly, counsel respectfully requests the Court grant this motion give him until September 5, 2014 to file the opening brief.

DATED: July 7, 2014.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY AND AFFIRM that this document was filed electronically with the Nevada Supreme Court on July 7, 2014.

Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO  
Nevada Attorney General

STEVEN OWENS  
Chief Deputy District Attorney

/s/ Mario D. Valencia  
MARIO D. VALENCIA