

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
Clerk of Supreme Court

MOTION FOR EXTENSION OF TIME
TO FILE THE OPENING BRIEF
(Third Request)

Pursuant to NRAP 26(b)(1)(A) and 31(b)(3), appellant DeAngelo R. Carroll moves for a 30-day extension of time to file the opening brief. This is Carroll's third request for an extension. The opening brief is currently due September 5, 2014. If this motion is granted, the brief will be due Monday, October 6, 2014.¹

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

¹ The opening brief was originally due May 8, 2014. Carroll has requested and been granted two extensions of time.

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 also charged him with 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 State withdrew its notices and amended notices to seek the death penalty against them. 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 2010. 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 attorney Patrick E. McDonald to represent Carroll in his post-conviction proceedings. On December 29, 2011, McDonald filed Carroll's post-conviction petition raising, among other claims, 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 was "unable to proceed with representation of clients due to personal reasons." The court granted McDonald's motion.

On April 13, 2013, the court appointed undersigned counsel to represent Carroll in his direct appeal. Counsel notified the court that the district 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. 64757.²

² 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 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.

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 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.

It's also important to note, as Carroll pointed out in his second motion for an extension of time (filed July 7, 2014), that copies of the evidence admitted at trial (*e.g.*, transcripts of statements given to homicide detectives, audio and video recordings of these statements, audio recordings obtained — and transcripts of those recordings — by

the State while Carroll wore a recording device for them (as an informant and/or agent of the State) so they could build their case against the codefendants in this case) were not in the file materials he received from prior counsel. That was one of the reasons counsel had to request a second extension of time to file the opening brief, so he could order copies of the evidence admitted at trial and reviewing all of it.

There also are 10 appeals related to this case, including this appeal (*i.e.*, appeals 48233, 50576, 50939, 51549, 54209, 54272, 55608, 57217, 63115, 64757). These other appeals also consist of a voluminous amount of material that undersigned counsel has obtained.

III. *This is a very voluminous case and undersigned counsel did not represent Carroll in the district court proceedings*

As noted above, this case consists of an enormous amount of material to review and it takes an exorbitant amount of time to review it.

To put things in perspective, codefendants Hidalgo Jr. and Hidalgo III also appealed in this case. Their appeals were docketed in this Court as Nos. 54209 and 54272. The attorneys that represented them on appeal were the same attorneys that represented them in the

district court proceedings and at trial. Yet, it took Hidalgo Jr. and Hidalgo III more than 1 year to file their opening briefs. They filed 6 motions for an extension of time to file the opening brief. This Court granted them all.

In one of his motions, counsel for Hidalgo Jr. informed the Court that the record consisted of “fifteen (15) volumes with approximately 3359 pages, exclusive of pretrial and post-trial motions which appellate issues are also involved.” *See* Luis A. Hidalgo, Jr.’s and Luis Hidalgo, III’s Joint Motion for Fifth Extension of Time to File Opening Brief (Filed November 29, 2010 in Appeal Nos. 54209 and 54272), page 4.³ Moreover, it had taken him “close to 210 hours reading, digesting and assimilating the recording and conducting preliminary research into the legal issues.” *Id.* at 2. In a subsequent motion, counsel for Hidalgo Jr. wrote that he had “spent close to 281 hours reading, digesting and assimilating the record, conducting research into the legal issues and writing the Opening Brief.” *See* Luis A. Hidalgo, Jr.’s and Luis Hidalgo,

³ Ultimately, Hidalgo Jr.’s appendix on appeal consisted of 25 volumes (No. 54209). Hidalgo III filed an appendix consisting of 11 volumes in his appeal (No. 54272), but the State filed an additional 4 volumes with their appendix and answering brief.

III's Joint Motion for a Sixth Extension of Time to File Opening Brief (filed January 12, 2011 in Appeal Nos. 54209 and 54272), page 2.

The State has had this case since its inception and is thoroughly familiar with the facts and legal issues. Yet, the State requested 4 extensions of time to file its answering brief in Hidalgo III's appeal (No. 54272), and 2 extensions of time to file its answering brief in Hidalgo Jr.'s appeal (No. 54209). The Court also granted all of the State's motions for an extension of time to file the answering brief.

Unlike the State and counsel for Hidalgo Jr. and Hidalgo III, undersigned counsel did not represent Carroll in the district court proceedings or at trial. Furthermore, Carroll's case was a death penalty case. Hidalgo Jr.'s and Hidalgo's III's cases were not death penalty cases. For these reasons, Carroll respectfully submits it is even more important for undersigned counsel to review all of the file materials, the evidence admitted at trial, the transcripts of the hearings and trials, the pretrial and post-trial motions, and the documents submitted in all of the related appeals in order to learn all of the facts and legal issues in this case. This along with researching legal issues and writing

the opening brief will take a great deal of time.

IV. *What counsel has done since requesting the second extension*

That said, counsel for Carroll has reviewed the file materials from prior counsel, the evidence admitted at trial, all of the transcripts of Carroll's trial and sentencing, almost all of the district court record (pretrial and post-trial motions), all of the transcripts of the pretrial hearings, many of the transcripts of codefendant Count's and codefendants' Hidalgo Jr. and Hidalgo III's trials, all of the documents in appeals 48233 and 50576, and a large portion of the documents in the other related appeals.

Counsel also conducted research into the legal issues, and he has started drafting portions of the opening brief.

V. *What still needs to be done*

Counsel needs to finish reviewing and assimilating the record, and he needs to finish researching the legal issues and drafting the remainder of the opening brief.

VI. *This will take than 30 additional days*

Counsel firmly believes he can accomplish all of this within the

next 30 days. It's possible he might even get the opening brief and appendix filed before the additional 30 days expire. However, in light of other professional obligations (undersigned counsel has other appeals briefs due in the United States Court of Appeals for the Ninth Circuit in the next 30 days) and the medical issues and doctors' appointments he has been dealing with, counsel for Carroll is requesting an additional 30 days to file the opening brief. He sincerely believes no additional extensions will be needed to get the opening brief filed; barring unforeseen circumstances.

VII. *Conclusion*

Good cause exists for this request for the reasons stated above. Accordingly, counsel respectfully requests the Court grant this motion give him until Monday, October 6, 2014 to file the opening brief.

DATED: September 5, 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 September 5, 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