

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEANGELO R. CARROLL,) No. 64757

Appellant,)

v.)

THE STATE OF NEVADA,)

Respondent.)

Electronically Filed
Oct 21 2014 08:14 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

Pursuant to NRAP 26(b)(1)(A) and 31(b)(3), appellant Deangelo R. Carroll moves for a one-week extension of time to file the opening brief. This is Carroll's fifth request for an extension. The opening brief is currently due October 20, 2014. If this motion is granted, the brief will be due Monday, October 27, 2014.¹

Supporting Memorandum

I. Procedural background

This case began in June 2005. There were originally five defendants: Kenneth Counts, Luis Hidalgo, III, Anabel Espindola, Deangelo Carroll and Jayson Taoipu. The State charged the defendants with Count 1 (Conspiracy

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

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 Counts, Hidalgo III, Espindola and Deangelo. They could not seek the death penalty against Taoipu because he was a minor.

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 entered into a written plea agreement with the State and pleaded guilty to both of the charges in the Amended Information. As part of his plea agreement, Taoipu agreed to testify for the State against the other defendants. After he testified at trial against Counts, he was sentenced. 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 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 Espindola, charging her with one count of Voluntary Manslaughter with Use of a Deadly Weapon. That same day, Espindola entered into a written plea agreement

with the State and pleaded guilty to the one count in the Third Amended Information. As part of her plea deal, she too agreed to testify against the other defendants. She testified against Hidalgo Jr., Hidalgo III and Deangelo. On February 10, 2011, after she testified at their trials, Espindola was sentenced to 24 to 72 months with an equal and consecutive sentence of 24 to 72 months for Voluntary Manslaughter with Use of a Deadly Weapon. She was given credit for 1,379 days.

Counts' jury trial began in January 2008. In February, the jury found him guilty of Count 1 (Conspiracy to Commit Murder), but not guilty of Count 2 (Murder with Use of a Deadly Weapon), even though all the evidence shows, and the State's theory is, that Counts shot and killed the victim in this case. Counts was sentenced under the small habitual criminal statute to 96 to 240 months in prison.

In February 2008, the State charged the sixth defendant in this case, Luis Hidalgo, Jr. He too was charged him with Count 1 (Conspiracy to Commit Murder) and Count 2 (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.

Hidalgo Jr. and Hidalgo III's jury trial began in January 2009. Before trial,

the State withdrew its notices and amended notices to seek the death penalty against them. In February 2009, the jury found 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), and Counts 3 and 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 also found Hidalgo Jr. guilty of Count 1 (Conspiracy to Commit a Battery with a Deadly Weapon or Battery Resulting in Substantial Bodily Harm) and 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.

Deangelo's jury trial began in May 2010. The jury found him guilty of Count 1 (Conspiracy to Commit Murder) and Count 2 (First-Degree Murder with Use of a Deadly Weapon). Because he was convicted of first-degree murder and

the State was seeking the death penalty, Deangelo's case proceeded to the penalty phase of the trial.

In June 2010, 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 also 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 Deangelo to LIFE in prison with the possibility of parole after a minimum of 40 years has been served.

On August 12, 2010, the judge sentenced Deangelo to 36 to 120 months in prison on Count 1 (Conspiracy to Commit Murder), and to LIFE in prison with the

possibility of parole after 20 years has been served, plus an equal and consecutive term of LIFE in prison with the possibility of parole after 20 years has been served on Count 2 (First-Degree Murder with the Use of a Deadly Weapon). The sentences on counts 1 and 2 were run consecutively.

Deangelo asked his trial attorneys to appeal his convictions and sentences. 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 Deangelo in post-conviction proceedings. On December 29, 2011, McDonald filed a post-conviction petition alleging an appeal deprivation claim.

On July 30, 2012, the district court granted the petition and gave Deangelo the right to pursue a direct 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 McDonald's "medical condition" and other "personal reasons" prevented him from representing clients. The court granted the motion.

On April 13, 2013, the court appointed undersigned counsel to represent Deangelo in his direct appeal. Counsel notified the court that the clerk had not yet filed the notice of appeal pursuant to NRAP 4(c).

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

The notice of appeal was filed on January 6, 2014, resulting in this 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, he had been focused on opposing the State's motion to dismiss the direct appeal, on finding out what happened procedurally with Deangelo's post-conviction petition, what happened to McDonald, and on preparing for the evidentiary hearing to make sure Deangelo 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 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 Deangelo'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 Deangelo 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 Deangelo 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 review all of it.

There are also ten 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 Deangelo in the district court proceedings

As noted above, this case consists of an enormous amount of material and it takes hundreds of hours to review, digest and analyze it.

To put things in perspective, 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 one (1) year to file their opening briefs. They filed six (6) motions for an extension of time to file their opening briefs. This Court granted all of them.

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 record 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, 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

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 its own appendix consisting of an additional 4 volumes.

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 its answering brief.

Unlike the State and counsel for Hidalgo Jr. and Hidalgo III, undersigned counsel did not represent Deangelo in the district court proceedings or at trial. Furthermore, Deangelo's case was a death penalty case in the trial court. Hidalgo Jr.'s and Hidalgo III's cases were not.

For these reasons, Deangelo 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 fourth extension

That said, counsel for Deangelo has reviewed the file materials from prior counsel, the evidence admitted at trial, all of the transcripts of Deangelo'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 Counts' and Hidalgo Jr.'s and Hidalgo III's trials, and all of the documents in the related appeals he believes are relevant for this appeal.

Counsel has identified appealable issues, researched them, drafted initial arguments, drafted the jurisdictional statement, the procedural history, and a comprehensive statement of the case and facts.

V. What still needs to be done

Now that all of the above is done, counsel began putting together the appendix. He's almost done with that. It's been quite an undertaking given the amount of material involved, the rules governing electronic filing, trying to fit everything into the approved/authorized byte sizes, and trying to figure out how to include certain evidence that's in electronic format that's essential to the appeal. Once the appendix is complete, counsel will have to insert all of the citations to the appendix into the opening brief. And then once that's done, he needs to proof-read the brief and edit it. The brief currently exceeds the word count. Counsel will work diligently over the next week to edit the brief in hopes of getting it down to the allowable word count, which candidly will be difficult and time consuming given the amount of material in this case, the issues that must be raised on appeal to preserve them (should that be necessary) for post conviction proceedings, and the need to include all of the information necessary for the court to make a decision on the issues.

VI. Conclusion

Counsel therefore moves for a one (1) week extension of time, up to and including Monday, October 27, 2014, to file the opening brief.

DATED: October 20, 2014.

/s/ Mario D. Valencia
MARIO D. VALENCIA
Nevada Bar No. 6154
1055 Whitney Ranch Dr., Ste. 220
Henderson, NV 89014
(702) 940-2222
Counsel for Deangelo R. Carroll

CERTIFICATE OF SERVICE

I HEREBY CERTIFY AND AFFIRM that this document was filed electronically with the Nevada Supreme Court on October 20, 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