

REQT

BRENT D. PERCIVAL, ESQ.

Nevada Bar #3656

BRENT D. PERCIVAL, ESQ. P.C.

Las Vegas, Nevada 89101

(702) 868-5650

Attorney for Defendant/Appellant

CORY DEALVONE HUBBARD

Electronically Filed
May 08 2015 09:19 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

CORY DEALVONE HUBBARD,
Appellant,

Supreme Court No. 66185

District Court Case No. C-13-292507-1

vs.

THE STATE OF NEVADA,
Respondent.

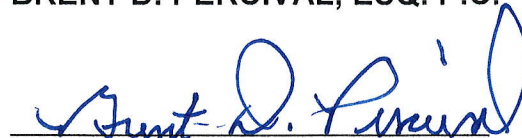
**REQUEST FOR ADDITIONAL TIME TO FILE
APPELLANT'S OPENING BRIEF AND APPENDIX
(SECOND REQUEST)**

COMES NOW Appellant, CORY DEALVONE HUBBARD, by and through his attorney of record, BRENT D. PERCIVAL, ESQ., of the law office Brent D. Percival, Esq. P.C., and hereby respectfully submits the present Request for Additional Time to File Appellant's Opening Brief and Appendix in the above-captioned matter.

This Request for additional time is made and based upon the entirety of the pleadings and papers presently on file herein, and upon the affidavit of Brent D. Percival, Esq., attached hereto.

DATED this 7th day of May, 2015.

BRENT D. PERCIVAL, ESQ. P.C.



BRENT D. PERCIVAL, ESQ.

Nevada Bar #3656

630 South Third Street

Las Vegas, NV 89101

(702) 868-5650

Attorney for Appellant

**AFFIDAVIT OF BRENT D. PERCIVAL, IN SUPPORT OF REQUEST FOR
ADDITIONAL TIME TO FILE OPENING BRIEF AND APPENDIX**

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

Brent D. Percival, Esq., being first duly sworn, deposes and says:

1. That I am an attorney licensed to practice law in the State of Nevada, and before the U.S. District Courts in and for the States of Nevada and Kansas. I have been so licensed within the State of Nevada since approximately November 18, 1988.

2. That I currently serve as a contract/conflict attorney for the County of Clark, Eighth Judicial District Court, in Las Vegas, Nevada. In this capacity, I am called upon to represent indigent defendants who are unable to have the Clark County Public Defender's office represent them because of conflicts of interest. I have been serving as a conflict attorney in Clark County, Nevada since approximately the month of July, 1996.

3. I was appointed by the Honorable Judge Joseph Sciscento, Clark County Justice Court Judge, Department 2, to serve as attorney for Defendant/Appellant CORY DEALVONE HUBBARD on or about the 30th day of August, 2013. Mr. HUBBARD was part of a three-defendant case, which prevented the Public Defender from serving as counsel for all three defendants.

4. After my appointment in the Justice Court, the prosecutor's office presented this matter to the Grand Jury, who returned a True Bill of Indictment in the District Court on the 11th day of September, 2013. My appointment to represent Mr. Hubbard carried over from the Justice Court to the post-indictment District Court proceedings, and I represented Mr. HUBBARD in all phases of the proceedings which were held in the District Court below, commencing with the Initial Arraignment held September 19, 2013.

5. That the litigation of this matter was intense and rather hotly contested, consuming a time period from the Initial Arraignment, held September 19, 2013, until

1
2 the matter ultimately proceeded to trial during the week of April 14 to April 22, 2014.
3 During the pretrial proceedings, Mr. HUBBARD'S two co-defendants ultimately
4 accepted plea negotiations offered by the State of Nevada, and Defendant HUBBARD
5 proceeded to trial before a jury of his peers by himself.

6 6. That after 6 days of testimony and deliberation by the Jury, a Verdict was
7 eventually returned which found the Defendant guilty of eleven felony counts, including
8 Conspiracy to Commit Robbery, (Count 1), Burglary (Count (2), Robbery with Use of a
9 Deadly Weapon, (Counts 3 through 9), Assault (Count 14), and Discharge of a Firearm
10 Within a Structure (Count 15). The jury returned its verdicts on the 22nd day of April,
11 2014.

12 7. A sentencing hearing was held on the 26th day of June, 2014. At the time
13 of that hearing, Defendant Hubbard was adjudicated Guilty on all of the above-listed
14 counts. Following the court's pronouncement of Guilt on these charges, Mr. Hubbard
15 was sentenced, pursuant to the Nevada State Habitual Criminal Act, to concurrent
16 sentences of 10 years to life, with each count running concurrently to each of the
17 others.

18 8. A written Judgment of Conviction was entered and filed with the Clerk of
19 the Court in this matter on the 1st day of July, 2014. Thereafter, Defendant Hubbard
20 filed his Notice of Appeal, in proper person, on the 29th day of July, 2014. Despite the
21 fact that Defendant Hubbard had been adjudicated Guilty of being a Category "A" felon,
22 and sentenced to 10 concurrent terms of life without the possibility of parole, the
23 undersigned was tasked to serve as Appellate Counsel for Mr. Hubbard before the
24 Nevada Supreme Court. This occurred, despite Mr. Hubbard's request that new
25 counsel be appointed on Appeal, and despite Judge Bixler's Assurances that new
26 counsel would be appointed to serve for Mr. Hubbard in the Appellate Process.

27 9. Thereafter, on September 23, 2014, your affiant prepared and served
28 Court Reporter Bill Nelson, designated Court Reporter for Department XXIV of the Clark
County District Court, with a Request for Rough Draft Transcripts of the proceedings

1
2 held in the District Court. This request for Rough Draft Transcripts was filed with the
3 Nevada Supreme Court on the 24th day of September, 2014.

4 10. At or the time that the Request for Rough Draft Transcripts were filed and
5 served upon Bill Nelson's office, (September 23, 2014) your affiant had only just been
6 told by his client that he did not wish the undersigned to take any further action on his
7 behalf, with respect to this appeal.

8 11. Shortly after the Rough Draft Transcript Request was filed upon the office
9 of Court Reporter Bill Nelson, Reporter Nelson contacted your affiant, and indicated
10 that he was not the Court Reporter who was responsible for the preparation of all of the
11 Transcripts requested by the Notice filed upon his office. Upon receipt of this notice,
12 your affiant prepared and served requests for Rough Draft Transcripts on court
13 reporters Dana Tavaglione, Robert Cangemi, Jason Melendez, and Bill Nelson. These
14 Requests for Rough Draft Transcripts were filed with the Supreme Court on the 15th day
15 of October, 2014, and were filed with the Nevada Supreme Court that same day.

16 12. That prior to receiving this incoming notice that not all of these reporters
17 were associated with one another in a Court Reporting Firm, it had been your affiant's
18 understanding that that was the case, and the Requests for Rough Draft Transcripts
19 were sent out in September, 2015 with that understanding.

20 13. That on November 14, 2014, the Appellant/Defendant, Cory Hubbard,
21 filed a Notice with the Nevada Supreme Court, indicating that your affiant was not
22 authorized to carry out any of the functions of Appellate Counsel, beyond the mere filing
23 of the Notice of Appeal. The Supreme Court seems to have held this Notice to be of no
24 effect by its entry of an order of November 21, 2014, indicating that the Defendant's
25 Notice would be held of no effect.

26 14. On November 24, 2014, Court Reporter Dana Tavaglione, filed a Notice
27 with the Supreme Court, indicating that the Rough Draft Transcripts that had been
28 requested of her, those for 4/01/14, 4/08/14, 4/10/2014, 4/14/2014, 4/15/2014,
4/16/2014, 4/17/2014, and 4/22/2014 had been delivered. Counsel for Appellant was

not actually in receipt of these transcripts, however, as he was unaware that the transcripts had been loaded onto the Clark County Odyssey website, rather than e-mailed or hand delivered to his office.

15. On January 26, 2015, Court Reporter Robert Cangemi filed a Notice with the Nevada Supreme Court, indicating that the Rough Draft Transcripts that he had been requested to prepare, transcripts of hearings held on October 15, 2013, October 22, 2013, October 29, 2013, October 31, 2013, November 26, 2013, and April 21, 2014 had been delivered. Once again, counsel was unaware that the transcripts had been prepared and received, as he was not notified that the same had been loaded onto the Clark County Odyssey Website.

16. On January 26, 2015, Counsel for the Defendant/Appellant received an order from the Supreme Court, directing that the Opening Brief and Appendix should be filed within 15 days of the date of that order, or that conditional sanctions had been imposed, which would require counsel to pay the sum of \$500.00 in sanctions for failure to timely file the same.

17. In response to this Order, on January 30, 2015, counsel for Defendant/Appellant filed and served a Motion for an extension of time to file the Opening Brief and Appendix, based upon the fact that a number of potentially important transcripts had not yet been received within his office. At the time, counsel was unaware that the Clark County District Court Court Reporters had simply filed the transcripts in the Odyssey system, without delivering a copy of the same to counsel via e-mail, or via hand-delivery.

18. By February 18, 2015, Counsel for the Appellant had served each individual court reporter with his correct contact information, where transcripts could be served via e-mail, when Rough Draft Transcripts for Appeal were requested. In addition, counsel for Appellant filed a copy of this Notice to the Court Reporters with the Clerk of the Nevada Supreme Court by February 18, 2015.

1
2 19. Court Reporter Robert Cangemi filed copies of the Requested Transcripts
3 for hearing dates January 14, 2014 and January 21, 2014.

4 20. The final Transcripts Requested by the Defendants were not filed with the
5 Clerk of the Court, or served upon Counsel for the Plaintiff until between March 25th and
6 March 30th, 2015, when Court Reporter Bill Nelson filed transcripts of proceedings held
7 09/09/13, 11/14/13, 12/03/13, 12/05/13, 1/23/14, 023/20/2014, and 06/26/2014 with the
8 Clerk of the Court.

9 21. It was not until April 1st, 2015, that all of the Requested Rough Draft
10 Transcripts that had been requested from the various Court Reporters who had been
11 involved in the case had been received. By that time, less than 35 days remained in
12 the time-frame that the Nevada Supreme Court had set forth for the filing and service of
13 Appellant's Opening Brief and Appendix in this matter.

14 22. That, there are a number of reasons that the undersigned counsel has not
15 been able to prepare and file Appellant CORY HUBBARD'S Opening Brief and
16 Appendix in this matter. These matters will be set forth, in some detail, below.

17 23. The undersigned counsel was on vacation visiting family in the state of
18 Kansas during the time frame December 26, 2014 until January 9, 2015. Upon his
19 return from the brief holiday vacation that I spent visiting family, your affiant returned to
20 the State of Nevada with a Jury trial a mere 2 weeks away.

21 24. Your affiant was in trial for a full week, during the week of January 26-
22 February 2, 2015, in the matter entitled "State of Nevada, Plaintiff, vs. Fabian Lazaro,
23 Defendant", District Court Case No. C13-287412-1. This matter was a 10- Count
24 Conspiracy to Commit Murder, Attempted Murder with Use of a Deadly Weapon, (2
25 Counts) Battery with Use of a Deadly Weapon with Substantial Bodily Harm, (3
26 Counts) and Assault with a Deadly Weapon (1 Count) case, tried before the Honorable
27 Judge Jennifer Togliatti.

28 25. After this trial, the jury returned not guilty verdicts on 5 of 7 counts, with
findings of guilt only entered upon the Battery w/ a Deadly Weapon, w/ Substantial

1
2 Bodily Harm counts. The Sentencing in the State vs. Fabian Lazaro Matter was held
3 March 31, 2015, before the Honorable Nancy Becker, senior visiting judge.

4 26. Promptly after the completion of the jury trial in the matter of State vs.
5 Fabian Lazaro, Your affiant was obligated to commence preparation for an appellate
6 briefing in the matter entitled "Gregory Fritz, Appellant, vs. State of Nevada,
7 Respondent." This case bears Supreme Court Case Number 64770, and involved an
8 appeal from the Defendant's conviction for 8 Counts of Sexual Assault on a Minor
9 under the age of 16, and 2 counts of Lewdness with a Minor under the age of 14.

10 27 The due date for the Fritz brief, after several requests for extensions of time
11 were granted due to counsel's failure to receive transcripts from the various Court
12 Reporters involved in the preparation of the same, was set for the 3rd of March, 2015.
13 (As an aside, the transcripts were prepared by an outside court reporting service, as the
14 courtroom in which the Fritz matter proceeded to trial was subject to audiotape
15 recording).

16 28. Unfortunately, your affiant took ill, and was out of the office for 8 business
17 days, commencing March 2, 2015. Upon his return from this brief medical leave, your
18 affiant prepared and completed the Gregory Fritz v. State of Nevada brief, and filed the
19 brief on April 2, 2015. Due to deficiencies in the format of the brief, (involving typeface,
20 spacing, and margin errors) the initial brief filed April 2, 2014 was rejected, and a
21 revised brief was filed on the 17th day of April, 2014.

22 29. That the last of the Rough Draft Transcripts related to the Cory Hubbard vs.
23 State of Nevada matter were not filed until the 25th of March, 2015, in the District Court
24 of Clark County, Nevada. Counsel was eventually notified that these transcripts were
25 on file with the clerk of the court sometime between the 25th and the 30th day of March,
26 2015.

27 30. That at the time that the last set of transcripts of proceedings were filed in
28 the District Court in and for Las Vegas, Nevada, your affiant was busily preparing the
Fast Track Appellate Statement of Defendant ALFONZO TOLBERT, which followed his

1
2 probation revocation during the month of December, 2014, in the Eighth Judicial District
3 Court in and for Clark County, Nevada.

4 31. Following the revocation of his probation, Mr. Tolbert filed a proper person
5 Notice of Appeal, and a briefing schedule was set For Mr. Tolbert's Fast Track
6 Appellate Statement his Opening Fast Track Brief and Appendix fell due on the 29th day
7 of April, 2015.

8 32. After retrieving all of the Rough Draft Transcripts, reviewing the same,
9 preparing the Appendix to be used in support of Defendant TOLBERT'S appeal,
10 performing the necessary legal research, and drafting Mr. Tolbert's Opening Fast Track
11 Brief, those documents were filed with this Supreme Court by the 29th day of April,
12 2015. By this time, the last of the Transcripts pertaining to the HUBBARD Appeal had
13 been on file with the District Court for less than 30 days.

14 33. By the time that your affiant had filed the Opening Fast Track Brief and
15 Appendix in the *Alfonzo Tolbert vs. State of Nevada* matter, only 7 days remained in the
16 time frame in which the Appellant's Opening Brief was to be filed in this matter involving
17 the Appellate Issues in the *Cory Hubbard vs. State of Nevada* Appeal.

18 34. During the time period between January 16, 2015, and May 7th, 2015, your
19 affiant has taken part in and completed one 6 day jury trial; has prepared and filed one
20 Opening Fast Track Brief and one full length Opening brief in a category A Felony
21 matter, and has completed legal research on a second Fast Track Brief (or, more
22 appropriately, a Fast Track Briefing matter in which it was necessary for the
23 undersigned counsel to file a motion for leave to withdraw as counsel of record). (see,
24 generally, Christopher Lippincott vs. State, Supreme Court Case No. 67484.

25 35. The full-length brief filed in the matter Gregory Fritz adv. State of Nevada,
26 was a full 54 page brief, filed in response to a ten-count Category A felony conviction,
27 and was over 13,000 words in length. This brief was completed and filed April 17,
28 2015, at a time when, according to the earlier order of the court, would have left 21

1
2 days remaining in the briefing schedule in this, the CORY HUBBARD adv. STATE
3 matter.

4 36. During the time period commencing January 16, 2015, and extending to and
5 including May 7th, 2015, your affiant was also scheduled to commence no less than 7
6 separate court-appointed jury trials, in preparation for which extensive time was spent
7 preparing for trial and meeting with the individual clients and my own private
8 investigator, to be ready for trial.

9 37. Because of this unusually heavy litigation schedule, and because of the fact
10 that the last of the transcripts in this matter were not filed until March 25, 2015, your
11 affiant has had insufficient time in which to review the relevant transcripts pertaining to
12 the research and briefing of this matter, and to commence preparation of the brief.

13 38. By this motion, I am not seeking to unreasonably delay the Appellate
14 process that Mr. Hubbard is entitled to in this matter, nor am I trying to avoid my
15 responsibilities to this Court or to my client. The truth remains that, due an unusually
16 busy trial and litigation calendar, a medical condition that I suffered during the early part
17 of March, 2015, being required to review and brief at least two other Fast Track Appeals
18 during this time-frame, and the late arrival of many of the transcripts that were and are
19 necessary to complete the briefing process in this appeal, your affiant is far from
20 finished, or even ready to prepare the brief in this action.

21 39. It is your affiant's present plan to recruit additional experienced attorneys to
22 assist him with the preparation of this brief, in the hopes that the brief can be
23 researched and completed within a reasonable amount of time. This being said,
24 however, your affiant would request a 90 day extension from the date of the filing of this
25 motion, in which to prepare and file the Opening Brief and Appendix in this matter. If
26 granted, this extension would allow counsel until the 5th day of August, 2015, in which to

27 ///

28 ///

complete and file the Opening Brief and Appendix on behalf of Appellant, Cory Hubbard.

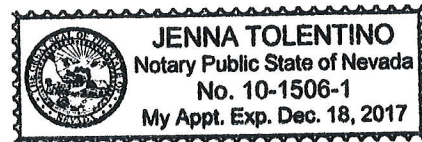
FURTHER, YOUR AFFIANT SAYETH NAUGHT.

DATED this 7th day of May, 2015.


BRENT D. PERCIVAL, ESQ.

SUBSCRIBED and SWORN to before
me this 7th day of May, 2015



Notary Public



CERTIFICATE OF MAILING

I hereby certify that on the 7th day of May, 2015, I served a copy of the foregoing
Request for Additional Time to File Appellant's Opening Brief and Appendix, by
depositing a copy in the U.S. Mail, first-class postage attached, addressed as follows:

Clark County District Attorney's Office
Appellate Division
200 Lewis Avenue
Las Vegas, Nevada 89155
Counsel for Respondent


An Employee of
Brent D. Percival, Esq., P.C.