

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAZEN ALOTAIBI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 67380

Electronically Filed  
Aug 24 2015 02:09 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

District Court Case No.: C-13-287173-1  
Dept. XXIII

**DEFENDANT/APPELLANT MAZEN ALOTAIBI'S MOTION FOR  
EXTENSION OF TIME WITHIN WHICH TO FILE OPENING BRIEF  
(THIRD REQUEST)**

COMES NOW, Defendant/Appellant, MAZEN ALOTAIBI, by and through his attorney, DOMINIC P. GENTILE, ESQ. of the law firm of GENTILE CRISTALLI MILLER ARMENI & SAVARESE, pursuant to NRAP 27 and 31(b)(3), and hereby respectfully requests a sixty-day (60) day extension of time within which to file Appellant's Opening Brief and Appendix.

IN SUPPORT of this Motion, counsel for Appellant respectfully assigns the following:

1. That Appellant's Opening Brief and Appendix were originally due to be filed in this matter on June 10, 2015;

2. That on June 5, 2015, the undersigned counsel obtained a 14-day telephonic extension of time within which to file Appellant's Opening Brief and Appendix, making Appellant's Opening Brief and Appendix due to be filed on June 24, 2015;
3. That said June 5, 2015 14-day telephonic extension of time has been the only extension of time for the filing of the Opening Brief and Appendix in this matter that has been granted by the Court to date, and no previous request for extension of time has been denied or denied in part;
4. That on June 18, 2015, the undersigned counsel filed Motion to Stay Direct Appeal and for Remand to Permit Predicate Filing of Petition for Post-Conviction Relief and Evidentiary Hearing Thereon, with respect to which the Court has yet to issue a ruling (attached hereto as Exhibit "A");
5. That on June 24, 2015, the undersigned counsel filed a Motion for Extension of Time Within Which to File Opening Brief (Second Request) to and including August 24, 2015, with respect to which the Court has likewise yet to issue a ruling (attached hereto as Exhibit "B");
6. That an additional 60-day extension of time is hereby requested, which would make Appellant's Opening Brief and Appendix due on October 23, 2015, in order to obtain a ruling on the Motion to Stay Direct Appeal and for Remand to Permit Predicate Filing of Petition for Post-Conviction

Relief and Evidentiary Hearing Thereon and because counsel requires additional time in order to properly prepare the Opening Brief in any event in view of the several sophisticated issues involved;

7. That the content of the Opening Brief depends upon the Court's ruling on Appellant's Motion to Stay Direct Appeal and for Remand to Permit Predicate Filing of Petition for Post-Conviction Relief and Evidentiary Hearing Thereon. Courts have permitted defendants to make ineffective assistance of counsel claims prior to direct appeal; indeed, even prior to entry of judgment in the trial court. See, e.g., U.S. v. Steele, 733 F.3d 894, 897 (9th Cir. 2013) ("[W]hen a claim of ineffective assistance of counsel is first raised in the district court prior to the judgment of conviction, the district court may, and at times should, consider the claim at that point in the proceeding"). And this Court will consider ineffective assistance claims on direct appeal if there has been an evidentiary hearing on the matter, or if an evidentiary hearing would be needless. See Archanian v. State, 122 Nev. 1019, 1036, 145 P.3d 1008, 1020-21 (2006) ("This court has repeatedly declined to consider ineffective-assistance-of-counsel claims on direct appeal unless the district court has held an evidentiary hearing on the matter or an evidentiary hearing would be needless").

8. Furthermore, the Ninth Circuit has noted that “[r]equiring a defendant to wait for post-conviction relief has several consequences, including that a defendant may serve months in prison waiting for post-conviction arguments to be heard. Lengthy delays necessarily entail concomitant weakening of memories and aging of evidence.” U.S. v. Steele, 733 F.3d 894, 897 (9th Cir. 2013). Here, Appellant Alotaibi – who is and has been consistently in custody ever since the day of his arrest on December 31, 2012 – respectfully submits that there is no reason to delay an evidentiary hearing on his claims for ineffective assistance of counsel in this case in that they are central to the relief he seeks in this case.

WHEREFORE, premises considered, Appellant, Mazen Alotiabi, respectfully requests that the time for filing his Opening Brief and Appendix be extended from August 24, 2015 to October 23, 2015.

Dated this 24<sup>th</sup> day of August, 2015.

GENTILE CRISTALLI MILLER  
ARMENI & SAVARESE

/s/ Dominic P. Gentile  
DOMINIC P. GENTILE  
Nevada Bar No. 1923  
410 South Rampart Boulevard, Suite 420  
Las Vegas, Nevada 89145  
(702) 880-0000  
Attorney for Appellant, Mazen Alotaibi

### CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On August 24, 2015, I caused to be served a true and correct copy of the foregoing **DEFENDANT/APPELLANT MAZEN ALOTAIBI'S MOTION FOR EXTENSION OF TIME WITHIN WHICH TO FILE OPENING BRIEF (THIRD REQUEST)**, by the method indicated:



**BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).



**BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.



**BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

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**BY PERSONAL DELIVERY:** by causing personal delivery of the document(s) listed above to the person(s) at the address(es) set forth below.

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**BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

Clark County District Attorney's Office –  
Criminal Division  
Ryan J. MacDonald  
Email: [ryan.macdonald@clarkcountyda.com](mailto:ryan.macdonald@clarkcountyda.com)  
Steven S. Owens  
Email: [steven.owens@clarkcountyda.com](mailto:steven.owens@clarkcountyda.com)  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155  
Counsel for the State of Nevada

Adam Paul Laxalt  
Nevada Attorney General  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1108  
Counsel for Respondent



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An employee of  
GENTILE CRISTALLI MILLER  
ARMENI & SAVARESE

**EXHIBIT A**

**EXHIBIT A**

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

2                   MAZEN ALOTAIBI,

3   Appellant,

No. 67380

4                   vs.

5                   THE STATE OF NEVADA,

6   Respondent.

Electronically Filed  
Jun 18 2015 08:50 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

7

8                   **MOTION TO STAY DIRECT APPEAL AND FOR REMAND TO PERMIT**  
9                   **PREDICATE FILING OF PETITION FOR POSTCONVICTION RELIEF**  
10                   **AND EVIDENTIARY HEARING THEREON**

11                   **COMES NOW**, the Appellant, MAZEN ALOTAIBI, by and through his  
12 attorneys, DOMINIC P. GENTILE, ESQ., and VINCENT SAVARESE III, ESQ.,  
13 of the law firm of GENTILE CRISTALLI MILLER ARMENI & SAVARESE,  
14 and hereby moves the Court to stay the instant appeal and remand this matter to the  
15 district court in order to permit the Defendant/Appellant to file a predicate petition  
16 for post-conviction relief pursuant to Nevada Revised Statutes ("NRS") §§ 34.720,  
17 et seq. on grounds of ineffective assistance of counsel at trial and obtain an  
18 evidentiary hearing and ruling thereon in advance of this Court's consideration of  
19 Appellant's issues on appeal.  
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23                   This Motion is based upon and supported by the following Memorandum of  
24 Points and Authorities and the pleadings and papers on file herein.  
25

26                   In support of this Motion, Appellant respectfully assigns the following:

27                   1. That among the issues to be presented for review in this case is "whether  
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1 the Defendant was deprived of the effective assistance of counsel for his  
2 defense at trial.” Appellant’s Docketing Statement in a Criminal Appeal  
3 p. 4, ¶ 18C;  
4

5 2. That the question of whether the Defendant was deprived of effective  
6 assistance of counsel at trial is the principal issue to be presented for  
7 review in this case;  
8

9 3. That an evidentiary hearing on Appellant’s claims of ineffective  
10 assistance of trial counsel has not yet been conducted in the district court;  
11

12 4. That in order to permit Appellant to perfect his claims of ineffective  
13 assistance of trial counsel for review on direct appeal, this case should be  
14 remanded to the district court in order that he may present his claims of  
15 ineffective assistance of trial counsel pursuant to NRS §§ 43.720 et seq.  
16 and obtain an evidentiary hearing thereon in advance of this Court’s  
17 consideration of his issues on appeal; and  
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5. That the remand requested herein is in the interest of judicial economy.

Dated this 17<sup>th</sup> day of June, 2015.

GENTILE CRISTALLI MILLER  
ARMENI & SAVARESE

DOMINIC P. GENTILE  
Nevada Bar No. 1923  
VINCENT SAVARESE III  
Nevada Bar No. 2467  
410 South Rampart Blvd., Suite 420  
Las Vegas, Nevada 89145  
(702) 880-0000  
Attorneys for Appellant

## MEMORANDUM OF POINTS AND AUTHORITIES

I.

## STATEMENT OF RELEVANT FACTS

Defendant/Appellant Mazen Alotaibi has timely appealed from the Judgment of Conviction and sentence entered against him by the district court on January 28, 2015 and February 2, 2015 pursuant to guilty verdicts returned following a 10 day jury trial. Appellant's principal contention on direct appeal is that he was deprived of the effective assistance of counsel at trial. However, Appellant's claims of ineffective assistance of trial counsel have not been perfected for review on direct appeal because an evidentiary hearing thereon has not yet been conducted in the district court.

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II.

LEGAL ARGUMENT

**THIS CASE SHOULD BE REMANDED TO THE DISTRICT  
COURT IN ORDER TO PERMIT A PREDICATE  
EVIDENTIARY HEARING ON APPELLANT'S CLAIMS OF  
INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL.**

Citing this Court's decisions in *Feazell v. State*, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995), and *Mazzan v. State*, 100 Nev. 74, 80, 675 P.2d 409, 413 (1984), the United States District Court for the District of Nevada explained in *Echavarria v. Baker*, No. 3:98-CV-00202-MMD, 2013 WL 1181951, at \*16 (D. Nev. Mar. 20, 2013), that "in Nevada, claims of ineffective assistance of counsel may be raised on direct appeal." However, as the *Echavarria* court pointed out this is generally more appropriate where "there has already been an evidentiary hearing or where an evidentiary hearing would be unnecessary." *Id.*

Nevertheless, in an appropriate case, nothing prohibits this Court from remanding a case to the district court in order to permit an evidentiary hearing on a criminal defendant's claims of ineffective assistance of trial counsel so that such claims may be perfected for review on direct appeal. And such procedure is further in the interests of judicial economy.

This is an appropriate case in which to allow such a procedural route. Indeed, in this case Appellant's principal issues for review are his claims of ineffective assistance of trial counsel.

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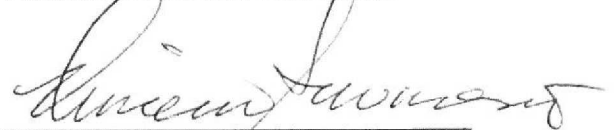
III.

CONCLUSION

THEREFORE, Appellant respectfully requests that the Court stay the instant appeal and remand this case to the district court in order to permit Appellant to perfect his claims of ineffective assistance of trial counsel at an evidentiary hearing so as to enable him to present such claims on direct appeal.

Dated this 17<sup>th</sup> day of June, 2015.

GENTILE CRISTALLI MILLER  
ARMENI & SAVARESE



DOMINIC P. GENTILE  
Nevada Bar No. 1923  
VINCENT SAVARESE III  
Nevada Bar No. 2467  
410 South Rampart Blvd., Suite 420  
Las Vegas, Nevada 89145  
(702) 880-0000  
Attorneys for Appellant

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**EXHIBIT B**

**EXHIBIT B**

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

MAZEN ALOTAIBI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 67380

District Court Case No. CV13-2871-1  
DEPT. XXIII Electronically Filed  
Jun 24 2015 09:23 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**DEFENDANT/APPELLANT MAZEN ALOTAIBI'S MOTION FOR  
EXTENSION OF TIME WITHIN WHICH TO FILE OPENING BRIEF  
(SECOND REQUEST)**

COMES NOW, Defendant/Appellant, MAZEN ALOTAIBI, by and through his attorney, DOMINIC P. GENTILE, ESQ. of the law firm of GENTILE CRISTALLI MILLER ARMENI & SAVARESE, pursuant to NRAP 27 and 31(b)(3), and hereby respectfully requests a sixty-day (60) day extension of time within which to file Appellant's Opening Brief and Appendix.

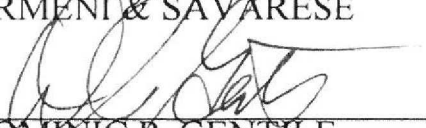
IN SUPPORT of this Motion, counsel for Appellant respectfully assigns the following:

1. That Appellant's Opening Brief and Appendix were originally due to be filed in this matter on June 10, 2015;
2. That on June 5, 2015, the undersigned counsel obtained a 5-day telephonic extension of time within which to file Appellant's Opening Brief and Appendix;
3. That said June 5, 2015 5-day telephonic extension of time has been the only extension of time for the filing of the Opening Brief and Appendix in this matter that has been sought by Appellant or granted to date;
4. That no previous request for extension of time has been denied or denied in part;

- 1 5. That, as a result of said June 5, 2015 5-day telephonic extension of time,  
2 Appellant's Opening brief and Appendix are currently due on June 24,  
3 2015;
- 4 6. That a 60-day extension of time is hereby requested, which would make  
5 Appellant's Opening brief and Appendix due on August 24, 2015;
- 6 7. That a second extension of time is necessary to permit counsel for  
7 Appellant adequate time within which to properly research and prepare  
8 Appellant's arguments on appeal, particularly in view of the other current  
9 professional obligations of counsel, as set forth in the attached  
10 Declaration of Dominic P. Gentile, Esq.; and
- 11 8. That, in addition, Appellant's Motion to Stay Direct Appeal and for  
12 Remand to Permit Predicate Filing of Petition for Post-Conviction Relief  
13 and Evidentiary Hearing Thereon remains pending before the Court as of  
14 the filing of the instant Motion.

15 Dated this 23<sup>rd</sup> day of June, 2014.

16 GENTILE CRISTALLI MILLER  
17 ARMENI & SAVARESE

18   
19 \_\_\_\_\_  
20 DOMINIC P. GENTILE  
21 Nevada Bar No. 1923  
22 410 South Rampart Boulevard, Suite 420  
23 Las Vegas, Nevada 89145  
24 (702) 880-0000  
25 Attorneys for Defendant Mazen Alotaibi  
26  
27  
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**DECLARATION OF DOMINIC P. GENTILE, ESQ.**

I, Dominic P. Gentile, do declare as follows:

1. I am an attorney duly licensed to practice law in the State of Nevada, and I am currently attorney of record for Defendant/Appellant Mazen Alotiabi and the author of the Opening Brief in this matter.
2. This appeal arises from Appellant's conviction on multiple felony counts, resulting in his being sentenced to a term of, *inter alia*, imprisonment for life with parole eligibility after a minimum of 35 years of imprisonment have been served.
3. Reviewing the trial record, narrowing the issues for appeal, completing the necessary legal research and writing to properly prepare the Appellant's Opening Brief is a substantial undertaking in this case and additional time is needed; particularly in consideration of the current demands and other professional obligations of my extremely busy day-to-day law practice, which have made it impossible for me to complete the Opening Brief by the appointed time, even taking into account the exercise of due diligence.
4. I have a firm trial setting in the matter of *Dulce Bazan vs. Aria Resort and Casino LLC, et al.*, Eighth Judicial District Court Case No.: A-13-683248-C. This trial is set to commence on June 29, 2015 and to last through July 2, 2015.
5. I have a prior commitment to the State Bar of Nevada, as an instructor at the Nevada State Bar Trial Academy and will be out-of-town from July 8, 2015 through July 11, 2015 for that purpose.
6. I have a total of twenty-four (24) Motions in Limine scheduled to be heard on July 14, 2015 in the matter of *Brett Alexander vs. Brett Mauren*, Eighth Judicial Court Case No.: A-13-687062-C; and have a firm trial setting for August 3, 2015 in that matter.

1 7. I have an opening brief and appendix due on July 20, 2015 in the United  
2 States Court of Appeals for the Fifth Circuit in the complex matter entitled  
3 *In Re: Deepwater Horizon, Lake Eugenie Land & Development, Inc. v. BP*  
4 *Exploration & Production, Inc. et al., Glenn J. Lerner, Jonathan B. Andry,*  
5 *Movants-Appellants v. Louis J. Freeh, Special Master, Appellee, Case No.:*  
6 *15-30265.*

7 8. The demands of my preparation for all of the aforementioned trials, briefs  
8 and other commitments has made it impossible to complete the Opening  
9 Brief in this case by the current June 24, 2015 deadline, even taking into  
10 account the exercise of due diligence.

11 WHEREFORE, premises considered, Defendant/Appellant, Mazen Alotaibi  
12 respectfully requests that the time for filing his Opening Brief and Appendix be  
13 extended from June 24, 2015 to and including August 24, 2015.

14 Dated this 23<sup>rd</sup> day of June, 2014.

15  
16 Respectfully submitted.

17 GENTILE CRISTALLI MILLER  
18 ARMENI & SAVARESE

19 \_\_\_\_\_  
20 DOMINIC P. GENTILE  
21 Nevada Bar No. 1923  
22 KORY KAPLAN  
23 Nevada Bar No. 13164  
24 410 South Rampart Boulevard, Suite 420  
25 Las Vegas, Nevada 89145  
26 (702) 880-0000  
27 Attorneys for Defendant Mazen Alotaibi  
28

1 **CERTIFICATE OF SERVICE**

2 The undersigned, an employee of Gentile Cristalli Miller Armeni & Savarese,  
3 hereby certifies that on the 23<sup>rd</sup> day of June, 2015, I served a copy of the  
4 **DEFENDANT/APPELLANT MAZEN ALOTAIBI'S MOTION FOR**  
5 **EXTENSION OF TIME WITHIN WHICH TO FILE OPENING BRIEF**  
6 **(SECOND REQUEST)**, by electronic, and by placing said copy in an envelope,  
7 postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope  
8 addressed to:

9 Clark County District Attorney's Office – Criminal Division  
10 Steven B. Wolfson, District Attorney  
11 Mary Kay Holthus, Chief Deputy District Attorney  
12 Email: [mary.holthus@clarkcountynyda.com](mailto:mary.holthus@clarkcountynyda.com)  
13 Jacqueline M. Bluth, Chief Deputy District Attorney  
14 Email: [jacqueline.bluth@clarkcountynyda.com](mailto:jacqueline.bluth@clarkcountynyda.com)  
15 Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155  
Counsel for the State of Nevada

16 ADAM PAUL LAXALT, ESQ.  
17 Nevada Attorney General  
18 100 N. Carson Street  
19 Carson City, Nevada 89701-4717  
20 (775) 684-1108  
Counsel for Respondent

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23 An employee of  
24 GENTILE CRISTALLI MILLER  
25 ARMENI & SAVARESE  
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