

IN THE SUPREME COURT OF THE STATE OF NEVADA

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WILLIAM WITTER,  
  
Petitioner/Appellant,  
  
vs.  
  
STATE OF NEVADA,  
  
Respondents/Appellees.

Electronically Filed  
Feb 07 2020 04:40 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court No. 73431

District Court Case No. C117513

**REQUEST FOR EXTENSION OF  
TIME**

(Death Penalty Habeas Corpus  
Case)

Petitioner/Appellant William Witter, through counsel, hereby requests an extension of time of sixty (60) days, up to and including April 7, 2020 within which to file his Opening Brief. This request is supported by the attached declaration of counsel.

Dated this 7th day of February, 2020.

Respectfully submitted,  
Rene L. Valladares  
Federal Public Defender

/s/David Anthony  
David Anthony  
Assistant Federal Public Defender

## DECLARATION OF DAVID ANTHONY

I, David Anthony, declare as follows:

1. I am an attorney at law, admitted to practice before this Court, employed as an Assistant Federal Public Defender. I represent the Petitioner/Appellant William Witter in this capital case.
  
2. Mr. Witter's Opening Brief in Docket Number 73431 is currently due on February 7, 2020. I am requesting an extension of time of sixty (60) days, up to and including April 7, 2020, to file and serve the Opening Brief. This is Mr. Witter's first request for an extension of time following this Court's order reinstating the briefing schedule for this appeal.<sup>1</sup>
  
3. I am requesting an extension of time in order to address new authority from this Court, *Castillo v. State*, 135 Nev. 126, 442 P.3d 558 (2019), which arose after the Court stayed the instant appeal pending

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<sup>1</sup> Mr. Witter previously received an extension of time to file the Opening Brief when he was simultaneously litigating the appeal from the district court's amended judgment in Case No. 73444. The opening brief was originally due on April 24, 2018. This appeal was subsequently stayed while Mr. Witter litigated the appeal in Case No. 73444. Following the disposition of Case No. 73444, Mr. Witter filed a Notice of Intent to Proceed with this appeal, and this Court reinstated the appeal and set forth a briefing schedule.

the litigation of the direct appeal in Case No. 73444. This Court's decision in *Castillo* directly impacts the constitutional issues raised in Mr. Witter's instant petition. I am requesting an extension of time from this Court in order to address *Castillo's* impact in Mr. Witter's case.

4. I am also requesting an extension of time due to my obligations in other capital habeas matters that arose after the issuance of this Court's Scheduling Order that could not be further extended. I have had to assume responsibility for two new capital cases that have come into the office and one of the cases, *Nunnery v. Gittere*, Case No. 3:19-cv-00618-JAD-WGC, is a pre-petition case that has required substantial work to comply with the federal court's scheduling orders. In *Lisle v. Gittere*, Case No. 2:03-cv-01006-MMD-DJA, I am under a court imposed scheduling order that has and will continue to require substantial time each week to complete the tasks that have been ordered by the court. On December 24, 2019, I filed a petition for rehearing with the Ninth Circuit Court of Appeals in *Floyd v. Filson*, Case No. 14-99012, for which I had previously sought and received a sixty-day extension of time. I assisted case teams with the filing of reply

briefs in this Court on December 19 & 27, 2019. I also assisted a case team with the filing of a 430-page federal petition on January 30, 2020, in *Byford v. Gittere*, Case No. 3:11-cv-00112-JCM-WGC. On February 3, 2020, I filed a petition for writ of certiorari in *Castillo v. Gittere*, Case No. 19A595, after having previously sought and received an extension of sixty days from Justice Kagan to file the petition. I have also been supervising eight federal trial cases over the last several months and litigating discovery issues, and I anticipate that this will continue over the next several months.

5. Given these responsibilities, I was not able to complete Mr. Witter's Opening Brief by the current deadline.

6. I am requesting 60 days to complete the Opening Brief to ensure that I am able to finish it while also meeting my obligations in other capital cases. I currently have an application for certificate of appealability due on February 18, 2020, in *Hampton v. Ryan*, Case No. 19-99005, for which I have previously sought and received an extension of sixty days. I have an opposition to motion to dismiss due on March 2, 2020, in *Middleton v. Gittere*, Case No. CR95-1882, for which I have

previously sought and received an extension of forty days. I also have no opening brief due on April 1, 2020, in *Sherman v. Gittere*, Case No. 16-99000, for which I have previously sought and received an extension of time of 120 days.

7. The 60 days requested are necessary to allow me to complete Mr. Witter's Opening Brief in accordance with my duty to provide effective representation consistent with the standards pertaining to capital defense counsel.

8. On February 6, 2020, I emailed opposing counsel in this matter, Chief Deputy District Attorney, Alexander Chen, in order to obtain the State's position on this requested extension. However, I did not hear back from the State before filing this request.

9. This request is made not solely for the purposes of delay or for any other improper purpose, but only to ensure that Mr. Witter receives competent representation in this appeal. I anticipate that I will be able to complete and file Mr. Witter's opening briefs within sixty days.

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 7th in Las Vegas, Nevada.

/s/ David Anthony  
David Anthony  
Assistant Federal Public Defender

## CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 7th day of February, electronic service of the foregoing REQUEST FOR EXTENSION OF TIME shall be made in accordance with the Master Service List as follows:

Alexander Chen  
Chief Deputy District Attorney  
Alexander.Chen@clarkcountyda.com

*/s/ Sara Jelinek*

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An Employee of the Federal Public  
Defender, District of Nevada