

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM WITTER,

Petitioner/Appellant,

vs.

STATE OF NEVADA,

Respondents/Appellees.

Electronically Filed
Apr 24 2018 10:51 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 73444

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 June 25, 2018, within which to file his Opening Brief. This request is supported by the attached declaration of counsel.

Dated this 23rd day of April, 2018.

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 73444 is currently due on April 24, 2018. He also has an Opening Brief due in the in Docket No. 73431 the same day. I am requesting an extension of time of sixty (60) days, up to and including June 25, 2018, to file and serve both Opening Briefs. See NRAP 31(b)(3)(D). This is my first request for an extension of time since this Court's order, dated February 23, 2018, which resolved the parties' various motions regarding the appeals.

3. I am the Chief of the Capital Habeas Unit of the Federal Public Defender's Office. I became involved in Mr. Witter's case when two of the prior attorneys that were assigned to the case left the unit. Due to the departure of the prior attorneys, I have had to assume interim responsibility for several additional capital cases while also spending a substantial amount of time engaged in the hiring of new attorneys and

other staff in the office. Mr. Witter's case is one of the additional capital cases to which I have been assigned that is above and beyond my normal case load and the tasks in the case must be completed along with my administrative responsibilities as the Chief of the Unit.

4. Mr. Witter's appeals present several complicated procedural and substantive issues that will take more time than usual to address. The appeal in Docket Number 73444 is an appeal from a final judgment consisting of third amended judgment from a jury guilty verdict and sentence of death. The appeal in Docket Number 73431 is the appeal from the denial of a petition for writ of habeas corpus. This Court has clustered the appeals pursuant to IOP 2(c)(2). The substantive constitutional claims in Mr. Witter's case must be addressed along with the procedural issues involved in the habeas proceeding and the procedural issues involved in the third amended judgment. Specifically, this Court has invited the parties to brief issues "related to the law of the case doctrine and the implication of this court's decision in Slaatte v. State, 129 Nev. 219, 298 P.3d 1170 (2013)." These procedural issues will take more time than normal to address.

5. At the present time, progress has been made on the drafting of the opening brief. I estimate that between one-third and one-half of the claims have been drafted along with corresponding discussions regarding the law of the case doctrine. However, I will need at least sixty days to complete the drafting, editing, and citation checks for the brief.

6. The primary reason for this request for an extension of time is due to my administrative obligations as the Chief of the capital habeas unit and to filing deadlines that became due, or will become due within the next sixty days, that could not be further extended. This Court's order denying the motion to dismiss the appeal in Docket Number 73444 was issued on February 23, 2018, and its order dismissing the State's appeals in Docket Number 73431 was issued the same day.

7. Since that time, I filed a 104 page opposition to motion to dismiss on March 1, 2018, in Lopez v. Filson, USDC Case No. 2:01-cv-00406-RCJ-NJK. I filed two motions and replies in Middleton v. State, Second Judicial District Court Case No. CR95-1882, on March 7, April 4, and April 13, 2018. I assisted in the filing of a 400 page federal amended petition in Leonard v. Filson, USDC Case No. 2:99-cv-00360-MMD-CWH,

on March 19, 2018. I filed a reply brief with this Court on April 11, 2018, in Sherman v. Filson, No. 73984. I also assisted in the filing of a motion to alter or amend a final judgment on April 20, 2018, in Hogan v. Filson, USDC Case No. 2:97-cv-00927-JCM-PAL.

8. As the Chief of the unit, I have had to devote time and attention to four state capital habeas appeals that were affirmed by this Court, and which became final, within the last the last five months. My office has also recently accepted appointed to a new capital habeas matter arising from the State of Arizona. I have had to devote a significant amount of time to the higher volume of cases coming to the CHU. I have also had to assist one case team with an evidentiary hearing that occurred two weeks ago, and two other case teams with upcoming evidentiary hearings in the Second Judicial District Court as well as in federal court.

9. I am requesting sixty days so that I can complete the opening briefs in Mr. Witter's case while also handling my other case related filing deadlines that will become due in the next sixty days. I am currently working on a third brief with this Court as Respondent and Cross-

Appellant in the capital habeas matter of Filson v. Gutierrez, No. 74236, which is currently due with this Court on May 2, 2018. I am also counsel for real party in interest, Scott Dozier, in two State petitions for writ of mandamus/prohibition, and this Court has set oral argument in that case for an hour and twenty minutes on May 8, 2018. The Gutierrez and Dozier matters involve complex appeals, and my case related obligations in those cases before this Court will require a substantial amount of time on my part.

10. 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.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 23, 2018 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 23rd day of April, 2018, electronic service of the foregoing REQUEST FOR EXTENSION OF TIME shall be made in accordance with the Master Service List as follows:

Steven S. Owens
Chief Deputy District Attorney
steven.owens@clarkcountyda.com

/s/ Sara Jelinek

An Employee of the Federal Public
Defender, District of Nevada