

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM WITTER,

Petitioner/Appellant,

vs.

STATE OF NEVADA,

Respondents/Appellees.

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Supreme Court No. 73444
Elizabeth A. Brown
Clerk of Supreme Court

District Court Case No. C117513

**REQUEST FOR EXTENSION OF
TIME TO FILE REPLY BRIEF**

(Death Penalty Habeas Corpus
Case)

Petitioner/Appellant William Witter, through counsel, hereby requests an extension of time of seventy days, up to and including February 21, 2019, within which to file his Reply Brief. This request is supported by the attached declaration of counsel.

Dated this 13th day of December, 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. The State's Answering Brief was filed on October 29, 2018. Under NRAP 31(a)(3)(C), Mr. Witter's Reply Brief is due on December 13, 2018. I am requesting an extension of time of seventy days, up to and including February 21, 2019, to file and serve the Reply Brief. *See* NRAP 31(b)(3)(D). This is Mr. Witter's first request for an extension of time.

3. There has been progress made in drafting responses to the State's arguments, but there is a substantial amount of work remaining to be done before the Reply Brief is completed for filing. This instant appeal presents a complex procedural history, and includes arguments regarding the application of this Court's decision in *Slaate v. State*, 129 Nev. 219, 298 P.3d 1170 (2013), and the law of the case doctrine as applied to each of the constitutional issues raised in the brief.

4. My primary reason for requesting an extension is due to my obligations in other capital habeas matters that could not be further extended. Since the filing of the State's brief, I filed two supplemental briefs in the Ninth Circuit Court of Appeals in *Floyd v. Filson*, Case No. 14-99012 and *Smith v. Filson*, Case No. 14-99003, on November 5 and 20, 2018, respectively. On November 8, 2018, I filed a Petition for Rehearing in this Court in *McConnell v. Gittere*, Case No. 71061. On November 19, 2018, I filed a Supplemental Brief in *Armstrong v. Ryan*, United States District Court, District of Arizona Case No. CV-15-00358-TUC-RM.

5. On November 21, 2018, I filed a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 and an Emergency Motion to Stay Issuance of Execution Warrant on behalf of Tamir Hamilton, in the United States District Court, District of Nevada Case No. 3:18-cv-00555-RFB-WGC.

6. On November 30, 2018, I filed a Complaint for Injunctive and Declaratory Relief due to Unconstitutional Conditions of Confinement and Plaintiff's Motion for Temporary Restraining Order With Notice and

Preliminary Injunction in *Dozier v. Dzurenda, et al.*, in the United States District Court, District of Nevada Case No. 3:18-cv-00570-RCJ-CBC.

7. On December 4, 2018, I filed Respondent's Reply Brief on Cross-Appeal in *Gittere v. Gutierrez*, Nevada Supreme Court Case No. 74236, and on December 6, 2018, I filed an Opening Brief with this Court in *Bejarano v. Gittere*, Case No. 76629.

8. In addition to being out of office from December 5–7, 2018, due to illness, I am supervising two case teams that have federal petition filings due in the United States District Court, Districts of Nevada and Arizona, with imminent statute of limitations deadlines next week.

9. Given these responsibilities, it was not possible for me to complete Mr. Witter's Reply Brief by today.

10. I am requesting seventy days to complete the Reply to ensure that I am able to finish it while also meeting my obligations in other capital cases that will become due in the next sixty days. I have three out-of-state oral arguments scheduled in January and February 7, 2019. I also have scheduled leave for the first week of January, 2019.

11. The additional time requested here is necessary for me to devote the attention required to competently represent Mr. Witter. I believe that I will be able to complete and file the Reply Brief with this Court by February 21, 2019

12. This request is not made solely for the purpose of delay, or for any other improper purpose, but only to ensure that this office provides competent representation to Mr. Witter. Nev. R. Prof. Conduct 1.1.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 13, 2018, in Las Vegas Nevada.

/s/David Anthony
David Anthony
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

In accordance with NRAP 25(d)(1), I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 13th day of December, 2018, electronic service of the foregoing REQUEST FOR EXTENSION OF TIME TO FILE REPLY BRIEF shall be made in accordance with the Master Service List as follows:

Steven S. Owens
Chief Deputy District Attorney
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/s/ Sara Jelinek

An Employee of the Federal Public
Defender, District of Nevada