

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS WILLIAM RANDOLPH

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 73825

Direct Appeal From A Judgment Of Conviction
Eighth Judicial District Court
The Honorable Stefany Miley, District Judge
District Court No. 09C250966

**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
TO FILE OPENING BRIEF
(SECOND REQUEST)**

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Attorney for Thomas Randolph

THOMAS RANDOLPH hereby moves for an enlargement of time to file his opening brief - to January 2, 2019.

A. DISTRICT COURT PROCEDURAL BACKGROUND

RANDOLPH was convicted on August 23, 2017 of conspiracy to commit murder, and double murder. **He was sentenced to death.**

Counsel was appointed to represent Mr. Randolph on direct appeal to the Nevada Supreme Court on April 30, 2018.

The opening brief in this case is due on October 1, 2018, pursuant to an enlargement of time which was granted by this Court on July 23, 2018.

B. JUSTIFICATION FOR MOTION

This request is necessitated by the fact that (1) counsel noticed an anomaly in the record on appeal (ROA) which had to be resolved before she continued reviewing the record, (2) counsel had trouble obtaining a copy of a thumb drive exhibit and was unable to open a DVD exhibit without assistance from an IT professional, (3) the ROA is over 8,000 pages in length, and (4) MR. Randolph has written several lengthy letters outlining issues he wishes to have discussed in the Opening Brief, which counsel needs to review and respond to and which may necessitate another in-person meeting with Mr. Randolph. Counsel is currently only working on Mr. Randolph's appeal, and will only be working on this appeal until it is finished, with the exception of one Reply Brief in another case before this Court which counsel anticipates will be due the first part of November.

1. Anomaly In The ROA

In reviewing the ROA, counsel noticed several instances where a page bearing the same bates number had two or three different versions - one was unredacted, and two were redacted in different ways. Counsel felt it was important to find out who had made the redactions and which version had been submitted to the Nevada Supreme Court as part of the ROA.

Counsel spoke with JoNell Thomas with the Public Defender's Office, which is the entity that provided a copy of the ROA to current appellate counsel. Ms. Thomas advised that her office had not redacted any documents.

Counsel then spoke with Heather Ungermann in the appeals division of the Court Clerk's Office. She confirmed that she or someone in her office had prepared the ROA and done the bates numbering. She also said that her office did not redact anything in the ROA, and that what was provided to this Court was an unredacted version of all pages of all documents.

Counsel then spoke to someone in the clerk's office of the Nevada Supreme Court. She said she could not confirm whether or not the ROA filed with this Court had redacted pages or not. We left it to where I would alert the Court in the Opening Brief if I had to reference any pages of the ROA which were in question.

To this day, I do not know who made the redactions, or what version has been filed with this Court.

2. Exhibit Issues

When counsel received exhibits from the Evidence Vault, there was reference to a thumb drive that had been admitted as a defense exhibit, but which could not be copied because the Evidence Vault could not copy thumb drives. This exhibit was the subject of a motion to suppress, and therefore would be important for the appeal. Counsel phoned the Evidence Vault and was told that it could not provide a copy of the thumb drive because it would first have to load the contents on its computer, and it had a policy against doing that because it might contain a virus which could infect the court's computer system.

Counsel then called its copy service to see if they could somehow obtain a copy, and they offered to take a computer and load the contents on their computer and get me a copy that way. The Evidence Vault would not allow that because in copying from the thumb drive, they were afraid that the original might be corrupted or otherwise damaged.

This left me in a dilemma. I spoke to the supervisor, Connie Blum, who contacted her IT department to see if they had any suggestions.

In the meantime, I contacted defense trial counsel who was able to help me identify what was on the thumb drive, and we determined that it was a walk-through video that had been

admitted during trial on a DVD and which I already had a copy of. In the meantime, Ms. Blum phoned me back to advise that the IT Department had made a copy of the thumb drive and that I could pick it up at the courthouse. They would not mail it to me for fear of it becoming corrupted. I plan to pick it up this Wednesday (09-19-18) just to make sure that it is the same video I already have a copy of.

3. 8,000-Page ROA

The ROA is over 8,000 pages in length. I read a record/appendix at the rate of approximately 20 pages per hour. That is not just straight reading. That involves reading, highlighting important issues or facts, making notes in the margins, and attaching post-its to easily locate issues and witness testimony. Reading 8,000 pages at 20 pages per hour takes approximately 400 hours to complete. Spending eight hours per day just reading the ROA takes approximately 50 days to complete.

In counsel's last motion for enlargement, I advised this Court that I would be able to begin reading the ROA the beginning of August. That was delayed somewhat by a one-week vacation the beginning of August about which counsel advised this Court in her last motion, and also by efforts to sort out the issues discussed above with the redacted ROA and the missing exhibit. Nevertheless, even if counsel had begun reading the

ROA on August 1, 2018, it would take until almost October 1, 2018 (current due date for Opening Brief) just to finish reading the ROA because of its sheer length of 8,000 pages.

As of this writing, counsel is halfway through reading the ROA. It will take another 20-30 days for her to finish reading it. That takes us to the middle of October. After that, counsel must review letters from the client and perhaps schedule a second meeting with him (discussed below), research the various issues, and write the brief, itself. While counsel believes she can finish this by December 1, 2018, in an abundance of caution so as to not have to return to ask for a third enlargement of time, and in view of the approaching holiday season, she is asking for an enlargement to January 2, 2019.

4. Client Input

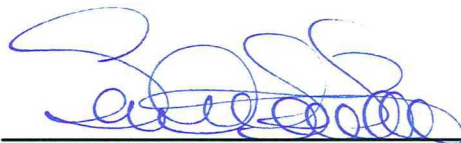
Mr. Randolph is naturally, very concerned about this appeal, and wants to make sure that all issues are discussed. To this end, he has written several very lengthy letters outlining his view of important issues. I have not yet read all of them because, as I have told him, they will not make sense to me until I have finished reading the ROA. I have promised him that once I am finished reading the ROA, I will review all his letters and respond with my thoughts, and even perhaps schedule another meeting with him if I think that is necessary.

This effort, alone, may require me to research issues which I do not feel should be discussed in the appeal, in order to explain with citations to precedent why an issue may not be appropriate to be discussed in the appeal. It may require me to search the 8,000-page record for facts which would explain why a particular issue may not be strategically appropriate to address in the appeal. While this effort takes time away from the actual research and preparation of the Opening Brief, I feel very strongly that given that this is a capital case, a great deal of deference must be afforded the client to make sure his questions are answered, and all issues he wishes discussed which are not frivolous are addressed.

C. CONCLUSION

For the reasons outlined above, Counsel respectfully requests an enlargement of time to file the Opening Brief in this case to January 2, 2019.

Dated this 17th day of September, 2018.



SANDRA L. STEWART, ESQ.
Nevada Bar No.: 6834
Attorney for Appellant, RANDOLPH

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the:

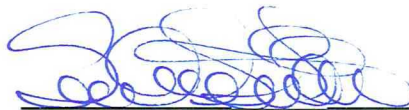
**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
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by mailing a copy on September 17, 2018, 2018 via first class
mail, postage thereon fully prepaid, to the following:

**THOMAS RANDOLPH, IM NO. 1183344
HIGH DESERT STATE PRISON
POST OFFICE BOX 650
ELY, NV 89070**

and by e-filing a copy with the Nevada Supreme Court, thereby
providing a copy to:

**CLARK COUNTY DISTRICT ATTORNEY
OFFICE OF THE DISTRICT ATTORNEY
200 LEWIS AVENUE, THIRD FLOOR
LAS VEGAS, NV 89155-2212**



SANDRA L. STEWART