

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE AZUCENA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Feb 23 2018 04:02 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Case No. 74071

**APPELLANT'S MOTION FOR EXTENSION OF TIME TO FILE
OPENING BRIEF AND APPENDIX**

COMES NOW Appellant, JOSE AZUCENA, by and through Deputy Public Defender DEBORAH L. WESTBROOK, and moves this Honorable Court for a **ninety (90) day** extension of time from February 26, 2018, through and including **May 28, 2018** within which to file the Opening Brief and Appendix in this case. This Motion is based upon the attached Declaration of Counsel.

DATED this 23 day of February, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/ Deborah L. Westbrook
DEBORAH L. WESTBROOK, #9285
Deputy Public Defender
309 So. Third Street, Suite #226
Las Vegas, Nevada 89155-2610
(702) 455-4685

DECLARATION OF DEBORAH L. WESTBROOK

1. I am an attorney licensed to practice law in the State of Nevada; I am a deputy public defender assigned to handle the appeal of this matter; I am familiar with the procedural history of this case.

2. In a standard appeal, an Appellant gets 120 days after the docketing date to file his Opening Brief and Appendix. NRAP 31(a)(1)(A). The appellant must file a Transcript Request Form with the district court clerk no later than 15 days from the date that the appeal is docketed. NRAP 9(a)(3)(a). Then, within 30 days after the Transcript Request Form has been delivered, the court reporter/recorder must prepare the requested transcripts. NRAP 9(c)(1)(A). Assuming everyone complies with these rules, an Appellant is entitled to a minimum of 75 days to review the record, research the issues, and prepare and file an Opening Brief, plus an automatic 30-day stipulated extension.

3. Appellate counsel complied with the rules in this case. Mr. Azucena's appeal was docketed on September 27, 2017. His Transcript Request Form was filed just 13 days later, on October 10, 2017. Had the court recorder/reporter prepared the requested transcripts in a timely manner, I could have begun working on Mr. Azucena's appeal no later than

November 9, 2017. I would have had 77 days to review the record, research the issues, and prepare and file his Opening Brief.

4. Instead, however, the court reporter obtained a 30-day extension of time to submit the transcripts in this case and did not produce them until December 11, 2017. Yet, when this Court granted the court reporter's 30-day extension, it did not grant Mr. Azucena an equal extension of time to submit his Opening Brief. As a result, Mr. Azucena lost 30 days that could have been spent preparing his appeal.

5. Although transcripts were produced in December, due to the winter holidays our appellate team clerk did not complete the Appendix until early January 2018. As the Opening Brief was originally due just weeks later, on January 25, 2018, I obtained the standard stipulated 30-day extension of time to submit the Opening Brief, which is presently due on February 26, 2018.

6. I was unable to begin reviewing Mr. Azucena's case until this week due to other pending appellate deadlines which required the filing of the following: (1) a Petition for Rehearing in **Skropeta v. State** (Case Nos. 69812/71642) on January 9, 2018; (2) a Reply Brief in **Richardson v. State** (Case No. 72660) on January 10, 2018; (3) an Opening Brief in **Colvin v. State** (Case No. 74058) on January 22, 2018; (4) an Opposition and Motion

to Strike in **Richardson v. State** (Case No. 72660) on January 26, 2018; (5) a Reply Brief in **Richards v. State** (Case No. 70530) on February 1, 2018; and (6) a Reply Brief in **Mathews v. State** (Case No. 72701) on February 16, 2018. I also spent the entire week of January 22nd drafting and reviewing jury instructions in connection with the Commission on Statewide Rules of Criminal Procedure, Jury Instructions Work Group, chaired by Judge Scott Freeman.

7. The Appendix in this case is voluminous, consisting of fifteen (15) volumes and nearly 3,000 pages. To date, I have reviewed only **five (5)** of the fifteen (15) volumes. I have not yet reviewed **any** of the twelve days of jury trial transcripts. I have not started researching or preparing the Opening Brief. I would be patently ineffective if required to submit an Opening Brief on February 26, 2018.

8. Mr. Azucena's case is extremely complex. The Second Amended Indictment charged Mr. Azucena with 39 crimes against 6 different children who lived in his apartment complex, including 18 counts of lewdness with a child under the age of 14, 4 counts of attempt lewdness with a child under the age of 14, 5 counts of indecent exposure, 9 counts of child abuse neglect or endangerment, 2 counts of sexual assault, and 1 count of first degree kidnapping. Following a 12-day jury trial, Mr. Azucena was

convicted of 30 of those crimes: 12 counts of lewdness with a child under 14, 4 counts of attempt lewdness with a child under 14, 5 counts of indecent exposure, 7 counts of child abuse neglect or endangerment, 1 count of sexual assault, and 1 count of first degree kidnapping. Mr. Azucena received an aggregate total sentence of 85 years to life.

9. Given the complexity of this case, I expect to spend at least one month reviewing and outlining the 3000 pages of transcript, and at least another month researching and writing the appeal. Had I received the transcripts back in early November, I would have had ample time to complete this part of the process – 77 days, to be exact. However, there is additional work to be done in this case as well.

10. Having spoken with the trial attorneys, I am aware that it will be necessary for me to obtain and supplement the record to include JAVS for the entire trial, including for two pretrial hearing dates. I have already asked the court recorder to provide us with copies of the JAVS and, once I receive them, I will be filing a joint stipulation with trial counsel from the District Attorney's Office to include those in the record. Additional time is necessary to complete this process. Additional time will also be necessary for me to review the JAVS and incorporate relevant portions of the JAVS into my argument on appeal.

11. Earlier this week, I asked the Clerk of the Evidence Vault for copies of all of the evidence that was submitted in the case so that I could evaluate it to determine if any additional issues need to be raised on appeal. I have not yet received copies of the evidence and additional time is necessary to both obtain and review the evidence that was introduced at trial.

12. In my professional opinion, a **ninety-day** extension of time is necessary in order to safeguard Mr. Azucena's Sixth Amendment right to the effective assistance of counsel, and his 5th and 14th Amendment rights to due process. Therefore, I am requesting a **90-day** extension of time to file my Opening Brief and Appendix, up to and including **May 28, 2018**.

13. This Motion for Extension is made in good faith and not for the purpose of delay.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 23 day of February, 2018.

/s/ Deborah L. Westbrook
DEBORAH L. WESTBROOK

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 23 day of February, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT
STEVEN S. OWENS

DEBORAH L. WESTBROOK
HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

JOSE AZUCENA
NDOC No: 1183653
c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

BY /s/ Carrie M. Connolly
Employee, Clark County Public
Defender's Office