

IN THE SUPREME COURT OF THE STATE OF NEVADA

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James Montell Chappell,

Petitioner/Appellant,

vs.

The State of Nevada,

Respondents/Appellees.

Electronically Filed
Jan 14 2022 11:22 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 77002

District Court Case No. C131341

DEATH PENALTY CASE

**Request for Extension of Time to file Appellant's
Petition for Rehearing**

Appellant James Montell Chappell requests an extension of time of thirty (30) days, up to and including February 17, 2022, to file his Petition for Rehearing.

This request is supported by the attached declaration of counsel.

Dated this 14th day of January, 2022.

Respectfully submitted,

/s/ *Brad D. Levenson*

Brad D. Levenson

Assistant Federal Public Defender

Nevada Bar No. 13804C

411 E. Bonneville Ave., Suite 250

Las Vegas, Nevada 89101

702-388-6577

Declaration of Brad D. Levenson

I, Brad D. Levenson, declare as follows:

1. I am an attorney at law, admitted to practice before this Court and employed by the Capital Habeas Unit of the Federal Public Defender, District of Nevada. I am assigned to represent James M. Chappell in this matter.

2. This Court issued an Order of Affirmance in this case on December 30, 2021. The Petition for Rehearing in this case is due Tuesday, January 18, 2022. NRAP 40(a)(1). I am seeking an extension of time of thirty (30) days, up to and including February 17, 2022, within which to file and serve the Petition for Rehearing. No previous extensions have been sought.

3. I am requesting a thirty-day continuance because this Court's decision is on a matter of first impression with wide ranging importance and I have not had adequate time to prepare Mr. Chappell's Petition for Rehearing due to the holidays and other case-related responsibilities.

4. This Court's published decision in Mr. Chappell's case is on a matter of first impression that promises to have far reaching consequences on the current system of district courts appointing habeas counsel to conduct re-trial and re-sentencing proceedings, particularly in capital cases. In particular, this Court's decision requires a pro se capital defendant to attack the performance of the very counsel who is currently representing him at a re-trial. Slip. Op. at 9-10. Capital defense counsel in such circumstances is ethically obligated to zealously represent the client while at the same time defending himself/herself against charges of ineffectiveness and to advise the client regarding the availability of post-conviction remedies under Standard 2-18(a) of ADKT 411. A petition for rehearing is required to direct the Court's attention to the irreconcilable inconsistency with this interpretation of the procedural default rules in Mr. Chappell's case with this Court's decision in *Nika v. State*, 120 Nev. 600, 606-07, 97 P.3d 1140, 1145 (2004), where the Court specifically declined to interpret NRS 34.810 in a manner that would require the petitioner to attack the performance of counsel while counsel is still representing the client.

5. Specifically, with respect to other cases, I was in Sacramento, California on January 4 and January 5, 2022, for a court hearing, discovery review, and a client visit all related to *U.S.A. v. Ronald Yandell*, case number 2:19-CR-00107-KJM, a federal capital trial case out of the Eastern District of California. Further, on January 10, 2022, I had to file a reply to a motion to reconsider in *U.S.A. v. Schlesinger*, case number 4:18-cr-02719-RCC, a capital trial case out of the District of Arizona.

6. Given these responsibilities, it is not possible for me to complete Mr. Chappell's Petition for Rehearing by the deadline. The additional time requested here is necessary for me to devote adequate attention to competently represent Mr. Chappell.

7. On January 12, 2022, I contacted opposing counsel in this matter, Chief Deputy District Attorney Karen Mishler. She indicated no opposition to this request.

8. 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. Chappell. 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 January 14, 2022, in Las Vegas, Nevada.

/s/ *Brad D. Levenson*

Brad D. Levenson

Certificate of Service

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 14th day of January 2022, electronic service of the foregoing **Request for Extension of Time to file Appellant's Petition for Rehearing** shall be made in accordance with the Master Service List as follows:

Karen Mishler
Chief Deputy District Attorney
Motions@clarkcountyda.com
Eileen.Davis@clarkcountyda.com

/s/ Sara Jelinek
An Employee of the
Federal Public Defender,
District of Nevada