

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 78152

MELVIN LEROY GONZALES,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Oct 28 2020 09:41 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**MOTION FOR AN EXTENSION TO TIME TO FILE A
REQUEST FOR LEAVE TO FILE AN AMICUS CURIAE
BRIEF AND AN AMICUS BRIEF ON BEHALF OF THE
NEVADA ATTORNEYS FOR CRIMINAL JUSTICE IN
SUPPORT OF APPELLANT
(FIRST REQUEST)**

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For NACJ Amicus Curiae

Nevada Attorneys for Criminal Justice (“NACJ”), by and through its counsel, Jonathan M. Kirshbaum, Assistant Federal Public Defender, hereby move for an extension of time to file a request for leave to file an amicus curiae brief and an accompanying amicus brief in support of appellant’s petition of review. NACJ requests an extension of time to November 25, 2020, to file these pleadings.

NACJ understands that this request is being made out of time. Any request to file an amicus curiae brief would have been due on October 26, 2020. *See* NRAP 29(f). NACJ was not approached about potentially filing an amicus brief until the afternoon of October 26, 2020. We processed the request in an expedited fashion and then filed this motion as soon as we could. As discussed in more detail below, due to the importance of the issue in this case and the value that input from NACJ could provide to this Court, NACJ respectfully requests that this Court grant this motion. In addition, the Attorney General’s Office has recently filed a motion for an extension of time to November 25, 2020, to file an amicus brief. This request would allow NACJ to file its request for leave and the

accompanying amicus brief at the same time as the Attorney General's Office.

Good cause exists for granting this request. In its opinion below, the Nevada Court of Appeals held that, under NRS 34.810(1)(a), a petitioner who pled guilty cannot raise ineffective assistance of counsel claims with respect to counsel's performance at sentencing or on appeal in a post-conviction petition. This exceedingly narrow interpretation of 34.810(a)(1) will preclude these petitioners from raising these clearly established constitutional challenges in Nevada state courts. This is inconsistent with the general framework of Chapter 34 as well as this Court's prior precedent allowing these types of claims to be raised in post-conviction petitions. Indeed, a post-conviction petition is universally viewed as the exclusive means to address these constitutional rights. The Court of Appeals published opinion will have a detrimental impact on countless petitioners in every judicial department.

NACJ is well-positioned to provide insight to this Court on this issue. NACJ is comprised of both private and public attorneys and is, as this Court knows, a statewide organization comprised of criminal defense

attorneys. Many attorney members of NACJ represent petitioners in state court post-conviction proceedings, as well as in appellate proceedings that often follow post-conviction litigation in the district court. In addition, attorney members of NACJ also have experience litigating post-conviction petitions challenging state court convictions in federal court. It is respectfully submitted that the experience and perspective of these attorneys in an amicus brief would greatly benefit this Court in its consideration of the critically important issue in this case.

This motion is submitted in good faith and not for the purposes of delay. NACJ respectfully asks this Court to grant this motion.

Respectfully submitted this 28th day of October, 2020.

Respectfully submitted,

/s/ Jonathan M. Kirshbaum
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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2020, I electronically filed the foregoing with the Clerk of the Nevada Supreme Court by using the appellate electronic filing system. Participants in the case who are registered users in the appellate electronic filing system will be served by the system and include:

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