

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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**MICHAEL MCNAIR**

Appellant,

vs.

**THE STATE OF NEVADA**

Respondent.

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**Docket No. 78871**

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Direct Appeal From A Judgment of Conviction  
Eighth Judicial District Court  
The Honorable Douglas Herndon, District Judge  
District Court No. C-17-327395-1

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**MOTION AND STIPULATION TO REQUEST TO STAY THE  
APPEAL AND REMAND THIS MATTER TO THE DISTRICT  
COURT FOR ENTRY OF PLEA**

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Navid Afshar  
State Bar #14465  
Deputy Special Public Defender  
JoNell Thomas  
State Bar #4771  
Special Public Defender  
330 South 3<sup>rd</sup> Street  
Las Vegas, NV 89155  
(702) 455-6265  
Attorney for McNair

COMES NOW, Appellant Michael McNair, by and through his attorney, Navid Afshar, Deputy Special Public Defender, in agreement with the State of Nevada, and requests that this Honorable Court issue an Order to suspend briefing for this appeal and remand the matter to the district court for entry of plea.

### STATEMENT OF THE CASE

This is an appeal from a judgment of conviction of First Degree Murder with Use of a Deadly Weapon and Carrying a Concealed Firearm or Other Deadly Weapon. Mr. McNair was charged by way of Information with Murder with use of a deadly weapon and Carrying Concealed Firearm or other deadly weapon on October 24, 2017. He proceeded to trial and the jury returned a verdict of guilty as to First Degree Murder with use of a deadly weapon and Carrying a Concealed Firearm or other deadly weapon. The district court sentenced Mr. McNair on May 1, 2019 to 20 years to Life plus a consecutive term of 60-240 months for the use of the deadly weapon and a concurrent sentence for Count 2. The Judgment of Conviction was filed May 3, 2019 and the Notice of Appeal was timely filed on May 22, 2019.

McNair filed his second request for an extension of time to file his Opening Brief on December 30, 2019. The Court's Order granting the motion was filed January 9, 2020 and the due date for the Opening Brief is currently set for February 13, 2020.

Based on the reasons set forth in the declaration attached hereto, counsel for Appellant is requesting a suspension of the briefing schedule. It is respectfully requested that this Court issue an Order granting this request for a suspension of the current briefing schedule, and to order that this matter be remanded matter back to the district court in order for the Appellant to enter a plea.

### POINTS AND AUTHORITIES

NRAP 2 sets forth in pertinent part:

On the court's own or a party's motion, the court may — to expedite its decision or for other good cause — suspend any provision of these Rules in a particular case and order proceedings as the court directs, except as otherwise provided in Rule 26(b).

NRAP 26(b) sets forth in pertinent part:

Except as otherwise provided in these Rules, or when not otherwise controlled by statute, the time prescribed by these Rules to perform any act may be extended once for appellant(s) and once for respondent(s) by stipulation of the parties. No stipulation extending time is effective unless approved by the court or a justice

or judge thereof; and such stipulations must be filed before expiration of the time period that is sought to be extended.

### CONCLUSION

Based on the Declaration attached hereto, Mr. McNair requests the Court grant his motion and stipulation with the State of Nevada, requesting an Order to suspend the briefing schedule and remand this matter back to the district court.

DATED this 11<sup>th</sup> day of February, 2020.

SUBMITTED BY:

A handwritten signature in dark ink, appearing to read "David Afschar", is written over a horizontal line.

NAVID AFSHAR  
Deputy Special Public Defender  
330 S. Third St., Ste. 800  
Las Vegas, Nevada 89155  
702-455-6265  
Attorney for Appellant McNair

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## DECLARATION OF NAVID AFSHAR

NAVID AFSHAR, hereby declares as follows:

1. That I am an attorney duly licensed to practice law in the State of Nevada, and the deputy with the Clark County Special Public Defender's office assigned to represent Mr. McNair on his direct appeal from a Judgment of Conviction (Verdict From Jury Trial).
2. I was not the trial attorney in this case but assisted trial counsel at certain points.
3. McNair's second request for an extension of time to file his Opening Brief was granted. The Opening Brief is due February 13, 2020.
4. Appellate counsel, in communication with and on behalf of Mr. McNair has been negotiating with the State of Nevada, respondent in this case, to resolve this matter. After consulting with all relevant parties, the State and Mr. McNair have come to an agreement that would include Mr. McNair entering a plea of guilty and withdrawing his appeal. Given the upcoming deadline of the Opening Brief, the parties would like to suspend the briefing in


order to transport Mr. McNair back to Las Vegas, NV from his current location of Ely State Prison and remand the matter back to the district court so that Mr. McNair may enter his plea upon issuance of this Court's Order, and file a notice to withdraw his appeal.

5. Based on all relevant considerations, both Appellant and Respondent would like to resolve this matter without proceeding on appeal. Appellate counsel has addressed the effects of entering a plea and withdrawing an appeal under NRAP 4(b)(6). However, Mr. McNair's current location has constrained communication and counsel would like to have the opportunity to request that the district court move to grant an order for transport, in order to better communicate with Mr. McNair and enter the plea in the district court.

I declare that I make this request in good faith and not for purposes of delay.

...

Dated this 11<sup>th</sup> day of February, 2020

A handwritten signature in dark ink, appearing to read "Navid Afshar", is written over a horizontal line.

NAVID AFSHAR  
Deputy Special Public Defender  
330 S. Third St., Ste. 800  
Las Vegas, Nevada 89155  
702-455-6265  
Attorney for Appellant McNair

### STIPULATION

The State of Nevada and Appellant Michael McNair, by and through his counsel, Navid Afshar, Deputy Special Public Defender hereby stipulate and agree to stay the appeal and remand this matter to the District Court for Entry of Plea.

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Dated: this day of February <sup>11</sup>~~11~~<sup>12</sup>, 2020

/s/ NAVID AFSHAR

NAVID AFSHAR

Counsel for McNair



Alexander Chen  
Chief Deputy District Attorney  
Counsel for Respondent

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on 2/<sup>11</sup>~~20~~<sup>NA</sup>/2020, a copy of the foregoing MOTION was served as follows:

**BY ELECTRONIC FILING TO**

District Attorney's Office  
200 Lewis Ave., 3<sup>rd</sup> Floor  
Las Vegas, NV 89155

Nevada Attorney General  
100 N. Carson St.  
Carson City NV 89701

/s/ NAVID AFSHAR

NAVID AFSHAR

