## IN THE SUPREME COURT OF THE STATE OF NEVADA 1 2 3 Electronically Filed CHRISTOPHER SENA, 4 Apr 10 2020 05:25 p.m. Elizabeth A. Brown Appellant, 5 Case NGIPPOST Supreme Court 6 VS. 7 THE STATE OF NEVADA, 8 Respondent. 9 10 APPELLANT'S MOTION FOR EXTENSION OF TIME 11 **Second Request** 12 13 Comes Now Appellant CHRISTOPHER SENA, by and through Deputy 14 Public Defender WILLIAM M. WATERS, and hereby moves for a thirty (30) day 15 extension of time from Monday, April 20, 2020 through and including Wednesday May 16 20, 2020, within which to file the Opening Brief in this case. This Motion is based upon 17 the attached Declaration of counsel. 18 19 DATED this 10th day of April, 2020. 20 PHILIP J. KOHN CLARK COUNTY PUBLIC DEFENDER 21 22 23 /s/ William M. Waters By WILLIAM M. WATERS, #9456 24 Deputy Public Defender 25 309 So. Third Street, Suite #226 Las Vegas, Nevada 89155-2610 26 (702) 455-4685 27 28

## **DECLARATION OF WILLIAM M. WATERS**

- 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. Appellant's case began when the State filed the criminal complaint on September 19, 2014. The State alleged Appellant's committed 120 offenses over nearly two decades, with the majority of offenses carrying a sentence of life in prison. Appellant's case concluded when the district court sentenced Appellant on May 28, 2019, upon conviction after jury trial. The district court sentenced Appellant to life in prison with parole eligibility after 327 years.
- 3. During the almost five years between the case's inception and its conclusion, both the State and Defendant filed numerous motions in the district court which resulted in extensive argument. Additionally, Appellant's trial initially began on September 5, 2018, before the being aborted by the district court judge and then re-set for January 28, 2019. Appellant's trial began on January 28, 2019 and lasted 17 days with over a dozen witnesses testifying to facts which occurred over two decades.
- 4. The Clark County Public Defender's Office filed the Notice of Appeal in this matter on June 14, 2019.
- 5. The Clark County Public Defender's Office filed its Request for Transcripts and Docketing Statement on July 8, 2019, thereby making the Opening Brief due within 120 days (November 8, 2019).
- 6. On August 27, 2019, District Court Department 19's court reporter filed a request to extend time to file the transcripts. This Court granted the request on September 3, 2019 and ordered the reporter to file the transcripts by October 18, 2019. The Court also ordered the reporter to file her Notice of transcript delivery by October

28, 2019. Additionally, this Court extended the deadline for Appellant to file the Appendix and Opening Brief to January 16, 2020. Department 19's reporter filed her Notice on October 24, 2019 indicating all outstanding transcripts had been delivered.

- 7. Upon receipt of the transcripts, the Clark County Public Defender's Office complied the Appellant's Appendix which consists of all transcripts in the case as well as all court minutes and all motions filed in the district court. The Appellant's Appendix consists of 29 volumes containing 6,749 pages.
- 8. On January 8, 2020, Declarant prepared and filed a Stipulation allowing a thirty-day extension until February 18, 2020. This Court filed a Notice approving the stipulation.
- 9. On February 13, 2020, Declarant filed a Motion for Extension of Time to file the Opening Brief. Declarant <u>requested 90 days</u> but inadvertently noted April 20, 2020 instead of May 20, 2020 as the new deadline to file the Opening Brief. On February 27, 2020, this Court granted Declarant's motion, but rather than give Declarant the 90 days he requested, the Court presumably relied upon the incorrect April 20, 2020 date and therefore, only granted Declarant 60 days making the brief due April 20, 2020. Although Declarant noticed this error, he nevertheless continued to work on the Opening Brief hopeful he could finish the brief by the new April 20, 2020 deadline.
- 10. Declarant made substantial progress on Sena's Opening Brief. However, on March 20, 2020, Nevada Governor Steve Sisolak issued a mandatory shutdown Order for all non-essential businesses in Nevada in response to the Covid-19 pandemic. Shortly thereafter, most courts in Nevada, including this Court, issued administrative orders effectively continuing almost all non-custody criminal matters in the various Judicial Districts into June 2020. The administrative Orders also continued all in-custody jury trials even those where the defendant had invoked his constitutional

and statutory right to a speedy trial – by finding that the Covid-19 pandemic represented good cause to postpone these jury trials.

11. Given the disruption Governor Sisolak's abrupt Order caused, Declarant had to spend significant time ensuring his family would have basic necessities throughout the government mandated shutdown. Sisolak has subsequently amended his Order numerous times. The current shutdown is expected to last until the end of April 2020. However, given his repeated claims that Nevadan's are not complying with his Order, it appears Sisolak's mandatory shutdown will likely continue well past April 30, 2020. Additionally, Declarant had to assist his wife during an unexpected illness/convalescence in mid-March. Given the aforementioned, Declarant could not solely dedicate himself to working on Sena's Opening Brief.

12. Although the Clark County Public Defender's Office is essential – and therefore not bound by Sisolak's mandate – in order to comply with the spirt of Sisolak's Order and to also protect the lawyers and staff at the Public Defender's Office, the Clark County Public Defender instituted a modified schedule for all employees to mitigate the potential spread of Covid-19. Furthermore, in order to avoid exposing only certain deputy public defenders to Covid-19, the Clark County Public Defender's Office's Appellate, Murder, and Sexual Assault specialty teams are now assisting with the Las Vegas Justice's Court video arraignment calendar. These arraignments last all day. Given these additional responsibilities, Declarant, a member of the Appellate team, has not been able to focus solely on his Appellate case load which includes Sena's Opening Brief.

<sup>&</sup>lt;sup>1</sup> Declarant believes the Clark County District Attorney's Office has instituted a modified schedule for its employees as well.

13. Due to the voluminous Appendix in Sena's case (29 volumes containing 250 pages each), as well as Declarant's other appellate responsibilities, Declarant had to spend an inordinate number of hours reading the Appendix, assessing the potential appealable issues, speaking with Sena,<sup>2</sup> and writing the Opening Brief. Declarant affirms he has read the entire Appendix and notated where the appealable issues are located within the Appendix, has identified all appealable issues, has conducted applicable legal research regarding the appealable issues, and has written a portion of the Opening Brief. However, as noted, given the number of counts for which Sena was convicted, the testimony from the dozens of witnesses regarding allegations spanning almost two (2) decades, and the almost five years from criminal complaint to conviction, there are numerous, significant, and potentially meritorious issues in Sena's appeal which requires extensive writing. So far, without edits, Sena's brief substantially exceeds the applicable page/word limit as explained in NRAP 32(a)(7)(A)(i)-(ii).

14. While Declarant requests an additional 30 days to complete the Opening Brief, Declarant is somewhat confident he should be able to file the Opening brief before the new May 20, 2020 deadline. Nevertheless, in an abundance of caution, Declarant is requesting a full thirty (30) day extension of time within which to the instant Opening Brief. This is Declarant's second direct request to this Court for an extension of time. Declarant and the State of Nevada stipulated to an initial 30-day continuance on January 8, 2020, pursuant to NRAP 26(b)(2) and NRAP 31(2).

<sup>&</sup>lt;sup>2</sup> Although Sena is currently housed at High Desert State Prison in Indian Springs, Nevada, which is not far from Las Vegas, NDOC has discontinued contact visits with inmates for the foreseeable future. This moratorium includes attorney-client visits. Thus, Declarant has been unable to meet with Sena in person and must rely upon telephone calls. Unfortunately, Declarant can only speak to Sena if Sena is able to call and Declarant happens to be at his desk.

15. Declarant asserts the reasons mentioned herein constitute good cause to support his modest request for an extension of time. Therefore, Declarant affirms that this Motion 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 10 day of April, 2020.

<u>/s/ William M. Waters</u> WILLIAM M. WATERS

1	
2	<u>CERTIFICATE OF SERVICE</u>
3	I hereby certify that this document was filed electronically with the Nevada
4	Supreme Court on the 10 day of April, 2020. Electronic Service of the foregoing
5	document shall be made in accordance with the Master Service List as follows:
6	AARON D. FORD WILLIAM M. WATERS
7	ALEXANDER CHEN HOWARD S. BROOKS
8	I further certify that I served a copy of this document by mailing a true and
9	correct copy thereof, postage pre-paid, addressed to:
10	
11	CHRISTOPHER SENA NDOC No. 1217884
12	c/o High Desert State Prison
13	P.O. Box 650 Indian Springs, NV 89018
14	
15	
16	BY <u>/s/ Carrie M. Connolly</u> Employee, Clark County Public
17	Defender's Office
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	