

IN THE SUPREME COURT OF THE STATE OF NEVADA

TED MICHAEL DONKO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

CASE NO:

Electronically Filed
Mar 09 2021 09:59 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
81075

MOTION FOR ENLARGEMENT OF TIME (SECOND REQUEST)

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Deputy, JOHN NIMAN, and moves this Court for an enlargement of time within which to file Respondent's Answering Brief. This motion is based on the following memorandum, declaration of counsel and all papers and pleadings on file herein.

Dated this 9th day of March, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ John T. Niman*

JOHN T. NIMAN
Deputy District Attorney
Nevada Bar #014408
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MEMORANDUM

I, JOHN NIMAN, am a duly licensed attorney in the State of Nevada and am employed by the Clark County District Attorney's Office.

This is a direct appeal from a Judgment of Conviction. This Court may extend the time to file a Respondent's Answering Brief upon a clear showing of good cause. NRAP 31(b)(3).

This is the State's second request for an enlargement of time. If granted, the new filing date for Respondent's Answering Brief would be on April 8, 2021.

As a preliminary matter, once briefing was reinstated on July 27, 2020, Donko received 60 days to file his Opening Brief. Donko then received two extensions. Donko received a 30-day extension by way of Stipulation. Donko received a second 45-day extension by filing a Motion with this Court. Donko filed his Opening Brief on December 9, 2020. On December 21, 2020, the State filed a Motion to Dismiss Appeal. This Court denied the Motion on December 21, 2020. On January 8, 2021, the State filed its first Motion for Extension of Time. On January 15, 2021, this Court filed an Order granting the State's Motion for Extension of Time, and the deadline for filing a Respondent's Answering Brief was rescheduled to March 9, 2021.

The State's Criminal Appeals Unit is reviewing the trial record and requires more time to fully prepare its Answering Brief. Donko was charged with eight

felonies, to include: two counts of Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm; three counts of Attempt Murder with Use of a Deadly Weapon; one count of Assault with a Deadly Weapon; one count of Discharging Firearm At or Into Occupied Structure, Vehicle, Aircraft, or Watercraft; and one count of Ownership or Possession of Firearm by Prohibited Person. Donko has raised seven issues related to these proceedings. As such, the State requires additional time to ensure that the State complies with its duty to thoroughly address and respond to each issue raised. See Polk v. State, 126 Nev. 180, 185 (2010).

Moreover, the State requests the additional time to provide the attorneys who conducted the underlying trial the ability to review the Answering Brief to ensure each issue is fully briefed for this Court's review. More specifically, the State wishes to ensure that trial counsel has had the opportunity to review Donko's first issue regarding Gerardo Ramos' in-court identification of Donko and the circumstances surrounding such event at trial. Trial counsel has not yet had this opportunity.

Therefore, the State hereby respectfully makes its second request to extend time to allow the Answering Brief to be reviewed. This motion is made in good faith and not for the purposes of undue delay.

I declare under penalty of perjury that the factual representations set forth in the foregoing memorandum are true and correct.

Dated this 9th day of March, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ John T. Niman*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 9th day of March, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

DEBORAH L. WESTBROOK
Chief Deputy Public Defender

JOHN T. NIMAN
Deputy District Attorney

/s/ J. Garcia

Employee, Clark County
District Attorney's Office

JTN/Brittni Griffith/jg