

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEQUINCY BRASS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Oct 28 2020 05:28 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Case No. 81142

**APPELLANT'S FIRST MOTION FOR EXTENSION OF TIME
DUE TO MISSING SEALED TRANSCRIPT**

Comes Now Appellant DEQUINCY BRASS, by and through Chief Deputy Public Defender DEBORAH L. WESTBROOK, and moves for an extension of time of **sixty-five (65)** days from Monday, November 2, 2020 through and including **Wednesday, January 6, 2021** to file the Opening Brief and Appendix in this case. The grounds for this request are described in the attached Declaration.

DATED this 28 day of October, 2020.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By /s/ Deborah L. Westbrook
DEBORAH L. WESTBROOK, #9285
Chief Deputy Public Defender

DECLARATION OF DEBORAH L. WESTBROOK

1. I am an attorney licensed to practice law in the State of Nevada; I am the Chief Deputy Public Defender assigned to handle the appeal of this matter; I am familiar with the procedural history of this case.

2. A jury found the Appellant Dequincy Brass guilty of four (4) counts of lewdness with a child under the age of fourteen; nine (9) counts of sexual assault with a minor under fourteen years of age; one (1) count of child abuse, neglect or endangerment; three (3) counts of first degree kidnapping of a minor; two (2) counts of preventing or dissuading witness or victim from reporting crime or commencing prosecution; and one (1) count of battery with intent to commit sexual assault, victim under 16.

3. Mr. Brass's Judgment of Conviction (JOC) was filed on April 30, 2020. Pursuant to that JOC, Mr. Brass is currently serving an aggregate sentence of 115 years-to-life.

4. Mr. Brass timely filed his Notice of Appeal on May 4, 2020. On May 19, 2020, Mr. Brass filed and served Appellant's Request for Certified Transcript of Proceedings.

5. On June 16, 2020, Court Recorder Matthew Yarbrough requested an extension of time to prepare the requested transcripts as a result of COVID-19 related delays.

6. On June 25, 2020, this Court granted Mr. Yarbrough's request for an extension of time to prepare transcripts. In doing so, this Court also moved the deadline for filing Mr. Brass's Opening Brief and Appendix to October 2, 2020.

7. In July of 2020, Appellant's counsel discovered that an important transcript relating to a key issue on appeal had been ordered "sealed" and, as a result, was never transcribed.¹ The transcript involved a hearing on Mr. Brass's pretrial motion to withdraw his attorney, Mitchell L. Posin² for failing to prepare a defense. So, on July 29, 2020, Appellant's counsel obtained a Stipulation and Order to unseal and prepare that transcript within 30 days. See Exhibit A (7/29/20 SAO).

8. On August 26, 2020, Appellant's counsel obtained the sealed transcript and learned (by reading that transcript) that an *additional* sealed hearing on Mr. Brass's motion to withdraw counsel had taken place several days earlier and had not been transcribed either. So, on September 1, 2020, Appellant's counsel obtained a *second* Stipulation and Order to unseal and

¹ Because the corresponding court minutes were also sealed, Appellate counsel was unaware of that hearing when making her initial transcript request.

² Mitchell L. Posin has been the subject of two significant disciplinary actions by this Court, including a one-year suspension in 2008 and a two-year suspension with 18 months stayed in 2016. See, e.g., Case Nos. 51207, 53711 and 69417.

prepare that additional Young hearing transcript within 30 days. See Exhibit B (9/1/2020 SAO).

9. On September 24, 2020, while waiting for the final transcript to be prepared, Mr. Brass obtained a 30-day stipulation to file the Opening Brief and Appendix. Mr. Brass's Opening Brief is currently due on or before November 2, 2020.

10. Unfortunately, although Mr. Brass's Opening Brief is currently due next Monday, he *still* has not received the hearing transcript that was ordered unsealed on September 1, 2020. Without that transcript, Appellant's Appendix cannot be prepared in accordance with NRAP 30(c) (requiring that "[t]ranscripts that are included in the appendix shall be placed in chronological order by date of the hearing or trial"). And because the Appendix has not yet been prepared, Appellate counsel has been unable to review and annotate the Appendix in order to prepare the instant appeal.

11. As set forth above, Mr. Brass is serving an aggregate sentence of 115 years-to-life. This is his *only* chance to directly appeal that lengthy sentence. In my professional opinion, a **65-day** extension of time is necessary to safeguard Mr. Brass's Sixth Amendment right to the effective assistance of counsel, and his Fifth and Fourteenth Amendment rights to due process. See also ADKT 411. Once the missing transcript is finally obtained,

the appellate team clerk will need to compile the Appellant's Appendix. After that, Appellate counsel will need adequate time to review the Appendix, including all transcripts for Mr. Brass's six-day jury trial, to identify and research the law relating to all appellate issues, and to write the Opening Brief. Therefore, I am requesting a **65-day** extension of time to file the Opening Brief and Appendix, up to and including **Wednesday, January 6, 2021**.

12. This Motion for Extension 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 to the best of my information and belief.

EXECUTED on the 28 day of October, 2020.

/s/ Deborah L. Westbrook
DEBORAH L. WESTBROOK

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28 day of October, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
ALEXANDER CHEN

DEBORAH L. WESTBROOK

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

DEQUINCY BRASS
NDOC No. 1233421
c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

BY /s/ Carrie M. Connolly
Employee, Clark County Public
Defender's Office

EXHIBIT A

Alexander Chen
CLERK OF THE COURT

1 ORDER
2 DARIN F. IMLAY, PUBLIC DEFENDER
3 NEVADA BAR NO. 5674
4 DEBORAH L. WESTBROOK, CHIEF DEPUTY PUBLIC DEFENDER
5 NEVADA BAR NO. 9285
6 **PUBLIC DEFENDERS OFFICE**
7 309 South Third Street, Suite 226
8 Las Vegas, Nevada 89155
9 Telephone: (702) 455-4685
10 Facsimile: (702) 455-5112
11 *deborah.westbrook@clarkcountynv.gov*
12 *Attorneys for Defendant*

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)
10)
11 Plaintiff,) CASE NO. C-18-329765-1
12)
13 v.) DEPT. NO. XV
14)
15 DEQUINCY BRASS,)
16)
17 Defendant,)
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**STIPULATION AND ORDER TO UNSEAL AND PREPARE TRANSCRIPT
OF FEBRUARY 24, 2020 YOUNG HEARING**

16 Based on the stipulation and agreement by and between Chief Deputy Public Defender
17 Deborah L. Westbrook and Chief Deputy District Attorney Alexander Chen, it is hereby agreed
18 that the sealed Young hearing held on the afternoon of February 24, 2020 be unsealed and a
19 transcript prepared within 30 days of this Order to allow for appellate review of that proceeding.
20 Dated this 29th day of July, 2020

IT IS SO ORDERED.

Joe Hardy
DISTRICT COURT JUDGE

FB8 B2F D091 87F0
Joe Hardy
District Court Judge

Submitted by:

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

STEVEN B. WOLFSON
CLARK COUNTY DISTRICT ATTY.

By: /s/ Deborah L. Westbrook
DEBORAH L. WESTBROOK, #9285
Chief Deputy Public Defender

By: /s/ Alexander Chen
ALEXANDER CHEN, # 10539
Chief Deputy District Attorney

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Case Name: Dequincy Brass

Case No.: C-18-329765-1

Dept. No.: XV

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 State of Nevada

CASE NO: C-18-329765-1

7 vs

DEPT. NO. Department 15

8 Dequincy Brass
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system
13 to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/29/2020

15 Mitchell Posin	mposin@gmail.com
16 District Attorney	motions@clarkcountyda.com
17 Jennifer Garcia	Jennifer.Garcia@clarkcountyda.com
18 Eileen Davis	Eileen.Davis@clarkcountyda.com
19 Carrie Connolly	connolcm@ClarkCountyNV.gov
20 Sharon Nichols	nicholss@clarkcountycourts.us
21 Norma Ramirez	ramirezn@clarkcountycourts.us
22 Matt Yarbrough	yarbroughm@clarkcountycourts.us

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EXHIBIT B

Heidi L. Smith
CLERK OF THE COURT

ORDR
DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
DEBORAH L. WESTBROOK, CHIEF DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 9285
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
deborah.westbrook@clarkcountynv.gov
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,) CASE NO. C-18-329765-1
)
v.) DEPT. NO. XV
)
DEQUINCY BRASS,)
)
Defendant,)

**STIPULATION AND ORDER TO UNSEAL AND PREPARE TRANSCRIPT
OF FEBRUARY 20, 2020 CALENDAR CALL & YOUNG HEARING & TO UNSEAL
RELATED COURT MINUTES**

Based on the stipulation and agreement by and between Chief Deputy Public Defender Deborah L. Westbrook and Chief Deputy District Attorney Alexander Chen, it is hereby agreed that the sealed Calendar Call and Young hearing that occurred on February 20, 2020 be unsealed and a transcript prepared within 30 days of this Order to allow for appellate review of that proceeding. The parties further stipulate and agree that the court minutes for February 20, 2020 and February 24, 2020 be unsealed and made available to the parties for appellate review.

Dated this 1st day of September, 2020

IT IS SO ORDERED.

Joe Hardy
DISTRICT COURT JUDGE

Submitted by:

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

STEVEN B. WOLFSON
CLARK COUNTY DISTRICT ATTY.

84A 22E 1430 1809
Joe Hardy
District Court Judge

By: /s/ Deborah L. Westbrook
DEBORAH L. WESTBROOK, #9285
Chief Deputy Public Defender

By: /s/ Alexander Chen
ALEXANDER CHEN, # 10539
Chief Deputy District Attorney

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Case Name: Dequincy Brass

Case No.: C-18-329765-1

Dept. No.: XV

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
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CASE NO: C-18-329765-1

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13 to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/1/2020

15 District Attorney	motions@clarkcountynv.gov
16 Jennifer Garcia	Jennifer.Garcia@clarkcountynv.gov
17 Eileen Davis	Eileen.Davis@clarkcountynv.gov
18 Carrie Connolly	connolcm@ClarkCountyNV.gov
19 Sharon Nichols	nicholss@clarkcountycourts.us
20 Norma Ramirez	ramirezn@clarkcountycourts.us
21 Matt Yarbrough	yarbroughm@clarkcountycourts.us
22 Deborah Westbrook	Deborah.Westbrook@clarkcountynv.gov

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