

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALISHA BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent

CASE NO. 82686

D.C. CASE NO: 03C191253

Electronically Filed
Aug 25 2021 03:47 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**MOTION FOR EXTENSION OF TIME TO FILE AND SERVE OPENING
BRIEF AND APPENDIX/SECOND REQUEST/TRANSCRIPTS NOT
AVAILABLE-SEOND REQUEST**

COMES NOW, ALISHA BURNS, by and through her attorney of record, TONY ABBATANGELO ESQ., and moves this court for an order extending time to file and serve her Opening Brief and Appendix brief under **NRAP 31**. Appellant asks that this Court grant a 90 day extension from the date of this filing in order that the transcripts will be ready and Appellant can adequately prepare her Opening Brief and Appendix. As grounds, the Appellant submits the following:

FACTS IN SUPPORT OF MOTION FOR EXTENSION

Appellant has timely ordered the transcripts in May 21, 2021. See **Exhibit 1**. To date, none of these transcripts have been prepared. This Court previously granted a telephonic extension for Appellant to file and serve her Opening Brief and Appendix. Appellant inadvertently did not submit a Second Motion to Extend Time to File her Opening Brief and Appendix on or before this date. Irregardless, since the transcripts have not been yet prepared, there is no intent to delay for mere delay's sake.

1 Appellant has in all ways been diligent in this case. All issues in the lower
2 court were extensively briefed and litigated. A though evidentiary hearing was
3 conducted. Federal and State constitutional issues exist in this case which should
4 be addressed by this Honorable Court and possibly beyond. This case involves an
5 Appellant who was a victim of sex trafficking at a very young age. Simply stated,
6 had advances in the forensic science existed at the time of the offense, there is a
7 substantial likelihood that Appellant would have ever been charged.

8 Appellant asks that she be granted an extension of 90 days from the date of this
9 filing, which would make this Opening Brief and Appendix due Tuesday,
10 November 23, 2021.

11 POINTS AND AUTHORITIES

12
13 Nevada Rules of Appellate Procedure, **Rule 31** states as follows:

14
15 **(3) Motions for Extensions of Time.** A motion for extension of time for filing
16 a brief may be made no later than the due date for the brief and must comply
17 with the provisions of this Rule and Rule 27.

18 **(A) Contents of Motion.** A motion for extension of time for filing a brief shall
19 include the following:

20 (i) The date when the brief is due;

21 (ii) The number of extensions of time previously granted, and if extensions
22 were granted, the original date when the brief was due;

23 (iii) Whether any previous requests for extensions of time have been denied or
24 denied in part;

25 (iv) The reasons or grounds why an extension is necessary; and

26 (v) The length of the extension requested and the date on which the brief
27 would become due.

28 This motion for extension of time is reasonable, fair, and there is clearly good
cause to grant a 90 day extension from the original due date, which would be
Tuesday, November 23, 2021.

1 This Motion is also submitted under **NRAP 2**, which states as follows:

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

6 This Motion is also submitted pursuant to **NRAP 26(b)**, which states as
7 follows:

8 **(b) Extending Time.**

9 **(1) By Court Order.**

10 (A) For good cause, the court may extend the time prescribed by these Rules
11 or by its order to perform any act, or may permit an act to be done after that
12 time expires. But the court may not extend the time to file a notice of appeal
13 except as provided in Rule 4(c).

14 It is respectfully submitted that “good cause” is broad in scope...Intermountain
15 Lumber & Builders Supply, Inc. v. Glens Falls Ins. Co., 83 Nev. 126, 129, 424
16 P.2d 884, 886 (1967). Further, in cases dealing with excusable neglect, which is
17 included in the determination of “good cause,” this is at bottom an equitable
18 determination. Pioneer Inv. Servs. Co. v. Brunswick Associates Ltd. P'ship, 507
19 U.S. 380, 395, 113 S. Ct. 1489, 1498, 123 L. Ed. 2d 74 (1993). Appellant submits
20 that there is no prejudice to the State, and that the equities should favor the
21 allowance of good cause to permit this Opening Brief and Appendix to be filed.
22
23

24 Appellant submits that this Court’s holding of Stratton v Raine, 192 P 471
25 (1921), should , this Court stated, at 472:
26
27

28 “On the oral argument, counsel for appellants admitted that technically he
was in default for not filing and serving his opening brief within the time

1 allowed, but as we are convinced that he desires in good faith to prosecute
2 the appeal, and we cannot say with a reasonable degree of certainty that his
3 neglect to file his opening brief is so inexcusable as to amount to a failure to
4 prosecute the appeal, we are unwilling to dismiss it.

5 It is ordered that the motion be denied, and that counsel for appellants be,
6 and he is hereby, required to file and serve his opening brief in this case
7 within 15 days after receiving notice of this decision. Stratton v. Raine, 192
8 P. 471, 472 (Nev. 1920)

9 *Stratton* was mentioned positively in Hotels El Rancho v. Pray, 176 P.2d 236,
10 238, 64 Nev. 22, 25–26 (Nev. 1947):

11 We have no reason to question the good faith of appellants or their counsel,
12 and we are impressed with the showing made that the appeal has been taken
13 in good faith and the delay has not appreciably, if at all, postponed the
14 hearing on the appeal on its merits. *Moreover, we have previously declared*
15 *it the policy of the law that cases should be disposed of in this court on their*
16 *merits wherever possible.* In re McGregor, 56 Nev. 407, 48 P.2d 418, 55
17 P.2d 10; *Stratton v. Raine*, 45 Nev. 7, 192 P. 471; *Smith v. Taecker*, 127
18 Cal.App. 78, 15 P.2d 193; *Bourne v. Root*, 117 Cal.App. 618, 4 P.2d 264;
19 *Tyner v. Axt*, 111 Cal.App. 187, 295 P. 97; *Righetti v. Monroe*, Lyon &
20 *Miller*, 106 Cal.App. 346, 289 P. 650; *Fishman v. Silva et al.*, 108 Cal.App.
21 121, 291 P. 430

22 The appellant, as well as counsel, are in the utmost of good faith, and there
23 cannot be any prejudice to any party since the transcripts have not yet been
24 prepared.

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26 ///

27 ///

WHEREFORE, the Appellant prays that this Court grant an Extension of time to file and serve her Opening Brief and Appendix.

Dated this 25th day of August, 2021

/s/ Tony Abbatangelo, Esq.

TONY L. ABBATANGELO, ESQ.

State Bar Number 3897

4560 S. Decatur, Ste 300

Las Vegas, Nevada 89103

702-707-7000 FAX (702) 366-1940

tony@thevegaslawyers.com

Attorney for Appellant

CERTIFICATE OF SERVICE

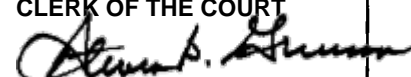
I certify that on the 25th day of August, 2021, I electronically served a copy of this docketing statement upon all counsel of record:

STEVE WOLFSON, ESQ. 200 S. Lewis Avenue Las Vegas NV 89101, and

AARON FORD, ESQ. 100 N. Carson Avenue, Carson City, NV 89710

/s/ Tony L. Abbatangelo, Esq.

EXHIBIT 1



Electronically Filed
May 12 2021 03:38 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

RQT

TONY L. ABBATANGELO, ESQ.

Nevada Bar No. 003897

Email: Tony@thevegaslawyers.com

THE VEGAS LAWYERS

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Las Vegas, Nevada 89173

Attorney for Defendant/Petitioner

ALISHA BURNS

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

ALISHA BURNS,

Defendant.

CASE NO.: 03C191253

DEPT.NO.: X (10)

REQUEST FOR TRANSCRIPTS

TO: VICTORIA BOYD, Court Reporter, Email boydv@clarkcountycourts.us :

Appellant, ALISHA BURNS, requests preparation of a transcript of the proceedings before
the district court, as follows:

1. January 7, 2004.

2. March 8, 2004.

3. April 10, 2019.

1 4. July 5, 2019.

2 5. July 15, 2019.

3 6. January 13, 2020.

4 7. February 24, 2020.

5 8. March 2, 2020.

6 9. March 4, 2020.

7 10. June 5, 2020.

8 11. June 15, 2020.

9 12. June 29, 2020.

10 13. January 22, 2021.


11 14. January 28, 2021.

12 15. June 3, 2003.

13 16. March 4, 2020.

14 Portions of the transcript requested: hearing conducted on the above date: all One copy
15 required.
16

17 Dated this 11th day of May, 2021.
18
19
20

21 
22 TONY L. ABBATANGELO, ESQ.
23 State Bar Number 3897
24 4560 S. Decatur, Ste 300
25 Las Vegas, Nevada 89103
26 702-707-7000 FAX (702) 366-1940
27 tony@thevegaslawyers.com
28 Attorney for Appellant

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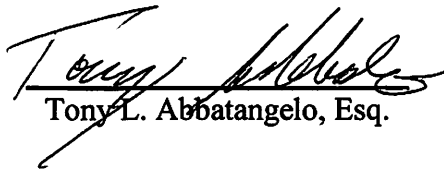
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Request for Transcripts was electronically served
and/or mailed to the following parties on the 11th day of May, 2021:

AARON FORD, ESQ.
Nevada Attorney General
100 N. Carson Street
Carson City, Nevada 89701,

STEVE WOLFSON, ESQ.
200 S. Lewis Avenue
Las Vegas NV 89101, and

VICTORIA BOYD, court reporter
boydv@clarkcountycourts.us


Tony L. Abbatangelo, Esq.