

IN THE SUPREME COURT OF THE STATE OF NEVADA

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DARION MUHAMMAD-COLEMAN,

Appellant,

vs.

STATE OF NEVADA,

Respondent.

Case No: 82915

Electronically Filed
Dec 02 2021 09:57 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**APPELLANT’S MOTION FOR FOUR-DAY EXTENSION OF TIME TO
FILE OPENING BRIEF**

COMES NOW, Appellant, Darion Muhammad-Coleman, by and through appellate counsel, Waleed Zaman, Esq., and moves this Honorable Court to enlarge the time to file an Opening Brief in this matter by four (4) days to December 6, 2021. This Motion is based on the Points and Authorities below, and the declaration of Waleed Zaman, Esq.

Dated this 2nd day of December 2021.

Respectfully submitted:

Waleed Zaman

Waleed Zaman, Esq.
Nevada Bar Number 13993
6620 S. Tenaya Way
Suite # 100
Las Vegas, Nevada 89113
Attorney for Appellant

PROCEDURAL HISTORY

This Honorable Court docketed this matter on May 17, 2021, and pursuant to Nevada Rules of Appellate Procedure Rule 31 (a)(1)(A), the Opening Brief was originally due on September 14th, 2021. This Court granted an initial request to continue for sixty (60) days, and the brief was set to be filed on November 15, 2021. A second request to continue was ultimately denied on November 18, 2021, finding insufficiently compelling or extraordinary circumstances for the continuance, and requiring that the Opening Brief be filed on December 2, 2021, absent “extraordinary circumstances and extreme need.” See Exhibit “A” *Order Denying Motion* (“Order”). Since that time, undersigned counsel has worked diligently towards timely filing the Opening Brief and Appendix, which is presently nearly complete and exceeds ten thousand words. However, the instant Motion follows, because counsel requires four (4) additional days to allow for an Opening Brief that can properly address the claims for which Appellant now seeks review.

STATEMENT OF FACTS

Since this Court’s Order, undersigned counsel sought to prepare and file the Opening Brief by December 2, 2021. First, undersigned counsel was unexpectedly ill between November 21, 2021, and November 23, 2021, as a result of receiving a COVID-19 booster shot and was only able to enter the office in a limited capacity during this time. Simultaneously, the Opening Brief contains approximately 10,000

words and requires additional arguments that must be made to allow counsel to effectively discharge his duties under both State and Federal Law. The brief was unexpectedly voluminous. Specifically, such arguments must be made to allow Appellant to exhaust any state remedies available to him, lest his federal appellate rights otherwise be significantly prejudiced. Rose v. Lundy, 455 U.S. 509 (1982). Moreover, presentation of such issues and argument are necessary to properly litigate the same before this Court. During this same time, counsel was also preparing as co-counsel in a murder trial in State of Nevada v. Gambino Granada-Ruiz (C-15-305044-1), for which both parties had announced ready, and trial was set to commence on December 6, 2021.¹ Finally, transcripts from the Petition hearing on October 20, 2020, that were necessary for the instant appeal were only recently filed on November 1, 2021. Such transcripts were frequently requested during the two months prior to their filing (and after service of a Request for Transcripts), but upon information and belief, an unforeseen delay in transcription did not allow the same to be prepared until November.

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¹The state unexpectedly voluntarily dismissed the case on November 30, 2021, at a pre-trial Motion hearing; and until such time counsel was simultaneously preparing the instant brief, this trial, and trying to maintain the rest of the criminal calendar, as the office has only one attorney handling criminal matters.

LEGAL ARGUMENT

Nevada Rules of Appellate Procedure Rule 26 (b)(1)(B) allows this Court discretion to enlarge the time to perform any act more than once, including filing of the Opening Brief, based upon extraordinary or compelling circumstances.

Here, sufficiently compelling circumstances and extreme need exist to allow the brief requested continuance of four (4) days. First, counsel was unable to work for a few days during the past two (2) weeks while preparing the Opening Brief due to unexpected side-effects from a COVID-19 booster vaccine. Because the Opening Brief is substantially longer than expected, this combined to make filing the Opening Brief by December 2, 2021 unmanageable. Furthermore, while preparation for the murder trial set for December 6, 2021 does not mitigate any duties counsel has for the instant matter, the uniquely time-sensitive nature of hearings, meetings, and witness preparation for the anticipated trial on December 6, 2021, in part made it impossible to properly draft and complete the Opening Brief without a few additional days to ensure its compliance with all applicable rules. Moreover, the additional four (4) days is necessary to ensure the appeal has exhausted all of Appellant's claims. Despite that approximately 10,000 words have been drafted, there remains substantial additional drafting to provide Appellant effective representation throughout the appeals process, and to not unduly prejudice his rights.

Therefore, there exists extraordinary circumstances and extreme need here, such that four (4) additional days to file the Opening Brief is proper.

CONCLUSION

Pursuant to the arguments above, Appellant respectfully requests that this Court extend the time to file an Opening Brief in this matter four (4) days until December 6, 2021.

Dated this 2nd day of December 2021.

Respectfully submitted:

Waleed Zaman

Waleed Zaman, Esq.
Nevada Bar Number 13993
6620 S. Tenaya Way
Suite # 100
Las Vegas, Nevada 89113
Attorney for Appellant

DECLARATION OF WALEED ZAMAN, ESQ.

I, Waleed Zaman, Esq., being first duly sworn, and upon information and belief, declare under penalty of perjury and say:

1. I am an attorney duly licensed to practice before all of the Courts in the State of Nevada, and I was retained to represent Darion Muhammad-Coleman in the instant matter (Case No. 82915).

2. That a four (4) day extension is needed for me to effectively complete and submit Mr. Muhammad-Coleman's Opening Brief, and that this is the third request to enlarge the time allowed for the same.

3. That I received a COVID-19 booster shot on November 21, 2021, after which I was only able to go into the office in a limited capacity for a couple of days, due to unexpected side effects of the same.

4. That the Opening brief is nearly complete, and it is approximately 10,000 words at this time, but that I have not yet briefed every argument that I need in order to effectively discharge my ethical and legal duties under State and Federal Law.

5. That I was also preparing as co-counsel in a murder trial in State of Nevada v. Gambino Granada-Ruiz (C-15-305044-1), for which both parties had announced ready, and trial was set to commence on December 6, 2021.

6. That we properly and timely served a Request for Transcripts on or around September 14, 2021, but there remained one outstanding transcript that could not be

transcribed until November 1, 2021, and this transcript was necessary for the Opening Brief as it was the argument on the Petition prior to the evidentiary hearing.

7. That this request is not made unnecessarily or to delay resolution of the matter.

FURTHER DECLARANT SAYETH NAUGHT

Dated this 2nd day of December 2021.

Waleed Zaman
Waleed Zaman, Esq.
Nevada Bar Number 13993
6620 S. Tenaya Way
Suite # 100
Las Vegas, Nevada 89113
Attorney for Appellant

Signed in Conformity with NRS 53.045
on this 2nd day of December 2021.

CERTIFICATE OF SERVICE

In accordance with *NRAP* 25, I hereby certify that on December 2, 2021, I filed the foregoing **APPELLANT'S MOTION FOR FOUR-DAY EXTENSION OF TIME TO FILE OPENING BRIEF** with the Nevada Supreme Court by electronic filing. I certify that the following parties or their counsel of record are registered as e-filers and that they will be served electronically by the system, in accordance with the Master Service List:

Aaron Ford, Esq.
Nevada Attorney General

Alexander Chen, Esq.
Chief Deputy District Attorney - Appellate

I further certify that on December 2, 2021, I served a true and correct copy of the foregoing **APPELLANT'S MOTION FOR FOUR-DAY EXTENSION OF TIME TO FILE OPENING BRIEF** through personal mail, addressed in a sealed and prepaid envelope to:

Darion Muhammad-Coleman #1144228
Ely State Prison
4569 North State Rt.
Ely, Nevada 89301

DATED this 2nd day of December 2021.

/S/ Waleed Zaman
An Employee of Zaman & Trippiedi

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARION MUHAMMAD-COLEMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82915

FILED

NOV 18 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING MOTION

Extraordinary circumstances and extreme need not having been shown, appellant's motion requesting a second extension of time (45 days) to file the opening brief is denied. NRAP 31(b)(3)(B). Appellant shall have 14 days from the date of this order to file and serve the opening brief and appendix. Any additional extensions will be granted only on showing of extraordinary circumstances and extreme need. *Id.* Counsel's caseload normally will not be deemed such a circumstance. *Cf. Varnum v. Grady*, 90 Nev. 374, 528 P.2d 1027 (1974). Failure to timely file the opening brief and appendix may result in the imposition of sanctions. NRAP 31(d).

It is so ORDERED.

1. S. J. Sanderth, C.J.

cc: Zaman & Trippiedi, PLLC
Attorney General/Carson City
Clark County District Attorney