

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC ABASTA, JR.

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Electronically Filed
Dec 06 2021 01:25 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Docket No. 83346

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Michael Villani, District Court Judge;
The Honorable David Barker, Senior District Court Judge;
and The Honorable Christina Silva, District Court Judge
District Court No. C-20-349045-1

**MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S
OPENING BRIEF AND APPENDIX (FIRST REQUEST)**

JoNell Thomas #4771
Chief Deputy Special Public Defender
Melinda E. Simpkins #7911
Chief Deputy Special Public Defender
Clark County Special Public Defender
330 South 3rd Street
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Abasta

COMES NOW, Appellant Eric Abasta, by and through his attorneys JoNell Thomas, Special Public Defender and Melinda E. Simpkins, Chief Deputy Special Public Defender, and moves this Court for an extension of time to file his Opening Brief and Appendix. This is Mr. Abasta's first request for an extension of time.

STATEMENT OF THE CASE

Appellant Eric Abasta filed his Notice of Appeal on August 6, 2021, from the Judgment of Conviction (Plea of Guilty) filed July 9, 2021. Due to conflicting messages received from the client, counsel for Mr. Abasta met with him at High Desert State Prison on September 29, 2021, to verify that he desired a direct appeal rather than to proceed with post conviction proceedings. After discussion with the client as to both direct appeal and post conviction procedures, Mr. Abasta requested to withdraw his appeal so that he could proceed with post conviction.

A Notice to Withdraw his direct appeal was prepared and sent to Mr. Abasta on September 29, 2021. He has not returned the signed document as of this date.

Based on the reasons set forth in the Declaration of Counsel attached hereto, Mr. Abasta is requesting 90 days to file his Opening Brief and Appendix. This is his first motion for an extension.

POINTS AND AUTHORITIES

NRAP 31(b)(3)(B) sets forth in pertinent part:

A motion for extension of time for filing a brief may be made no later than the due date for the brief....

(B) ...The court will grant an initial motion for extension of time for filing a brief only upon a clear showing of good cause. The court shall not grant additional extensions of time except upon a showing of extraordinary circumstances and extreme need.

CONCLUSION

Mr. Abasta moves this Court for a 90-day extension of time to file his Answering Brief, up to and including March 8, 2022.

Dated this 6th day of December, 2021.

Respectfully Submitted.

/s/ MELINDA E. SIMPKINS

JoNell Thomas
Melinda E. Simpkins
Nevada Bar No. 7911
Attorneys for Abasta

DECLARATION OF MELINDA SIMPKINS

MELINDA SIMPKINS, hereby declares as follows:

1. That I am an attorney duly licensed to practice law in the State of Nevada, and the attorney with the Clark County Special Public Defender's office assigned to represent Mr. Abasta on his direct appeal.

2. I was not the trial attorney in this case.

3. The Opening Brief is due December 8, 2021.

4. I met with Mr. Abasta on September 29, 2021, to discuss whether he desired to proceed with a direct appeal or whether he wanted to proceed with post conviction proceedings. He advised me that he wished to withdraw his direct appeal and he wanted to file a Petition for Post Conviction. On September 29, 2021, a Notice to Withdraw his direct appeal was sent to him to sign and return. As of this date, we have not received the paperwork.

5. In addition, due to death in the family, I was required to leave the jurisdiction and was out of the office for several weeks.

I expect that Mr. Abasta will return the paperwork to withdraw

...

his appeal and therefore, I am requesting an extension of 90 days to file the Opening Brief and appendix.

I declare that I make this request in good faith and not for purposes of delay.

Dated: December 6, 2021.

/s/ MELINDA E. SIMPKINS

MELINDA E. SIMPKINS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on December 6, 2021, a copy of the foregoing Motion for Extension of Time to File Opening Brief and Appendix (First Request) was served as follows:

BY ELECTRONIC FILING TO

District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

Nevada Attorney General
100 N. Carson St.
Carson City NV 89701

/s/ MELINDA SIMPKINS

MELINDA SIMPKINS