

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONTE JOHNSON

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Jul 11 2022 08:59 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 83796

MOTION FOR ENLARGEMENT OF TIME

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, ALEXANDER CHEN, 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 11th day of July, 2022.

Respectfully submitted,

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

BY /s/ Alexander Chen
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
Office of the Clark County District Attorney

MEMORANDUM

I, ALEXANDER CHEN, am a duly licensed attorney in the State of Nevada and am employed by the Clark County District Attorney's Office. I am the supervising attorney in the above-captioned case. Respondent's Answering Brief was due on June 27, 2022. The State and Respondent erroneously submitted for a stipulation to extend the briefing time without realizing that the NRAP precludes a stipulation in a capital case. The State had requested until August 26, 2022 to file its answering brief. This Court noted that the parties did not cite any reason for the stipulation. Thus, this Court issued an Order denying the stipulation and ordering that an answering brief be filed by July 22, 2022.

The State acknowledges that it erroneously believed that a stipulation was possible. However, this case is a 50 volume death penalty case with an extensive procedural history. The complexity of the case is evidenced by the fact that Appellant filed two motions for enlargement of time for 120 days each. This is not to say that the continuances were unwarranted, but it speaks to the complexity of this case.

Although the State knows that workload will generally not be a reason to perpetually seek continuances, and the State is making every effort to complete this answering brief as quickly as possible. The State is asking for mercy from its

ignorance on this matter, and requests that this Court grant an enlargement of time until August 29, 2022 to complete its answering brief.

First, the opening brief was filed on May 27, 2022. At the time, undersigned counsel for the State was preparing for en banc oral arguments in State v. Manson and State v. Adams, two oral arguments on the same day regarding determinations of competency without the possibility of restoration. Both cases had voluminous medical records and testimony to review. Those arguments took place June 7, 2022.

Then on June 1, 2022, this Court ordered the State to file an answering brief in Dibble v. Eighth Judicial Dist. Ct., where the undersigned counsel sought guidance from this Court on whether or not the correct parties were served. This Court filed an Order correcting the caption of the case based on apparent error and ordered a response in which the undersigned counsel responded on June 20, 2022.

The undersigned counsel then was leaving town and was going to be absent on the day that the answering brief was due. Thus, a stipulation was incorrectly sought from opposing counsel.

Upon return to the office, another capital case of Brian Hall was scheduled for oral arguments on August 2, 2022. Normally, the trial attorneys handle the oral arguments of trials that they had conducted. However, in this case the lead trial counsel is no longer with the office, and the co-counsel is unavailable due to the

shortage in staffing throughout the office. Therefore, the undersigned counsel began to prepare for the oral argument despite not having written the brief or tried the case.

This preparation has been against the backdrop of two law clerks leaving the office in June. Thus, the workload has increased for everyone else. The fact that this is an incredibly difficult and complex capital case made an assignment to a law clerk much more difficult. Ultimately due to the other work commitments listed above as well as the managerial responsibilities, but with the desire to complete this brief within 60 days of the filing of the opening brief, the undersigned is currently working with a clerk to complete this brief as soon as practicable.

However, completing this brief by July 22, 2022 as currently mandated by this Court will be a near impossibility. Thus, the State is humbly requesting an enlargement of time to complete this brief by August 29, 2022.

This is the State's first request for an enlargement of time. If granted, the new filing date for Respondent's Answering Brief would be due on or before Monday, August 29, 2022.

This motion is made in good faith and not for purposes of undue delay.

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

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Dated this 11th day of July, 2022.

Respectfully submitted,

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

BY */s/ Alexander Chen*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on July 11, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

RANDOLPH FIEDLER
ELLESSE HENDERSON
Assistant Federal Public Defenders

ALEXANDER CHEN
Chief Deputy District Attorney

BY /s/ E. Davis

Employee,
Clark County District Attorney's Office

AC//ed