

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 SEAN RODNEY ORTH,

Docket No. 85229

3 Appellant,

4 vs.

5 THE STATE OF NEVADA,

6 Respondent.

Electronically Filed
Jun 26 2023 10:53 PM
Elizabeth A. Brown
Clerk of Supreme Court

7 **APPELLANT'S MOTION FOR EXTENSION OF TIME TO FILE**
8 **OPENING BRIEF AND APPENDIX**
9 **(SECOND REQUEST)**

10 Appellant, SEAN RODNEY ORTH, by and through his attorney, C.
11 BENJAMIN SCROGGINS, ESQ., of THE LAW FIRM OF C. BENJAMIN
12 SCROGGINS, CHTD., hereby moves this Honorable Court for an Order extending
13 the time to file the Opening Brief and Appendix in the above-captioned case. This
14 is the second request for an extension of time in this case. This Motion is made
15 and based upon the pleadings and papers on file in this matter, the following

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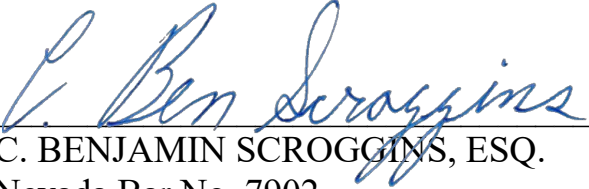
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Memorandum of Points and Authorities, and upon any other argument or evidence the Court may request in considering the Motion.

MADE this 26th day of June, 2023.

**THE LAW FIRM OF
C. BENJAMIN SCROGGINS, CHTD.**


C. BENJAMIN SCROGGINS, ESQ.

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*Attorney for Appellant,
SEAN RODNEY ORTH*

MEMORANDUM OF POINTS AND AUTHORITIES

The original due date for Appellant's Opening Brief and Appendix was May 11, 2023. Undersigned counsel requested and was granted an extension to file the Opening Brief and Appendix, setting the due date as June 26, 2023. Developments in Mr. Orth's case since the granting of the first extension have required undersigned counsel to modify his analysis of the arguments to be raised in this direct appeal and have also necessitated undersigned counsel's working more closely with Mr. Orth than is typical for a direct appeal.

As set forth in Mr. Orth's Docketing Statement, one of Mr. Orth's claims in

1 this case is based upon Double Jeopardy. There were multiple prosecutions in
2 different lower court jurisdictions that Mr. Orth has contended were based upon the
3 same underlying facts. This contention was difficult for Mr. Orth to establish
4 because transcripts from all of the proceedings were not readily available. In
5 particular, proceedings in the Henderson Municipal Court were based upon the
6 same underlying facts as the Eighth Judicial District Court case that gave rise to
7 this appeal, but transcripts were not forthcoming.

8 Undersigned counsel was finally able to obtain transcripts from those
9 proceedings recently and it is essential that the legal analysis in this appeal
10 incorporate them. Mr. Orth has also been prosecuting a federal action in proper
11 person and has recently petitioned the United States Supreme Court for a Writ of
12 Certiorari on federal constitutional issues that overlap with the issues raised in this
13 direct appeal. It is necessary for undersigned counsel to review multiple cases and
14 to consult with Mr. Orth extensively.

15 Due to the recently obtained court records and recently filed federal court
16 proceedings, undersigned counsel requires more time than anticipated. Mr. Orth
17 has also requested, reasonably, that undersigned counsel meet with him to review
18 the Opening Brief in this case prior to filing it. Given the factual interrelatedness
19 of the multiple legal actions revolving around the issues central to this appeal
20 undersigned counsel believes that Mr. Orth's input on the Opening Brief is
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1 important and more necessary than in a typical direct appeal. Mr. Orth has a large
2 “file” of documents that he has obtained and assembled through his proper person
3 litigation that undersigned counsel needs to be able to review with Mr. Orth.

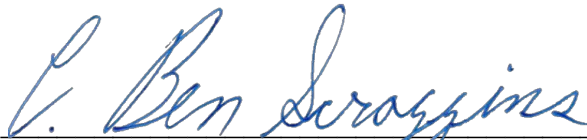
4 Given that Mr. Orth is incarcerated at High Desert State Prison, undersigned
5 counsel cannot meet with him easily and must schedule visits both around the
6 prison’s visiting schedule and undersigned counsel’s calendar. Undersigned
7 counsel believes that this may all be accomplished within 30 days, but does not
8 believe it can be adequately accomplished in less time. Undersigned counsel, both
9 out of necessity arising from newly obtained documentation and Mr. Orth’s direct
10 request, hereby requests an extension of 30 days, up to and including July 26, 2023,
11 to file the Opening Brief and Appendix.

12 NRAP 26(b)(1)(A) provides that this Court may extend the time to perform
13 any act for good cause. This Court’s order granting the first extension stated that
14 “[g]iven the length of this extension request, no further extensions shall be
15 permitted absent extraordinary circumstances and extreme need. NRAP
16 31(b)(3)(B).” Mr. Orth submits that the developing nature of the materials vital to
17 this appeal (especially newly obtained transcripts and federal court rulings)
18 constitute “extraordinary” circumstances not usually present in a direct appeal.
19 There is an “extreme need” for this short extension because Mr. Orth’s direct input
20 is essential to properly present his claims, but his incarceration makes it a more
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1 lengthy process to obtain.¹ Appellant submits that the above-stated reasons
2 constitute “good cause” for the short extension requested. Only one extension has
3 previously been requested in this case and the extension now requested will
4 provide adequate time to adequately present Mr. Orth’s constitutional claims to
5 this Court.

6 MADE this 26th day of June, 2023.

7 **THE LAW FIRM OF**
8 **C. BENJAMIN SCROGGINS, CHTD.**

9 

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17 *Attorney for Appellant,*
18 *SEAN RODNEY ORTH*

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20 ¹ Additionally, undersigned counsel’s Legal Assistant has had to devote the
21 majority of her time to a personal matter for the last couple of weeks that has
prevented her from assisting undersigned counsel on a full-time basis. The matter
is now resolved and she is able to once again focus fully on assisting in the
finalization and filing of the Mr. Orth’s Opening Brief and Appendix.
Undersigned counsel is a sole practitioner and has only one Legal Assistant.

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CERTIFIED this 26th day of June, 2023.

By: Kelly Jarvi
KELLY JARVI, *Legal Assistant to*
C. Benjamin Scroggins, Esq.