

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
Jul 26 2023 08:56 PM
Elizabeth A. Brown
Clerk of Supreme Court

7 **APPELLANT'S MOTION FOR EXTENSION OF TIME TO FILE**
8 **OPENING BRIEF AND APPENDIX**
9 **(THIRD 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 by 12
14 days, up to and including August 7, 2023. This is the THIRD request for an
15 extension of time in this case. This Motion is made and based upon the pleadings
16 and papers on file in this matter, the following Memorandum of Points and

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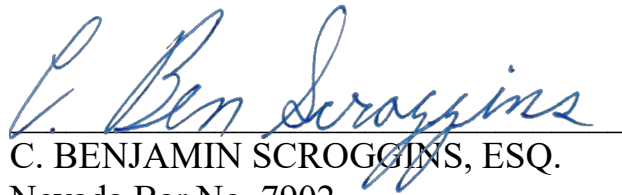
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1 Authorities, and upon any other argument or evidence the Court may request in
2 considering the Motion.

3 MADE this 26th day of July, 2023.

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

6 
7 C. BENJAMIN SCROGGINS, ESQ.

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11 *Attorney for Appellant,*
12 *SEAN RODNEY ORTH*

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 The original due date for Appellant's Opening Brief and Appendix was May
15 11, 2023. Undersigned counsel requested and was granted an extension to file the
16 Opening Brief and Appendix, setting the due date as June 26, 2023. Developments
17 in Mr. Orth's case since the granting of the first extension required undersigned
18 counsel to modify his analysis of the arguments to be raised in this direct appeal
19 and also necessitated undersigned counsel's working more closely with Mr. Orth
20 than is typical for a direct appeal. Accordingly, Mr. Orth filed a request for a
21 second of extension requesting a 30 day extension, up to and including July 26,

1 2023, which this Court granted.

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

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

19 Due to the recently obtained court records and recent developments in
20 federal court proceedings, undersigned counsel required more time than anticipated.

1 Mr. Orth has also requested, reasonably, that undersigned counsel meet with him to
2 review the Opening Brief in this case prior to filing it. Given the factual
3 interrelatedness of the multiple legal actions revolving around the issues central to
4 this appeal undersigned counsel believes that Mr. Orth's input on the Opening
5 Brief is important and more necessary than in a typical direct appeal. Mr. Orth has
6 a large "file" of documents that he has obtained and assembled through his proper
7 person litigation that undersigned counsel needs to be able to review with Mr. Orth.

8 Undersigned counsel stated in his Second Request for an Extension of time
9 that given that Mr. Orth is incarcerated at High Desert State Prison, undersigned
10 counsel cannot meet with him easily and must schedule visits both around the
11 prison's visiting schedule and undersigned counsel's calendar. At the time of
12 making the Second Request, undersigned counsel believed that this could all be
13 accomplished within 30 days. Unfortunately, undersigned counsel was unable to
14 finalize the Opening Brief and review it with Mr. Orth within that time frame.
15 Undersigned counsel is mailing the Brief and Appendix to Mr. Orth for his review,
16 but the earliest date undersigned counsel could schedule an in person meeting with
17 Mr. Orth is Friday, August 4, 2023. That visitation is currently scheduled. Based
18 upon these circumstances undersigned counsel requests a short extension, up to
19 and including August 7, 2023, to file the Opening Brief and Appendix.

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

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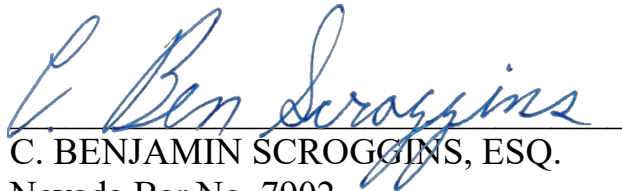
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1 provide adequate time to adequately present Mr. Orth's constitutional claims to
2 this Court.

3 MADE this 26th day of July, 2023.

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

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7 C. BENJAMIN SCROGGINS, ESQ.

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11 *Attorney for Appellant,*
12 *SEAN RODNEY ORTH*

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CERTIFIED this 26th day of July, 2023.

y: Kelly Jarvi
KELLY JARVI, Legal Assistant
C. Benjamin Scroggins, Esq.

KELLY JARVI, *Legal Assistant to*
C. Benjamin Scroggins, Esq.