

1 Thomas A. Ericsson, Esq.
2 Nevada Bar No. 4982
3 ORONOZ & ERICSSON, LLC
4 9900 Covington Cross Drive, Suite 290
5 Las Vegas, Nevada 89144
6 Telephone: (702) 878-2889
7 Facsimile: (702) 522-1542
8 tom@oronozlawyers.com
9 Attorney for Appellant Porter

Electronically Filed
Jun 21 2023 04:13 PM
Elizabeth A. Brown
Clerk of Supreme Court

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN D. PORTER,
Appellant,
vs.
STATE OF NEVADA,
Respondent.

Case No. 85782

**APPELLANT'S MOTION TO
ENLARGE TIME TO FILE
THE OPENING BRIEF AND
APPENDIX (1st Request)**

Appellant JUSTIN D. PORTER, by and through his counsel, THOMAS A. ERICSSON, ESQ., of Oronoz & Ericsson, LLC, respectfully submits this Motion to Enlarge Time to File Opening Brief and Appendix.

FACTUAL AND PROCEDURAL BACKGROUND

On April 26, 2001, the State of Nevada, by way of Information, charged Appellant Justin Porter with over forty (40) felony counts, including sexual assault, kidnapping, murder, burglary, and robbery, related to nine events over a four-month period, involving 12 victims. On May 2, 2001, an Amended Information was filed in open court to correct a typographical error. On October 11, 2001, a Second Amended Information was filed in reducing the total charges to 38 counts. Counts 30, 31 and 32 alleged burglary while in possession of a deadly weapon,

1 attempt robbery with use of a deadly weapon, and murder with use of a deadly
2 weapon respectively. These three counts involve a single victim.

3 On May 15, 2008, the appellant filed a motion to sever counts 30-32 from
4 the remainder of the charges. On June 18, 2008, the court granted the motion to
5 sever and ordered that murder event counts be tried separately. On April 30, 2009,
6 the state filed a Third Amended Information charging the three counts that were
7 severed from the large group of charges.
8
9

10 On May 8, 2009, a jury found appellant guilty on count three of second-
11 degree murder with use of deadly weapon. He was found not guilty on counts one
12 and two.
13

14 On September 30, 2009, the trial court sentenced Appellant to the Nevada
15 Department of Corrections to 120 months to life, plus a consecutive term of 120
16 months to life for the use of a deadly weapon. The judgment of conviction was
17 filed on October 13, 2009.
18
19

20 On September 6, 2022, the State of Nevada filed a Fourth Amended
21 Information charging Mr. Porter with 35 counts, including: Count One, Burglary
22 While In Possession Of A Deadly Weapon; Count Two, First Degree Kidnapping
23 With Use Of A Deadly Weapon; Count Three, Sexual Assault With Use Of A
24 Deadly Weapon; Count Four, Sexual Assault With Use Of A Deadly Weapon;
25 Count Five, Sexual Assault With Use Of A Deadly Weapon; Count Six, Sexual
26 Assault With Use Of A Deadly Weapon; Count Seven, Robbery With Use Of A
27
28

1 Deadly Weapon; Count Eight, Burglary While In Possession Of A Deadly
2 Weapon; Count Nine, First Degree Kidnapping With Use Of A Deadly Weapon
3 With Substantial Bodily Harm; Count 10, Sexual Assault With Use Of A Deadly
4 Weapon With Substantial Bodily Harm; Count 11, Attempt Murder With Use Of A
5 Deadly Weapon; Count 12, Sexual Assault With Use Of A Deadly Weapon With
6 Substantial Bodily Harm; Count 13, Robbery With Use Of A Deadly Weapon;
7 Count 14, First Degree Arson; Count 15, Burglary While In Possession Of A
8 Deadly Weapon; Count 16, First Degree Kidnapping With Use Of A Deadly
9 Weapon; Count 17, Sexual Assault With Use Of A Deadly Weapon; Count 18,
10 Robbery With Use Of A Deadly Weapon; Count 19, Burglary While In Possession
11 Of A Deadly Weapon; Count 20, Sexual Assault With Use Of A Deadly Weapon,
12 Victim 65 Years Of Age Or Older; Count 21, Robbery With Use Of A Deadly
13 Weapon, Victim 65 Years Of Age Or Older; Count 22, Burglary While In
14 Possession Of A Deadly Weapon; Count 23, Robbery With Use Of A Deadly
15 Weapon, Bacon 65 Years Of Age Or Older; Count 24, Robbery With Use Of A
16 Deadly Weapon, Victim 65 Years Of Age Or Older; Count 25, Burglary While In
17 Possession Of A Deadly Weapon; Count 26, Burglary While In Possession Of A
18 Deadly Weapon; Count 27, First Degree Kidnapping With Use Of A Deadly
19 Weapon; Count 28, Sexual Assault With Use Of A Deadly Weapon; Count 29,
20 Robbery With Use Of A Deadly Weapon; Count 30, Burglary While In Possession
21 Of A Deadly Weapon; Count 31, Robbery With Use Of A Deadly Weapon; Count

1 32, Attempt Robbery With Use Of A Deadly Weapon; Count 33, Attempt Robbery
2 With Use Of A Deadly Weapon; Count 34, Attempt Murder With Use Of A
3 Deadly Weapon; and Count 35, Battery With Use Of A Deadly Weapon.
4

5 On September 20, 2022, a jury rendered a verdict as follows: Count One,
6 Guilty Of Burglary While In Possession Of A Deadly Weapon; Count Two, Guilty
7 Of First Degree Kidnapping With Use Of A Deadly Weapon; Count Three, Guilty
8 Of Sexual Assault With Use Of A Deadly Weapon; Count Four, Not Guilty Of
9 Sexual Assault With Use Of A Deadly Weapon; Count Five, Guilty Of Sexual
10 Assault With Use Of A Deadly Weapon; Count Six, Not Guilty Of Sexual Assault
11 With Use Of A Deadly Weapon; Count Seven, Not Guilty Of Robbery With Use
12 Of A Deadly Weapon; Count Eight, Guilty Of Burglary While In Possession Of A
13 Deadly Weapon; Count Nine, Guilty Of First Degree Kidnapping With Use Of A
14 Deadly Weapon With Substantial Bodily Harm; Count 10, Guilty Of Sexual
15 Assault With Use Of A Deadly Weapon With Substantial Bodily Harm; Count 11,
16 Guilty Of Attempt Murder With Use Of A Deadly Weapon; Count 12, Guilty Of
17 Sexual Assault With Use Of A Deadly Weapon With Substantial Bodily Harm;
18 Count 13, Guilty Of Robbery With Use Of A Deadly Weapon; Count 14, Guilty Of
19 First Degree Arson; Count 15, Guilty Of Burglary While In Possession Of A
20 Deadly Weapon; Count 16, Guilty Of First Degree Kidnapping With Use Of A
21 Deadly Weapon; Count 17, Guilty Of Sexual Assault With Use Of A Deadly
22 Weapon; Count 18, Guilty Of Robbery With Use Of A Deadly Weapon; Count 19,
23
24
25
26
27
28

1 Guilty Of Burglary While In Possession Of A Deadly Weapon; Count 20, Guilty
2 Of Sexual Assault With Use Of A Deadly Weapon, Victim 65 Years Of Age Or
3 Older; Count 21, Guilty Of Robbery With Use Of A Deadly Weapon, Victim 65
4 Years Of Age Or Older; Count 22, Guilty Of Burglary While In Possession Of A
5 Deadly Weapon; Count 23, Guilty Of Robbery With Use Of A Deadly Weapon,
6 Victim 65 Years Of Age Or Older; Count 24, Guilty Of Robbery With Use Of A
7 Deadly Weapon, Victim 65 Years Of Age Or Older; Count 25, Not Guilty Of
8 Burglary While In Possession Of A Deadly Weapon; Count 26, Guilty Of Burglary
9 While In Possession Of A Deadly Weapon; Count 27, Guilty Of Second Degree
10 Kidnapping With Use Of A Deadly Weapon; Count 28, Guilty Of Sexual Assault
11 With Use Of A Deadly Weapon; Count 29, Guilty Of Robbery With Use Of A
12 Deadly Weapon; Count 30, Guilty Of Burglary While In Possession Of A Deadly
13 Weapon; Count 31, Guilty Of Robbery With Use Of A Deadly Weapon; Count 32,
14 Guilty of Attempt Robbery With Use Of A Deadly Weapon; Count 33, Guilty Of
15 Attempt Robbery With Use Of A Deadly Weapon; Count 34, Not Guilty Of
16 Attempt Murder With Use Of A Deadly Weapon; and Count 35, Guilty Of Battery.

22 On December 1, 2022, Appellant filed a *pro se* notice of appeal.

24 On December 27, 2022, the State of Nevada filed a Fifth Amended
25 Information. The Fifth Information added the three counts Appellant was tried on
26 during his first trial to the counts contained in the Fourth Amended Information.
27 Those counts are as follows: Count 36, Burglary While In Possession Of A Deadly
28

1 Weapon; Count 37, Attempt Robbery With Use Of A Deadly Weapon; and Count
2 38, Murder With Use Of A Deadly Weapon (Open Murder).

3 On February 15, 2023, the trial court filed a Judgment of Conviction and
4 sentenced Appellant as follows: in addition to the \$25.00 Administrative
5 Assessment Fee, and \$250.00 Indigent Defense Civil Assessment Fee plus \$3.00
6 DNA Collection Fee, the Defendant is SENTENCED to the Nevada Department of
7 Corrections (NDC) as follows: COUNT 1 - a MAXIMUM of FIFTEEN (15)
8 YEARS with a MINIMUM parole eligibility of FIVE (5) YEARS in the Nevada
9 Department of Corrections (NDC); COUNT 2 - LIFE with a MINIMUM parole
10 eligibility of FIVE (5) YEARS in the Nevada Department of Corrections (NDC),
11 plus a CONSECUTIVE term of LIFE with a MINIMUM parole eligibility of FIVE
12 (5) YEARS in the Nevada Department of Corrections (NDC) for use of a deadly
13 weapon; COUNT 3 - LIFE with a MINIMUM parole eligibility of TEN (10)
14 YEARS in the Nevada Department of Corrections (NDC), plus
15 CONSECUTIVE term of LIFE with a MINIMUM parole eligibility of TEN
16 (10) YEARS in the Nevada Department of Corrections (NDC) for use of a
17 deadly weapon, CONSECUTIVE to Counts 1 and 2; COUNT 5 - LIFE with a
18 MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of
19 Corrections (NDC), plus CONSECUTIVE term of LIFE with a
20 MINIMUM parole eligibility of TEN (10) YEARS in the Nevada
21 Department of Corrections (NDC) for use of a deadly weapon,
22
23
24
25
26
27
28

1 CONCURRENT with Count 3; COUNT 8 - MAXIMUM of FIFTEEN (15)
2 YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the Nevada
3 Department of Corrections (NDC), CONCURRENT with Count 5; COUNT 9 -
4 LIFE with a MINIMUM parole eligibility of FIFTEEN (15) YEARS in the
5 Nevada Department of Corrections (NDC), plus CONSECUTIVE term of LIFE
6 with a MINIMUM parole eligibility of FIFTEEN (15) YEARS in the Nevada
7 Department of Corrections (NDC) for use of a deadly weapon, CONCURRENT
8 with Count 8; COUNT 10 - LIFE with a MINIMUM parole eligibility of
9 FIFTEEN (15) YEARS in the Nevada Department of Corrections (NDC), plus
10 CONSECUTIVE term of LIFE with a MINIMUM parole eligibility of
11 FIFTEEN (15) YEARS in the Nevada Department of Corrections (NDC) for
12 use of a deadly weapon, CONSECUTIVE to Count 9; COUNT 11 - MAXIMUM
13 of TWENTY (20) YEARS with a MINIMUM parole eligibility of TWO (2)
14 YEARS in the Nevada Department of Corrections (NDC) plus CONSECUTIVE
15 term of a MAXIMUM of TWENTY (20) YEARS with a MINIMUM parole
16 eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC)
17 for use of a deadly weapon, CONCURRENT with Count 10; COUNT 12- LIFE
18 with a MINIMUM parole eligibility of FIFTEEN (15) YEARS in the Nevada
19 Department of Corrections (NDC) plus CONSECUTIVE term of LIFE with
20 a MINIMUM parole eligibility of FIFTEEN (15) YEARS in the Nevada
21 Department of Corrections (NDC) for use of a deadly weapon, CONCURRENT

1 with Count 11; COUNT 13 - a MAXIMUM of FIFTEEN (15) YEARS with a
2 MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of
3 Corrections (NDC) plus CONSECUTIVE term of a MAXIMUM of FIFTEEN
4 (15) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the
5 Nevada Department of Corrections (NDC) for use of a deadly weapon,
6 CONCURRENT with Count 12; COUNT 14- a MAXIMUM of FIFTEEN (15)
7 YEARS with a MINIMUM of TWO (2) YEARS in the Nevada Department
8 of Corrections (NDC), CONSECUTIVE to Count 13; COUNT 15 - a
9 MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM of TWO (2)
10 YEARS in the Nevada Department of Corrections (NDC), CONCURRENT
11 with Count 14; COUNT 16- LIFE with a MINIMUM parole eligibility of FIVE
12 (5) YEARS in the Nevada Department of Corrections (NDC) plus
13 CONSECUTIVE term of LIFE with a MINIMUM parole eligibility of FIVE
14 (5) YEARS in the Nevada Department of Corrections (NDC) for use of a deadly
15 weapon, CONCURRENT with Count 15; COUNT 17 - LIFE with a
16 MINIMUM parole eligibility of TEN (10) YEARS in the Nevada
17 Department of Corrections (NDC) plus CONSECUTIVE term of LIFE with
18 a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department
19 of Corrections (NDC) for use of a deadly weapon, CONSECUTIVE to Count
20 16; COUNT 18 - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM
21 parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections

(NDC), plus CONSECUTIVE term of a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC) for use of a deadly weapon, CONCURRENT with Count 17; COUNT 19 - a MAXIMUM of FIFTEEN (15) YEARS and a MINIMUM of TWO (2) YEARS in the Nevada Department of Corrections (NDC), CONCURRENT with Count 18; COUNT 20 - LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) plus CONSECUTIVE term of LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) for use of a deadly weapon, CONSECUTIVE to Count 19; COUNT 21 -a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC) plus CONSECUTIVE term of a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC) for use of a deadly weapon, CONCURRENT with Count 20; COUNT 22 - a MAXIMUM of FIFTEEN (15) YEARS and a MINIMUM of TWO (2) YEARS in the Nevada Department of Corrections (NDC), CONCURRENT with Count 21; COUNT 23- a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC) plus CONSECUTIVE term of a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of

1 Corrections (NDC) for use of a deadly weapon, CONSECUTIVE to Count 22;
2 COUNT 24- a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole
3 eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC)
4 plus CONSECUTIVE term of a MAXIMUM of FIFTEEN (15) YEARS with a
5 MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of
6 Corrections (NDC)for use of a deadly weapon, CONCURRENT with Count 23;
7
8 COUNT 26 - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM of
9 TWO (2) YEARS in the Nevada Department of Corrections (NDC),
10
11 CONCURRENT with Count 24; COUNT 27 - a MAXIMUM of FIFTEEN (15)
12 YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the
13 Nevada Department of Corrections (NDC) plus CONSECUTIVE term of a
14 MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of
15 TWO (2) YEARS in the Nevada Department of Corrections (NDC) for use of a
16
17 deadly weapon, CONCURRENT with Count 26; COUNT 28- LIFE with a
18
19 MINIMUM parole eligibility of TEN (10) YEARS in the Nevada
20 Department of Corrections (NDC) plus CONSECUTIVE term of LIFE with a
21
22 MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of
23 Corrections (NDC) for use of a deadly weapon, CONSECUTIVE to Count
24
25 27; COUNT 29- to a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM
26 parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections
27 (NDC) plus CONSECUTIVE term of a MAXIMUM of FIFTEEN (15)
28

1 YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the
2 Nevada Department of Corrections (NDC) for use of a deadly weapon,
3 CONCURRENT with Count 28; COUNT 30 - a MAXIMUM of FIFTEEN (15)
4 YEARS and a MINIMUM of TWO (2) YEARS in the Nevada Department of
5 Corrections (NDC), CONCURRENT with Count 29; COUNT 31 - a MAXIMUM
6 of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of TWO (2)
7 YEARS in the Nevada Department of Corrections (NDC) plus CONSECUTIVE
8 term of a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole
9 eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC)
10 for use of a deadly weapon, CONSECUTIVE to Count 30; and COUNT 32
11 - a MAXIMUM of TEN (10) YEARS with a MINIMUM parole eligibility of
12 ONE (1) YEAR in the Nevada Department of Corrections (NDC) plus
13 CONSECUTIVE term of a MAXIMUM of TEN (10) YEARS with a
14 MINIMUM parole eligibility of ONE (1) YEAR in the Nevada Department of
15 Corrections (NDC) for use of a deadly weapon, CONCURRENT with Count
16 31; COUNT 33- a MAXIMUM of TEN (10) YEARS with a MINIMUM parole
17 eligibility of ONE (1) YEAR in the Nevada Department of Corrections
18 (NDC) plus CONSECUTIVE term of a MAXIMUM of TEN (10) YEARS with a
19 MINIMUM parole eligibility of ONE (1) YEAR in the Nevada Department of
20 Corrections (NDC) for use of a deadly weapon, CONCURRENT with Count 32;
21 and COUNT 35 - SIX (6) MONTHS in the Clark County Detention Center
22
23
24
25
26
27
28

1 (CCDC), CONCURRENT with Count 33; with EIGHT THOUSAND ONE
2 HUNDRED TWELVE (8,112) DAYS credit for time served. The AGGREGATE
3 TOTAL sentence is a MAXIMUM of LIFE with a MINIMUM of ONE
4 HUNDRED TWENTY-SIX (126) YEARS in the Nevada Department of
5 Corrections (NDC). COURT FURTHER ORDERED; these charges are to run
6 CONSECUTIVE to COUNT 38 - MURDER (SECOND DEGREE) as listed in the
7 Fifth Amended Information.
8
9

10 On February 16, 2023, Appellant timely filed a Notice of Appeal.

11 This is an extremely complicated case, both factually and procedurally. The
12 most recent trial on the larger number of charges was twelve trial days. Appellant
13 is facing an aggregate sentence of 146 years to life.
14

15 The final transcript was only filed in the district court case on June 7, 2023¹.
16

17 **ARGUMENT**

18 **GOOD CAUSE EXISTS TO ENLARGE THE TIME TO FILE** 19 **APPELLANT'S OPENING BRIEF AND APPENDIX** 20

21 Nevada Rule of Appellate Procedure 26(b)(1)(A) provides in relevant part:

22 For good cause, the court may extend the time prescribed by
23 these Rules or by its order to perform any act or may permit an
24 act to be done after that time expires.

25 Additionally, Nevada Rule of Appellate Procedure 31(b)(3) provides in
26 relevant part:
27
28

1 Motions for Extensions of Time. A motion for extension of
2 time for filing a brief may be made no later than the due date for
3 the brief and must comply with the provisions of this Rule and
4 Rule 27.

5 (A) Contents of Motion. A motion for extension of
6 time for filing a brief shall include the following:

7 (i) The date when the brief is due;

8 (ii) The number of extensions of time previously
9 granted (including a 14-day telephonic extension), and if
10 extensions were granted, the original date when the brief was
11 due;

12 (iii) Whether any previous requests for extensions of
13 time have been denied or denied in part;

14 (iv) The reasons or grounds why an extension is
15 necessary (including demonstrating extraordinary and
16 compelling circumstances under Rule 26(b)(1)(B), if required);
17 and

18 (v) The length of the extension requested and the date
19 on which the brief would become due.

20 The Appellant's Opening Brief and Appendix are currently due on June 23,
21 2023. No previous extensions have been requested or granted. The Appellant is
22 requesting a ninety (90) day extension of time due to the size and complexity of the
23 trial record.

24 Good cause exists to enlarge the time to file the Opening Brief because this
25 case involves complex trial and evidentiary issues that must be thoroughly
26

27
28 ¹ The filing court recorder has been requested to file a Notice of Completion and
Delivery of Transcript for the final transcript.

1 researched and briefed. Additionally, the final transcript was provided to appellant
2 counsel on June 7, 2023.

3 Accordingly, Counsel requests an additional ninety (90) days to finalize the
4 research and develop each of the Appellant's issues for the Opening Brief.
5

6 Because the Appellant is serving a sentence of 146 years to life in prison, it
7 is imperative that Counsel and Appellant have enough time to finalize all of the
8 issues before filing the Opening Brief. Therefore, good cause exists for this Court
9 to enlarge the time to file the Appellant's Opening Brief by ninety (90) days.
10

11 **CONCLUSION**
12

13 Based on the foregoing, good cause exists to enlarge the time to file the
14 Opening Brief. Therefore, Appellant respectfully moves this Court for an order
15 enlarging the time to file the Opening Brief by ninety (90) days.
16

17 DATED June 21, 2023.

18 Respectfully submitted,

19 By: /s/ Thomas A. Ericsson
20 Thomas A. Ericsson, Esq.
21 Nevada Bar No. 4982
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on June 21, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

STEVEN B. WOLFSON
Clark County District Attorney

THOMAS A. ERICSSON
Counsel for Appellant

By: /s/ Mariela Ramirez
An employee of Oronoz & Ericsson, LLC