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Attorneys for Appellant

FILED

DEC 06 2004

BY JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

IN THE
SUPREME COURT OF THE STATE OF NEVADA

* * *

DALE EDWARD FLANAGAN,
AppellantPetitioner,

vs.

CASE NO.: 40232

THE STATE OF NEVADA, and E.K.
McDaniel, Warden, Ely State Prison,

Respondents.

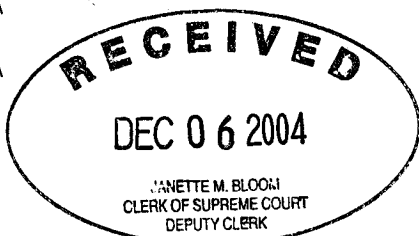
FOURTH MOTION TO EXTEND REMAND TO DISTRICT COURT

COMES NOW, Appellant's attorneys ROBERT D. NEWELL, ESQ. of DAVIS WRIGHT TREMAINE LLP and CAL J. POTTER, III, ESQ. of POTTER LAW OFFICES, and moves this Honorable Court for an order granting extension of time of sixty (60) days of the remand to District Court in the instant Death Penalty matter.

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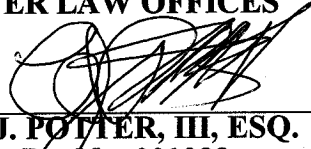


04-22193

1 This Motion is made and based on the Points and Authorities and the within Affidavit of
2 Cal J. Potter, III, Esq., attached hereto.

3 DATED this 3rd day of December, 2004.

4 **POTTER LAW OFFICES**

5 By 
6 **CAL J. POTTER, III, ESQ.**
7 Nevada Bar No. 001988
8 1125 Shadow Lane
9 Las Vegas, Nevada 89102
10 Attorneys for Appellant

11 **POINTS AND AUTHORITIES**

12 This Honorable Court entered an order on or about October 6, 2004, of limited remand
13 pursuant to SCR 250(8)(b). The Appellant requests that this Honorable Court further extend the
14 remand an additional sixty (60) days in order to allow time for Court Reporter(s) to transcribe the
15 remaining transcripts. Further, counsel for the parties reviewed the file, and there remain a
16 number of hearings and/or arguments for which no apparent documentation exists. However,
17 counsel respectfully requests additional time to clarify same.

18 Specifically, counsel has earnestly attempted to obtain transcripts for the following dates:
19 04/19/93, 03/09/00 and 06/02/00. Counsel has been advised by representatives of the Court that
20 transcript records pertaining to the 04/19/93 were purged in 2001, and that the 06/02/00 hearing
21 had no transcript, only a minute order. Counsel seeks this order. Further, Court Reporter Renee
22 Silvaggio has advised that although she is unable to provide the transcript of the 03/09/00 hearing
23 prior to December 6, 2004, at the earliest, as she has been unable to locate the disk for
24 transcription.

25 It should be noted that counsel to Appellant/Petitioner has had numerous conversations
26 with the said Court Reporter regarding the request and the pending transcript; even so, the
27 transcript has not been provided;


28 In addition, Appellant has identified additional hearing dates that may have corresponding
transcripts: 05/18/00, 06/06/00 and 12/18/00. Further, additional hearings and/or arguments from

1 the following dates are being examined for relevance to the proceedings also: 07/14/93, 02/17/94,
2 06/09/94, 10/03/94, 12/15/94, 12/29/94, 01/03/95, 06/06/00, 06/13/00 and 08/28/01; Counsel
3 earnestly seeks these records also.

4 WHEREFORE, the Appellant respectfully requests an enlargement of time of sixty (60)
5 days for remand to the District Court, so that the remaining documentation related to hearings
6 and/or arguments in the instant matter may be located and transcribed.

7 DATED this 3rd day of December, 2004.

8 Respectfully submitted,
9 **POTTER LAW OFFICES**

10 By 
11 **CAL J. POTTER, III, ESQ.**
12 Nevada Bar No. 001988
13 1125 Shadow Lane
14 Las Vegas, Nevada 89102
15 Attorneys for Appellant

16 **AFFIDAVIT**

17 STATE OF NEVADA)
18) ss.
19 COUNTY OF CLARK)

20 CAL J. POTTER, III, being first duly sworn, deposes and says:

21 That Affiant is an attorney duly licensed and practicing law in the County of Clark, State of
22 Nevada; that in this capacity Your Affiant serves as local Nevada counsel for the
23 Appellant/Petitioner in the instant matter;

24 That this Honorable Court entered an order on or about October 6, 2004, of limited
25 remand pursuant to SCR 250(8)(b)

26 That the Appellant requests that this Honorable Court further extend the remand an
27 additional sixty (60) days in order to allow time for Court Reporter(s) to transcribe the remaining
28 transcripts; that, further, counsel for the parties reviewed the file, and there remain a number of
hearings and/or arguments for which no apparent documentation exists and Your Affiant
respectfully requests additional time to clarify same;

1 That, specifically, counsel has earnestly attempted to obtain transcripts for the following
2 dates: 04/19/93, 03/09/00 and 06/02/00; that Counsel has been advised by representatives of the
3 Court that transcript records pertaining to the 04/19/93 were purged in 2001, and that the
4 06/02/00 hearing had no transcript, only a minute order; Your Affiant also seeks this order;

5 That Court Reporter Renee Silvaggio has advised that she is unable to provide the transcript
6 of the 03/09/00 hearing prior to December 6, 2004, at the earliest, as she has been unable to
7 locate the disk for transcription;

8 That Your Affiant has had numerous conversations with the said Court Reporter regarding
9 the request and the pending transcript; even so, the transcript has not been provided;

10 In addition, Appellant has identified additional hearing dates that may have corresponding
11 transcripts: 05/18/00, 06/06/00 and 12/18/00; Your Affiant also seeks these records;

12 That further, additional hearings and/or arguments from the following dates are being
13 examined for relevance to the proceedings also: 07/14/93, 02/17/94, 06/09/94, 10/03/94,
14 12/15/94, 12/29/94, 01/03/95, 06/06/00, 06/13/00 and 08/28/01; Your Affiant seeks these records
15 also;

16 That Your Affiant respectfully requests an enlargement of time of sixty (60) days for
17 remand to the District Court, so that the remaining documentation related to hearings and/or
18 arguments in the instant matter may be located and transcribed;

19 That this Motion is made in good faith and not for the purposes of delay, and no prior
20 continuance has been requested.

21 Further Affiant sayeth naught.

22
23 
CAL J. POTTER, III

24
25 SUBSCRIBED and SWORN to before
me this 3 day of December, 2004.

26 
27 NOTARY PUBLIC



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Steven S. Owens
Deputy District Attorney
Clark County District Attorney's Office
200 South Third Street, 7th Floor
Las Vegas, Nevada 89155


Employee of Potter Law Offices

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10 IN THE
11 SUPREME COURT OF THE STATE OF NEVADA

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13 DALE EDWARD FLANAGAN,

14 AppellantPetitioner,

15 vs.

CASE NO.: 40232

16 THE STATE OF NEVADA, and E.K.
McDaniel, Warden, Ely State Prison,

17 Respondents.
18 _____ /

19 ORDER GRANTING FOURTH MOTION
TO EXTEND REMAND TO DISTRICT COURT

20 Appellants FOURTH MOTION TO EXTEND REMAND TO DISTRICT
21 COURT in this Death Penalty matter having come before this Honorable Court, and the Court
22 being fully advised of the premises, IT IS SO ORDERED that said motion be GRANTED.
23

24
25 _____ NEVADA SUPREME COURT JUDGE

26 Submitted by: 

27 CAL J. POTTER, III, ESQ.
Nevada Bar No. 001988
POTTER LAW OFFICES
1125 Shadow Lane
28 Las Vegas, Nevada 89102

