

ORIGINAL

CAL J. POTTER, III, ESQ.
Nevada Bar No. 001988

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and
ROBERT D. NEWELL, ESQ.
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1300 S.W. Fifth Avenue, Suite 2300
Portland, Oregon 97201

Attorneys for Petitioner

FILED

SEP 27 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

IN THE
SUPREME COURT OF THE STATE OF NEVADA

◆ ◆ ◆

DALE EDWARD FLANAGAN,

Appellant/Petitioner,

vs.

Case No.: 40232

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

Respondants.

THIRD MOTION TO EXTEND REMAND TO DISTRICT COURT

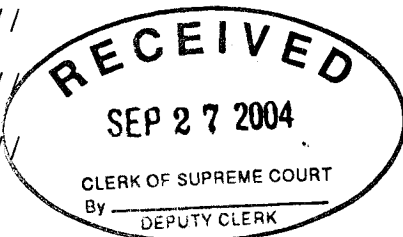
COMES NOW, Appellant's attorneys CAL J. POTTER, III, ESQ., of POTTER LAW
OFFICES and ROBERT D. NEWELL, ESQ. of DAVIS WRIGHT TREMAINE LLP, and moves
this Honorable Court for an order granting extension of time of thirty (30) days of the remand to
District Court.

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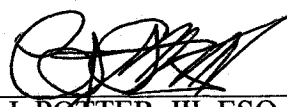
POTTER
LAW OFFICES
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Las Vegas, Nevada 89102
(702) 385-1954 *Fax (702) 385-9081

04-17867

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 ____ day of September, 2004.

4 POTTER LAW OFFICES

5
6 By 
7 CAL J. POTTER, III, ESQ.
8 Nevada Bar No. 1988
9 1125 Shadow Lane
10 Las Vegas, Nevada 89102
11 Attorneys for Appellant

12 **POINTS AND AUTHORITIES**


13 This Honorable Court entered an order on or about July, 2004. Since that time the
14 Appellant has not been able to locate the Court reporters and Court recorders for the most recent
15 hearings and has ordered the transcripts in question and has obtained Minute Orders for the
16 hearings conducted over 8 years ago.

17 In addition, the District Court has now ruled on the privilege log and the Appellant
18 anticipates obtaining the transcripts within 30 days.

19 WHEREFORE, the Appellant requests an enlargement of time of thirty (30) days for
20 remand to District Court.

21 Respectfully submitted,

22 POTTER LAW OFFICES

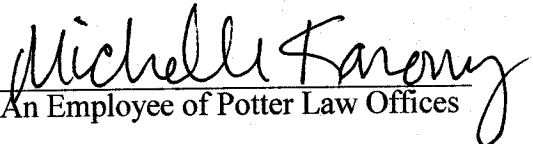
23 By 
24 CAL J. POTTER, III, ESQ.
25 Nevada Bar No. 1988
26 1125 Shadow Lane
27 Las Vegas, Nevada 89102
28 Attorneys for Appellant

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of POTTER LAW OFFICES, and that, on this date, I deposited for mailing at Las Vegas, Nevada, a true copy of the **THIRD MOTION TO EXTEND REMAND TO DISTRICT COURT** addressed to:

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

DATED this 23 day of September, 2004.


An Employee of Potter Law Offices

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Appellant/Petitioner,

vs.

Case No.: 40232

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

Respondants.

AFFIDAVIT OF CAL J. POTTER, III, ESQ.

I, CAL J. POTTER, III, ESQ., being duly sworn, depose and say:

1. This Court, by order dated March 2, 2004, remanded to the District Court for completion of the record for appeal. The State did not comply with the requirements set out in that order, and on April 22, 2004, Judge Leavitt issued an order requiring that the State turn over its file to Appellant for inspection to allow for the completion of the record on appeal. The State did not comply with that order. Appellant moved the Court to compel the State to turn over its file and on June 22, 2004, the Court held a hearing on that motion. Judge Leavitt reiterated her ruling that the State turn over all non-privileged documents in its file and prepare a privilege log of those documents being withheld.

SEP 27 2004

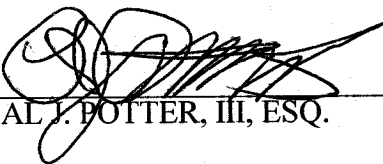
CLERK OF SUPREME COURT
By _____
DEPUTY CLERK

2. On behalf of Appellant, I have completed a review of the District Court file. In addition, the District Attorney's office allowed me to examine portions of its file. Those portions contained documents which were not in the District Court file and which were not in Appellant's file. The portion of the District Attorney's file which was made available to me contained notes which I asked to be copied but were not, as were the other documents I designated for copying. It appears that any privilege that may have been available at least as to those notes has been waived, but until I receive the privilege log from the District Attorney's office, that matter will not be ripe for resolution.

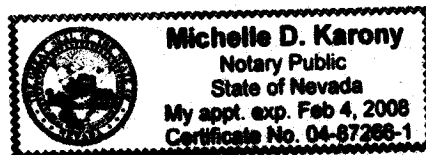
3. That Appellant's co-counsel has now received the privilege log that Judge Leavitt ordered the District Attorney to prepare and it has been reviewed and the Court has sustained the District Attorney's objections as set forth in the privilege log.

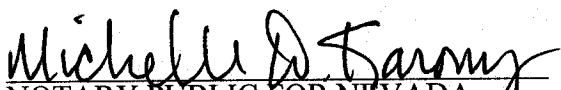
4. That your Affiant has also ordered the missing transcripts and has obtained minute orders for the Court hearings that are over 8 years old.

5. That your Affiant seeks an additional 30 days to obtain the outstanding transcripts.


CAL J. POTTER, III, ESQ.

SUBSCRIBED and SWORN on before me this 23rd day of September, 2004.




NOTARY PUBLIC FOR NEVADA
My Commission Expires: 2/4/08