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Attorney for Brendan James Nasby

FILED

OCT 18 2006

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

IN THE SUPREME COURT  
OF THE STATE OF NEVADA

\*\*\*

BRENDAN JAMES NASBY,

Appellant,

vs.

STATE OF NEVADA,

Respondent.

CASE NO: 47130

DIST. CT. NO: C154293

**MOTION FOR ENLARGEMENT OF TIME TO FILE OPENING BRIEFS**  
**(First Request)**

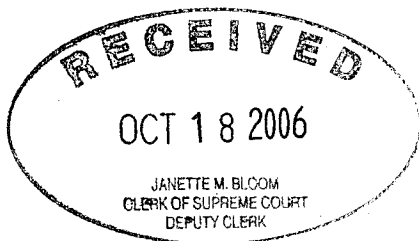
COMES NOW, Appellant, BRENDAN JAMES NASBY, by and through his attorney, ANTHONY P. SGRO, ESQ., and hereby makes this motion for enlargement of time to file his opening brief pursuant to Rule 26(b) of the Nevada Rules of Appellate Procedure.

This motion is based on the Points and Authorities attached hereto, all papers and pleadings on file herein, the attached Affidavit of ERICK M. FERRAN, and any oral argument deemed necessary by this Court.

DATED this 13<sup>th</sup> day of October, 2006.

PATTI & SGRO, LTD.

*[Signature]* for  
ANTHONY P. SGRO, ESQ.  
Nevada Bar No. 003811  
720 S. Seventh Street, Third Floor  
Las Vegas, NV 89101  
Telephone: (702) 385-9595  
Attorney for Appellant Nasby



EXTENSION OF TIME IS SO ORDERED TO  
AND INCLUDING November 22, 2006

*[Signature]*, Clerk of Court  
cc: Counsel of Record  
06-2465

1 POINTS AND AUTHORITIES

2 STATEMENT OF FACT

3 On August 11, 1998, Brendan James Nasby (hereinafter referred to as "Nasby"), was charged  
4 by Criminal Complaint with Conspiracy to Commit Murder and Murder with Use of Deadly Weapon  
5 (Open Murder). After a trial by jury in the Eighth Judicial District Court, which began on October  
6 13, 1999, Nasby was found guilty of all counts. Subsequently, a penalty hearing was held. The Court  
7 imposed a maximum term of 120 months with a minimum of 48 months for Count I Conspiracy to  
8 Commit Murder and one life sentence with the possibility of parole for Count II Murder with the use  
9 of a Deadly Weapon, plus an equal and consecutive term of life with the possibility for use of a  
10 deadly weapon. The Judgment of Conviction was filed on December 2, 1999.

11 Nasby appealed to the Nevada Supreme Court which upheld his sentence and conviction in  
12 an affirming opinion filed on February 7, 2001. In November, 2004, Nasby filed a petition for post-  
13 conviction relief in the lower Court. Nasby's Petition was denied on March 26, 2006, and the lower  
14 Court (Hon. Nancy Saitta) issued its written order on April 26, 2006. The instant appeal followed.

15 **I. Appellant Respectfully Requests An Extension Of Time To File His Opening Brief.**

16 Appellant respectfully requests a brief extension of thirty (30) days to file his opening brief  
17 with this Honorable Court.

18 Rule 26(b) of the Nevada Rules of Appellate Procedure states in pertinent part:

19 *Enlargement of time.* The court for good cause shown may upon motion enlarge  
20 the time prescribed by these rules or by its order for doing any act, or may permit  
an act be done after the expiration of such time; but the court may not enlarge the  
time for filing a notice of appeal.

21 The undersigned counsel has substantially completed the research and writing necessary to  
22 file Appellant's opening brief. However, due to the prohibitive visiting schedules at High Desert  
23 State Prison as well as the undersigned's hectic trial schedule, counsel will be unable to visit with  
24 his client to review the final brief to be filed with this Honorable Court and to make any alterations  
25 necessary to the brief before the October 20, 2006 filing deadline .

26 Furthermore, Affiant has recently been informed by Appellant Nasby that his "unit" has had  
27 no telephone privileges for the past month. As a result, the undersigned has been unable to  
28 communicate freely and openly with Nasby to discuss the specifics of his appellate brief.

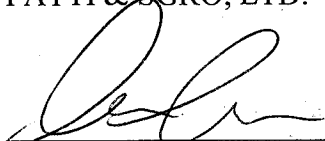
1 Accordingly, counsel brings the instant motion to enlarge in good-faith and not for the purpose of  
2 delaying these proceedings.

3  
4 WHEREFORE, the undersigned respectfully requests a brief enlargement of thirty (30) days  
5 in which to file his opening brief.

6 DATED this 13<sup>th</sup> day of October, 2006.

7 PATTI & SGRO, LTD.

8  
9 By:

  
10 ANTHONY P. SGRO, ESQ.  
11 Nevada Bar No. 003811  
12 720 S. Seventh Street, Third Floor  
13 Las Vegas, NV 89101  
14 Telephone: (702) 385-9595  
15 Attorney for Appellant NASBY

16  
17 **AFFIDAVIT OF ERICK M. FERRAN**  
18 **IN SUPPORT OF MOTION FOR ENLARGEMENT OF TIME**

19 STATE OF NEVADA            )  
20                                   : ss.  
21 COUNTY OF CLARK         )

22 ERICK M. FERRAN, having first been duly sworn, deposes, and states:

- 23 1. That your affiant is an attorney duly licensed to practice before this court.
- 24 2. That your affiant has knowledge of all matters contained herein and is competent to  
25 testify thereto of his own personal knowledge.
- 26 3. That your affiant is an associate attorney employed by ANTHONY P. SGRO, ESQ.,  
27 the court appointed counsel for the Appellant BRENDAN JAMES NASBY in the above-entitled  
28 action.
- 1 That the opening brief for Appellant NASBY is currently scheduled for filing with  
the Nevada Supreme Court on or about October 21, 2006.
- 2 That your affiant makes this Affidavit in support of the within MOTION FOR  
ENLARGEMENT OF TIME.

///

1           6.       That your affiant respectfully requests an extension of twenty (30) in which to file  
2 Appellant Nasby's opening brief in the above-captioned matter.

3           7.       That the legal research and writing of the brief is substantially completed.

4           8.       That due to the prohibitive visiting schedule at High Desert State Prison, as well as  
5 due to Affiant's hectic schedule, your Affiant will not have sufficient time to fully review the final  
6 brief with Appellant Nasby and make any changes to the brief prior to the October 21, 2006 filing  
7 deadline.

8           9.       That your Affiant has been unable to communicate with Appellant via telephone, as  
9 Appellant Nasby's Unit has been denied telephonic privilege for approximately one month.

10          10.       That the constitutional rights of Appellant Nasby weigh heavily in favor of granting  
11 the brief extension of time during which to file his opening brief.

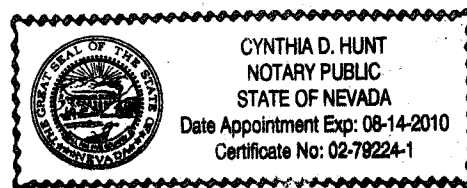
12          11.       That this motion is filed in good faith and not for purposes of delay.

13               FURTHER YOUR AFFIANT SAYETH NAUGHT,

14  
15  
16  
  
ERICK M. FERRAN

17       **SUBSCRIBED and SWORN** before me  
18 this 13<sup>th</sup> day of October, 2006.

19   
20 NOTARY PUBLIC in and for said  
21 COUNTY and STATE



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DAVID ROGER, ESQ./FRANK COUMOU, ESQ.  
District Attorney's Office  
200 Lewis Avenue, 3rd Floor  
Las Vegas, NV 89101  
(702) 477-2919 (Fax)

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