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2 PATTI, SGRO & LEWIS
3 Nevada State Bar No. 3811
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5 Las Vegas, NV 89101
6 (702) 385-9595

7 Attorney for Brendan James Nasby

FILED

8 IN THE SUPREME COURT
9 OF THE STATE OF NEVADA

FEB 07 2007

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

10 BRENDAN JAMES NASBY,

11 Appellant,

12 vs.

13 STATE OF NEVADA,

14 Respondent.

CASE NO: 47130

DIST. CT. NO: C154293

15 MOTION FOR ENLARGEMENT OF TIME TO FILE REPLY BRIEF
16 (First Request)

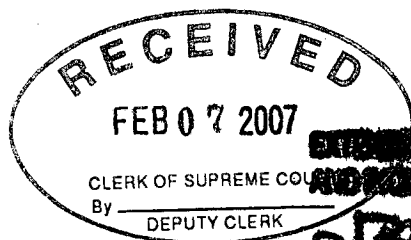
17 COMES NOW, Appellant, BRENDAN JAMES NASBY, by and through his attorney,
18 ANTHONY P. SGRO, ESQ., and hereby makes this motion for enlargement of time to file his reply
19 brief pursuant to Rule 26(b) of the Nevada Rules of Appellate Procedure.

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

23 DATED this 5th day of February, 2007.

24 PATTI, SGRO & LEWIS

25 *[Signature]*
26 ANTHONY P. SGRO, ESQ.
27 Nevada Bar No. 003811
28 720 S. Seventh Street, Third Floor
Las Vegas, NV 89101
Telephone: (702) 385-9595
Attorney for Appellant Nasby



cc: Counsel of Record

07-03078

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 Both Mr. Nasby and the State of Nevada have filed their opening briefs; Nasby's reply brief is
16 currently set to be submitted on or about February 7 2007.

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

18 Appellant respectfully requests a brief extension of twenty (20) days to file his opening brief
19 with this Honorable Court.

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

21 *Enlargement of time.* The court for good cause shown may upon motion enlarge
22 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.

23 The undersigned counsel has substantially completed the research and writing necessary to
24 file Appellant's reply brief. Further, the undersigned has visited Mr. Nasby at High Desert State
25 Prison in order to discuss his appellate brief as well as the State's opening brief. However, in the
26 past month Appellant Nasby has been transferred to Ely State Prison, where he is inaccessible to
27 regular visitation from the undersigned due to the distance between Ely and Las Vegas.

28 ///

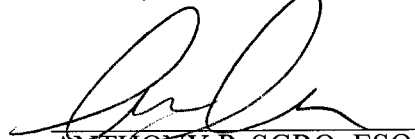
1 Due to the distance now present between the undersigned and Appellant, the undersigned's
2 only avenue to discuss legal issues with Mr. Nasby has been through telephonic conversations, which
3 have been scarce at best. Accordingly, the undersigned has been unable to visit with his client to
4 review the final brief to be filed with this Honorable Court and to make any alterations necessary
5 to the brief before the February 7, 2006 filing deadline. The undersigned is still currently awaiting
6 correspondence and/or a telephone call from Mr. Nasby detailing his thoughts/comments on the
7 State's opening brief. Accordingly, counsel brings the instant motion to enlarge in good-faith and
8 not for the purpose of delaying these proceedings. It is the undersigned's belief that any issues left
9 to be discussed will be resolved in the next few weeks.

10 WHEREFORE, the undersigned respectfully requests a brief enlargement of twenty (20) days
11 in which to file his opening brief.

12 DATED this 5th day of February, 2007.

13 PATTI, SGRO & LEWIS

14 By:

15 
16 ANTHONY P. SGRO, ESQ.
17 Nevada Bar No. 003811
18 720 S. Seventh Street, Third Floor
19 Las Vegas, NV 89101
20 Telephone: (702) 385-9595
21 Attorney for Appellant NASBY

22 **AFFIDAVIT OF ERICK M. FERRAN**
23 **IN SUPPORT OF MOTION FOR ENLARGEMENT OF TIME**

24 STATE OF NEVADA)
25 : ss.
26 COUNTY OF CLARK)

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

- 28 1. That your affiant is an attorney duly licensed to practice before this court.
2. That your affiant has knowledge of all matters contained herein and is competent to
testify thereto of his own personal knowledge.

///

///

1 3. That your affiant is an associate attorney employed by ANTHONY P. SGRO, ESQ.,
2 the court appointed counsel for the Appellant BRENDAN JAMES NASBY in the above-entitled
3 action.

4 4. That the reply brief for Appellant NASBY is currently scheduled for filing with the
5 Nevada Supreme Court on or about February 7, 2007.

6 5. That your affiant makes this Affidavit in support of the within MOTION FOR
7 ENLARGEMENT OF TIME.

8 6. That your affiant respectfully requests an extension of twenty (20) days in which to
9 file Appellant Nasby's reply brief in the above-captioned matter.

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

11 8. That due to Mr. Nasby being transferred to Ely State Prison from High Desert State
12 Prison as well as scarce telephonic conversations apparently allowed to Mr. Nasby at Ely State
13 Prison, your Affiant will not have sufficient time to fully review the final reply brief with Appellant
14 Nasby and make any changes to the brief prior to the February 7, 2007 filing deadline.

15 9. That the constitutional rights of Appellant Nasby weigh heavily in favor of granting
16 the brief extension of time during which to file his reply brief.

17 10. That this motion is filed in good faith and not for purposes of delay.

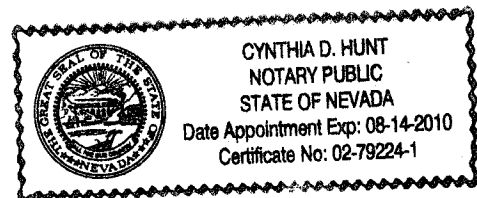
18 FURTHER YOUR AFFIANT SAYETH NAUGHT,

19
20
21

ERICK M. FERRAN

22 **SUBSCRIBED and SWORN** before me
23 this 8th day of February, 2007

24 NOTARY PUBLIC in and for said
25 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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Appellant,

vs.

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MOTION FOR ENLARGEMENT OF TIME TO FILE REPLY BRIEF
(First Request)

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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 5th day of February, 2007.

PATTI, SGRO & LEWIS