

RECEIVED  
Las Vegas Drop Box  
CLERK OF SUPREME COURT

2007 MAR 21 PM 2:01

1 ANTHONY P. SGRO, ESQ.  
2 PATTI, SGRO & LEWIS  
3 Nevada State Bar No. 3811  
4 720 S. Seventh Street, Third Floor  
5 Las Vegas, NV 89101  
6 (702) 385-9595

7 Attorney for Brendan James Nasby

FILED

MAR 23 2007

8 IN THE SUPREME COURT  
9 OF THE STATE OF NEVADA

10 \* \* \*

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Alvarado*  
DEPUTY CLERK

11 BRENDAN JAMES NASBY,

12 Appellant,

13 vs.

14 STATE OF NEVADA,

15 Respondent.

CASE NO: 47130

DIST. CT. NO: C154293

16 **MOTION FOR ENLARGEMENT OF TIME TO FILE REPLY BRIEF**  
17 **(Second Request)**

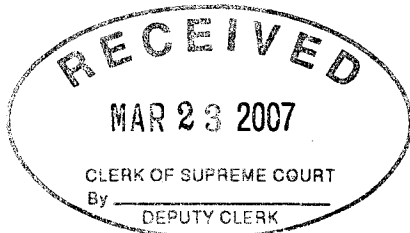
18 COMES NOW, Appellant, BRENDAN JAMES NASBY, by and through his attorney,  
19 ANTHONY P. SGRO, ESQ., and hereby makes this motion for enlargement of time to file his reply  
20 brief pursuant to Rule 26(b) of the Nevada Rules of Appellate Procedure.

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

24 DATED this 19<sup>th</sup> day of March, 2007.

25 PATTI, SGRO & LEWIS

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



07-06623

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 initially  
16 was currently set to be submitted on or about February 7 2007. On or about February 5, 2007, Nasby  
17 filed a motion for enlargement of time, wherein the undersigned claimed that due to his client's  
18 transfer to Ely State Prison, the undersigned had not yet had an opportunity to complete the appeal  
19 brief. The briefing deadline was extended to February 27, 2007. The instant motion for enlargement  
20 follows.<sup>1</sup>

21 **I. Appellant Respectfully Requests An Extension Of Time To File His Reply Brief, And**  
22 **Further Respectfully Requests That The Court Accept His Previously Filed Reply**  
23 **Brief.**

24 Appellant respectfully requests that this Honorable Court grant him a brief extension of time  
25 to file his reply brief, which has already been transmitted to the Court and is in the possession of the  
26 Court clerk.

---

27 <sup>1</sup> The Court is in possession of Nasby's brief, which has been filed and served upon the State.  
28 As discussed herein, the undersigned was unable to communicate with Nasby regarding the  
contents of the brief. Further, due to the undersigned's hectic schedule during late February,  
the undersigned inadvertently failed to file a motion for enlargement of time in this matter.

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

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

6 The undersigned counsel has completed Appellant's reply brief and, further, has transmitted  
7 true and correct copies to both the State of Nevada (District Attorney's Office) and the Attorney  
8 General's Office, as well as to this Honorable Court. The undersigned has experienced difficulties  
9 in communicating with Mr. Nasby regarding the substance of the brief, and was recently able to  
10 accomplish this via a telephonic conversation with Mr. Nasby. Previously, the undersigned has  
11 discussed appellate briefs in person with Mr. Nasby; however, due to Nasby's transfer to Ely, regular  
12 visitation—in combination with the undersigned's hectic schedule—has made in-person visits  
13 difficult. Nasby, however, was recently able to communicate with the undersigned, who  
14 immediately finalized the brief and submitted it to this Court and to the State.

15 Unfortunately, this lapse in communication, in combination with the undersigned's busy  
16 schedule during this time period, resulted in the undersigned's submission of this brief after the  
17 Court's set deadline. A review of the undersigned's file revealed that he inadvertently failed to file  
18 another motion for enlargement of time.

19 Considering the nature of the claims made by Nasby, and their constitutional importance, the  
20 undersigned would ask that his inadvertent mistake in filing the motion for enlargement not be  
21 imputed against his client. The interests of justice weigh heavily in favor of allowing the filing of  
22 Nasby's brief, which is already in possession of this Honorable Court.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 WHEREFORE, the undersigned respectfully requests that the Court accept Appellant  
2 Nasby's reply brief, on file herein.

3 DATED this 19<sup>th</sup> day of March, 2007.

4 PATTI, SGRO & LEWIS

5 ANTHONY P. SGRO, ESQ.

6 Nevada Bar No. 003811

7 720 S. Seventh Street, Third Floor

8 Las Vegas, NV 89101

9 Telephone: (702) 385-9595

10 Attorney for Appellant NASBY

11 **AFFIDAVIT OF ERICK M. FERRAN**  
12 **IN SUPPORT OF MOTION FOR ENLARGEMENT OF TIME**

13 STATE OF NEVADA )  
14 : ss.  
15 COUNTY OF CLARK )

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

- 17 1. That your affiant is an attorney duly licensed to practice before this court.
- 18 2. That your affiant has knowledge of all matters contained herein and is competent to  
19 testify thereto of his own personal knowledge.
- 20 3. That your affiant is an associate attorney employed by ANTHONY P. SGRO, ESQ.,  
21 the court appointed counsel for the Appellant BRENDAN JAMES NASBY in the above-entitled  
22 action.
- 23 4. That the reply brief for Appellant NASBY is currently scheduled for filing with the  
24 Nevada Supreme Court on or about February 27, 2007.
- 25 5. That your affiant makes this Affidavit in support of the within MOTION FOR  
26 ENLARGEMENT OF TIME, and in support of his request that the Court accept Nasby's previously  
27 filed reply brief.
- 28 6. That your affiant respectfully requests an extension of time to file his reply brief so  
that the Court's Clerk may file the brief, which is already in the Clerk's possession.

///

///

8. That due to Mr. Nasby being transferred to Ely State Prison from High Desert State Prison as well as scarce telephonic conversations apparently allowed to Mr. Nasby at Ely State Prison, your Affiant did not have sufficient time to fully review the final reply brief with Appellant Nasby and make any changes to the brief prior to the February 27, 2007 deadline. That, in part, Affiant's hectic schedule during this time period also resulted in his inability to communicate via telephone with Nasby.

10. That Affiant inadvertently failed to file a motion for enlargement of time to file the reply brief, and as a result files the instant motion and requests that this Court accept Nasby's brief.

12. That your Affiant respectfully requests that the Court not impute your Affiant's mistake to Nasby.

FURTHER YOUR AFFIANT SAYETH NAUGHT,

**SUBSCRIBED and SWORN** before me  
this 20 day of March, 2007

NOTARY PUBLIC in and for said  
COUNTY and STATE



- 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

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

*Gloria J. Reyma*  
An employee of Pati, Sgro & Lewis

25	///
26	///
27	///
28	///

## Transaction Report

Send

Transaction(s) completed

No.	TX	Date/Time	Destination	Duration	P. #	Result	Mode
690	MAR-20	15:45	7024552294	0'00'40"	006	OK	N ECM

1 ANTHONY P. SGRO, ESQ.  
2 PATTI, SGRO & LEWIS  
3 Nevada State Bar No. 3811  
4 720 S. Seventh Street, Third Floor  
5 Las Vegas, NV 89101  
6 (702) 385-9595

7 Attorney for Brendan James Nasby

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**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 REPLY BRIEF**  
**(Second 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 reply 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 19<sup>th</sup> day of March, 2007.

PATTI, SGRO & LEWIS