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 ATTORNEY FOR: Billy Lee Henderson III

IN THE SUPREME COURT OF THE STATE OF MONTANA

<p>BILLY LEE HENDERSON III, Appellant / Defendant,</p> <p>-vs-</p> <p>STATE OF MONTANA, Appellee / Plaintiff.</p>	<p>CASE NO. DA-19-0396</p> <p>SECOND (UNOPPOSED) MOTION FOR EXTENSION OF TIME TO FILE OPENING BRIEF</p>
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COMES NOW the Appellant / Defendant, Billy Lee Henderson III, and by and through counsel of record, Mathew M. Stevenson, hereby submits for this Court's review the foregoing MOTION FOR EXTENSION OF TIME (to file opening brief). The current deadline for the filing of opening brief is August 27, 2020. The reason for the proposed ORDER is elucidated in the attached AFFIDAVIT IN SUPPORT (pursuant to Mont. Rules App. Pro.: 26(2)). Counsel requests that the existing deadline be extended to the date of Friday, February 21, 2021. The State (L. Paulsen - Office of the Montana Attorney General) has been contacted and does not oppose this motion.

DATED this 5th day of August, 2020.

Mathew M. Stevenson
 Attorney for Billy Lee Henderson III

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2013, I served a true and accurate copy of the foregoing MOTION FOR EXTENSION OF TIME, via US MAIL, postage pre-paid, to:

- 1) Office of the Montana Attorney General, P.O. Box 201401. Helena, MT 59620-1401, and;
- 2) Billy Lee Henderson III, Great Falls Regional Prison, 3800 Ulm N. Frontage Rd., Great Falls, MT 59404.

DATED this 5th day of August, 2020.



Mathew M. Stevenson

STATE OF MONTANA)
 : ss. AFFIDAVIT IN SUPPORT OF
County of Missoula) MOTION FOR EXTENSION OF TIME

I, Mathew Stevenson, in compliance with M. R. App. P. 26(2) declare:

- 1) I am a licensed attorney in the State of Montana;
- 2) I am attorney for Defendant-Appellant Billie Lee Henderson;
- 3) His opening brief, under cause number DA-19-0396, is presently due no later than August 27, 2020;
- 4) The opening brief (in this case) was originally due February 6, 2020;
- 5) The length of the requested extension is for less than 6 months;
- 6) The extension is necessary, due to the following information;
- 7) Current counsel for Appellant / Defendant has been counsel since approximately April 23, 2020. Counsel has (also) been in possession of the trial record (approximately 1200 pages) since that time;
- 8) After careful review of the complete record, including non-trial-related materials, and after extensive consultation between present counsel, and Mr. Henderson, both counsel and Henderson have concluded that Mr. Henderson’s best legal arguments are likely non-record-based arguments, of the type best suited for a petition for post conviction relief;

- 9) Counsel (Stevenson) believes that the post conviction relief petition should occur prior to an appeal (if any), for the following reasons:
- a) The one-year post conviction relief deadline (for Mr. Henderson), based on the discovery of “new information,” will expire, in all likelihood, well in advance of a decision on any appeal, filed with this Court, on Mr. Henderson’s behalf;
 - b) In the event that Mr. Henderson’s post conviction petition is successful, it is presently his intention to withdraw his appeal, currently pending with this Court. In other words, permitting Mr. Henderson adequate extension of time to file an opening brief, in this case, may (and likely will) result in a reduced burden upon this Court, and therefore, promotes judicial economy;
- 10) Present counsel has exercised due diligence, because the decision to pursue post conviction relief, the success of which likely will result in Henderson’s voluntary dismissal of this (pending appeal) required considerable review of the record, consultation with prior counsel, and consultation with Mr. Henderson (himself);
- 11) While the success of the post conviction petition likely will result in Henderson’s voluntary dismissal of this (pending) appeal, he would like the

option of assessing such voluntary dismissal, only after learning whether or no his post conviction petition has been successful;

12) Counsel (Stevenson) requests the lengthy extension, specifically with the expectation that the post conviction process, and ultimately a ruling on said petition (by Montana's Fourth Judicial District Court), is a process which likely will not conclude until early in 2021;

13) Counsel (Stevenson) considered simply requesting (of this Court) a STAY of the appeal deadline (in this case), but the Montana Rules of Appellate Procedure (Rule 26) seem to require that the motion request "a date certain on or before which date the act for which an extension of time is requested must be performed."

14) The office of the Attorney General has been contacted, and apprised specifically of the length of time requested for the extension, and the reason for the requested length, and do not object either to this motion, or the requested length of time (requested in the motion).

/s/ Mathew M. Stevenson

Mathew M. Stevenson, Missoula, MT

August 5, 2020

Date

CERTIFICATE OF SERVICE

I, Mathew M. Stevenson, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 08-05-2020:

Kirsten H. Pabst (Prosecutor)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Timothy Charles Fox (Prosecutor)
Montana Attorney General
215 North Sanders
PO Box 201401
Helena MT 59620
Representing: State of Montana
Service Method: eService

Electronically Signed By: Mathew M. Stevenson
Dated: 08-05-2020