

## IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0079

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

BETHANY LYNN LEX,

Defendant and Appellant.

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**UNOPPOSED MOTION FOR EXTENSION OF TIME  
WITH AFFIDAVIT IN SUPPORT**

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COMES NOW, Deborah S. Smith, Assistant Appellate Defender for the Appellate Defender Division, and respectfully requests an extension of time until August 8, 2024, in which to prepare, file, and serve the Appellant's opening brief in the above-entitled matter. This is Appellant's thirteenth request for an extension. Appellant's opening brief was first due April 10, 2023. Appellant's opening brief is currently due July 9, 2024. Appellant submits the attached affidavit in support of this motion.

Opposing counsel has been contacted and has no objection.

Respectfully submitted this 28th day of June 2024.

OFFICE OF STATE PUBLIC DEFENDER  
APPELLATE DEFENDER DIVISION  
P.O. Box 200147  
Helena, MT 59620-0147

By: /s/ Deborah S. Smith  
DEBORAH S. SMITH  
Assistant Appellate Defender

[illegible]

I, Deborah S. Smith, in compliance with M. R. App. P. 26(2),  
declare:

1. I am a licensed, practicing attorney in the State of Montana,  
and I am currently employed by the Office of State Public Defender,  
Appellate Defender Division, as an Assistant Appellate Defender.

2. In that capacity, I was assigned as counsel in *State v. Lex* (DA 23-0079) on December 12, 2023.

3. Appellant's opening brief was first due April 10, 2023. The brief is presently due July 9, 2024. This is Appellant's thirteenth extension request, but is only my fourth extension request in this matter. I am requesting an extension of 30 days, until August 8, 2024, to submit the opening brief. The first nine extensions filed prior to my assignment as counsel were for 30 days each, and my first three extensions were each for 60 days.

4. I am also counsel of record in nine (9) other pending appeals:  
*State v. Stanley* (DA 21-0565), *State v. Roberts* (DA 21-0513), *State v. Davis* (DA 22-0171), *State v. Peterson* (DA 21-0573), *State v. Latter* (DA

22-0339), *State v. Walla* (DA 22-0483), *State v. Lehrkamp* (DA 22-0665), *State v. Jones* (DA 23-0151), and *State v. Cole* (DA 23-0305). Opening briefs remain due in three of these cases.

5. I review and complete my cases in the order in which they were assigned to me or previous counsel, unless the particular circumstances of a case warrant prioritization of a newer appeal over older appeals. All of my other appeals, with the exception of *Jones* and *Cole*, have been pending longer than Ms. Lex's appeal.

6. Since my last extension request, I have filed the reply brief in *Peterson* (05/09/2024) and the opening brief in *Lehrkamp* (06/05/2024). I have completed the opening brief in *Walla* (due 07/15/2024), which my client needs to review and I need to discuss with him before filing it.

7. Ms. Lex is next in my order of clients requiring an opening brief. I am currently reviewing the record in Ms. Lex's appeal. I request an extension of 30 days to complete record review, conduct legal research, consult with my client, and prepare the opening brief. Ms. Lex is currently incarcerated.

8. I will work diligently to complete the matter in the time requested.

9. The State has been contacted and does not object to this request.

10. I declare under penalty of perjury that the above is true and correct.

/s/ Deborah S. Smith  
DEBORAH S. SMITH,  
Helena, Montana

June 28, 2024  
Date

## **CERTIFICATE OF SERVICE**

I, Deborah Susan Smith, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 06-28-2024:

Austin Miles Knudsen (Govt Attorney)  
215 N. Sanders  
Helena MT 59620  
Representing: State of Montana  
Service Method: eService

Kelli Johnson Fivey (Attorney)  
County Courthouse  
155 W. Granite  
Butte MT 59701  
Representing: State of Montana  
Service Method: E-mail Delivery

Electronically signed by Kim Harrison on behalf of Deborah Susan Smith  
Dated: 06-28-2024