

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0305

STATE OF MONTANA,

Plaintiff and Appellee,

vs.

NEIL DENNIS COLE,

Defendant and Appellant.

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

COMES NOW, Deborah S. Smith, Assistant Appellate Defender for the Appellate Defender Division, and respectfully requests an extension of time until November 12, 2024, in which to prepare, file, and serve the Appellant's opening brief in the above-entitled matter. This is Appellant's twelfth request for an extension. Appellant's opening brief was first due August 14, 2023. Appellant's opening brief is currently due September 10, 2024. Appellant submits the attached affidavit in support of this motion.

Opposing counsel has been contacted and has no objection.

Respectfully submitted this 3rd day of September, 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
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. Cole* (DA 23-0305) on April 10, 2024.

3. Appellant's opening brief was first due August 14, 2023. The brief is presently due September 10, 2024. This is Appellant's twelfth extension request, but is only my third extension request in this matter. I am requesting an extension of 60 days, until November 12, 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 two extension requests were each for 60 days.

4. I am also counsel of record in seven (7) other pending appeals: *State v. Stanley* (DA 21-0565), *State v. Latter* (DA 22-0339), *State v. Walla* (DA 22-0483), *State v. Lehrkamp* (DA 22-0665), *State v.*

Lex (DA 23-0079), *State v. Jones* (DA 23-0181), and *State v. Shewalter* (DA 23-0398). 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. With the exception of *Jones* and *Shewalter*, all of my other appeals have been pending longer than Mr. Cole's appeal.

6. Since my last extension request, I have filed the opening brief in *Walla* (filed 07/17/2024), and the reply brief in *Latter* (filed 08/06/2024). I was out of the office from August 7 until August 26 on vacation. I am currently working on the opening brief in *Lex* (due 09/09/2024) and the reply brief in *Lehrkamp* (due 09/16/2024). When those two briefs are filed, I will turn to the opening brief in *Jones* and then to Mr. Cole's opening brief.

7. Accordingly, I request an extension of 60 days to review the record on appeal, conduct legal research, consult with my client, and prepare the opening brief. Mr. Cole is not 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

September 3, 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 09-03-2024:

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

Matthew C. Jennings (Govt Attorney)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Electronically signed by Kim Harrison on behalf of Deborah Susan Smith
Dated: 09-03-2024