

In the Supreme Court of the State of Idaho

STATE OF IDAHO,

Plaintiff-Respondent,

v.

AARON ANSON VON EHLINGER,

Defendant-Appellant.

ORDER RE 6TH MOTION FOR
EXTENSION OF TIME

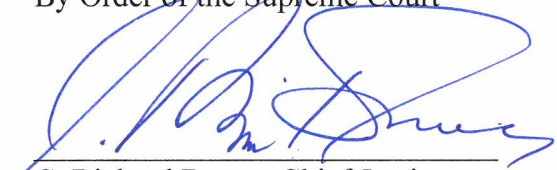
Supreme Court Docket No. 50087-2022
Ada County No. CR01-21-34839

A MOTION FOR SIXTH EXTENSION OF TIME FOR FILING APPELLANT'S REPLY BRIEF having been filed; therefore, good cause appearing,

IT IS ORDERED that the SIXTH MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S REPLY BRIEF is GRANTED, and the Brief shall be filed on or before March 22, 2024. No further extensions will be granted.

DATED this 16th day of March, 2024.

By Order of the Supreme Court


G. Richard Bevan, Chief Justice

ATTEST:


Melanie Gagnepain, Clerk

cc: Counsel of Record

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 50087-2022
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-21-34839
v.)	
)	MOTION FOR SIXTH EXTENSION
AARON ANSON VON EHLINGER,)	OF TIME FOR FILING
)	APPELLANT'S REPLY BRIEF
Defendant-Appellant.)	
_____)	

Aaron Von Ehlinger, moves this Court for an order extending the time in which the Appellant's Reply Brief will be due until March 22, 2024. This motion is based on the attached declaration.

DATED March 1, 2024.

/s/ Erik R. Lehtinen
ERIK R. LEHTINEN
State Appellate Public Defender

DECLARATION

I, Erik R. Lehtinen, declare under penalty of perjury, pursuant to the law of the State of Idaho, that the following is true and correct:

(1) This case was initially assigned to State Appellate Public Defender Eric D. Fredericksen, who drafted and filed the Appellant's Brief on behalf of Mr. Von Ehlinger.

(2) In late-September 2023, Governor Little selected Mr. Fredericksen to head a new statewide trial-level public defender's office. Mr. Fredericksen left the SAPD just a week after his new appointment was made public.

(3) When Mr. Fredericksen left, I became the interim director of the SAPD, effective September 25, 2023. While acting as the interim director, I also continued fulfilling the duties of my former position, Chief of the Appellate Unit. As if two jobs were not enough, I also covered most of Emily Joyce's caseload, as she had left the SAPD just a few days before Mr. Fredericksen did.

(4) Upon Mr. Fredericksen's departure, I reassigned this case to myself.

(5) Although taking on Ms. Joyce's and Mr. Fredericksen's cases was far from ideal under the circumstances, I simply had no one else to whom I could assign most of those cases. In FY2023, which ended June 30, 2023, the SAPD opened 719 new Appellate Unit cases. This was the highest single-year case count in the SAPD's 25-year history, and it represents a 19.2% increase over the Appellate Unit's pre-pandemic average (603.2 cases as of the end of FY2020).

(6) Unfortunately, the SAPD is simply not built to absorb a nearly 20% spike in its caseload, as it lacks the excess capacity to handle cases exceeding the historical average of around 600 new cases per year. The only "shock absorber" in the system is to request extensions of time from this Court. However, that is an imperfect solution, as delays continue to mount as attorneys

fall farther behind for as long as the overall caseload stays above a 600 case per year rate. SAPD attorneys cannot even begin catching up until cases drop below that rate for a sustained period.

(7) The SAPD's crushing caseload has continued into FY2024. As of January 1, 2024, the SAPD was on pace to open 698 new Appellate Unit cases in FY2024. This is still nearly 16% above the pre-pandemic average, and it still greatly exceeds the SAPD's capacity.¹ Accordingly, the SAPD is still falling further behind on its cases.

(8) Exacerbating the problems associated with a nearly 20% increase in the Appellate Unit caseload is that the SAPD has been unable to hire qualified attorneys to fill its attorney vacancies.

(9) During the 2023 legislative session, the Idaho Legislature appropriated funds for the SAPD to hire a new attorney in its Capital Litigation Unit. That funding became available on July 1, 2023, and the hope was to hire an attorney who could help with Appellate Unit cases in the short term, before transitioning fully to the Capital Litigation Unit in the long term. However, for the last eight months, the SAPD has been unable to fill that position with a qualified attorney.

(10) In addition, the Appellate Unit has two vacancies caused by the departures of Ms. Joyce and Mr. Fredericksen in late-September 2023. The SAPD has been unable to fill those positions as well.² Thus, the Appellate Unit is not only laboring under a caseload that is nearly

¹ There *may* be some light at the end of the tunnel. While month-over-month case numbers have fluctuated wildly in FY2024 (making it difficult to definitively identify a trend), new case appointments dipped in December 2023 and January 2024. Based on this, I am cautiously hopeful that the post-pandemic case surge has already peaked, and that new case appointments may now be on a downward trajectory. However, even if the surge in new appointments has peaked, the peak will not reach individual attorneys until Clerk's Records and Reporter's Transcripts are received in all (or most) of those cases, and that is likely still six to eight months away. It will then take many more months to get caught up.

² The SAPD is currently in the process of hiring an attorney to fill one of the two open Appellate Unit positions; however, this new hire likely will not be available to start at the SAPD for a number of months.

20% higher than capacity, but it is doing so with two out twelve positions vacant, *i.e.*, a 16.7% reduction in attorneys.

(11) As noted, there really is no “shock absorber” in the system, other than requesting extensions from this Court. Nevertheless, I am doing what I can to lighten the load on the overwhelmed Appellate Unit attorneys. The SAPD’s three Capital Litigation Unit attorneys are now working part-time on Appellate Unit cases (as their capital case caseloads permit). Additionally, although there is no dedicated budget to do so, we are scraping together funds to contract a handful of cases out to private attorneys. I do not anticipate that either of these measures will provide dramatic relief for the Appellate Unit; however, every little bit helps.

(12) In the meantime, I have reviewed the Appellant’s Brief and the Respondent’s Brief in this case, and I suspect that an Appellant’s Reply Brief is needed. However, I have not yet had an opportunity to fully review the record and draft and file a reply brief. The record in this case is extensive (the Clerk’s Record is 366 pages long; the Reporter’s Transcript is 719 pages long; and there are more than 1500 pages of exhibits), so it is taking significant time to get up to speed on the case.

(13) In addition to my work on this case, as well as my many other duties as director of the SAPD, I have spent significant time in recent weeks working on briefs in other cases. Specifically, I recently prepared and filed an Appellant’s Brief in *State v. Frizzell*, No. 50061-2022, and an Appellant’s Brief in Support of Petition for Review in *State v. Fell*, No. 49556-2022. Both of those cases were previously assigned to Ms. Joyce.

(14) Accordingly, I request an extension of twenty-one (21) days in this case, which would make the Appellant’s Reply Brief due on March 22, 2024.

(15) Five extensions of time have already been granted for the reply brief in this case, and no requests for extensions have been denied.

(16) I will make every effort to file the Appellant's Reply Brief on or before March 22, 2024.

DATED March 1, 2024.

/s/ Erik R. Lehtinen
ERIK R. LEHTINEN
State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 1, 2024, I caused a true and correct copy of the foregoing MOTION FOR SIXTH EXTENSION OF TIME FOR FILING APPELLANT'S REPLY BRIEF and DECLARATION to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

ERL/eas