

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARMENIA LEVI CUDJO, JR., } CA No. 08-99028
Petitioner-Appellant, } D.C. No. CV-99-08089-JFW
v. }
R.K. WONG, Warden, }
Respondent-Appellee. }

}

**APPELLANT'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO
FILE APPELLANT'S OPENING BRIEF**

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE JOHN F. WALTER
United States District Judge

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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARMENIA LEVI CUDJO, JR.,) CA No. 08-99028
Petitioner-Appellant,) D.C. No. CV-99-08089-JFW
v.)
R.K. WONG, Warden,)
Respondent and Appellee.)

**UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE
APPELLANT'S OPENING BRIEF**

Petitioner-Appellant, Armenia Levi Cudjo, Jr., hereby requests an extension of 30 days to and including June 5, 2009, to file his opening brief. This request is made under Rule 31 of the Federal Rules of Appellate Procedure and Circuit Rule 31-2.2(b) and is based on the attached Declarations of Katherine Froyen Black and Mark R. Drozdowski.

Dated: April 29, 2009

Respectfully submitted,

SEAN K. KENNEDY
Federal Public Defender

MARK R. DROZDOWSKI
Deputy Federal Public Defender

By /s/ Katherine Froyen Black
KATHERINE FROYEN BLACK
Deputy Federal Public Defender

Attorneys for Petitioner-Appellee

DECLARATION OF KATHERINE FROYEN BLACK

I, Katherine Froyen Black, declare:

1. I am an attorney licensed to practice law in the State of California, and I am admitted to practice in this Court. I am a Deputy Federal Public Defender in the Central District of California (“FPD”), and I am one of the attorneys assigned to represent Armenia Levi Cudjo, Jr., in this appeal. I make this declaration in support of Mr. Cudjo’s request for a 30-day extension of time, to and including June 5, 2009, to file and serve his appellant’s opening brief and excerpts of record.

2. The opening brief is currently due for filing on May 6, 2009. I request an extension of time for a period of 30 days, to and including June 5, 2009, to file the opening brief and excerpts.

3. This is Petitioner-Appellant’s third request for an extension of time in which to file his opening brief. Petitioner has sought and received two prior extensions of time, totaling 60 days, in which to file his opening brief.

4. I do not believe that I will be able to complete the opening brief by the current due date, in part because of other case responsibilities. In addition to my role as counsel of record for Petitioner-Appellant Cudjo, I am appointed counsel of record for five other capital habeas petitioners in the Central District. My responsibilities in these cases have been ongoing: C.D. Cal. case nos. CV-03-07948-GW; CV-96-02584-ABC; CV-05-04971-JFW; CV-07-00519-FMC; and CV 94-06417-AHS. During the past 30 days, since this Court granted Petitioner’s second request for an extension of time in which to file his opening brief, I have spent time fulfilling the following responsibilities in these other capital cases:

5. In case no. CV-05-04971-JFW, I, along with my co-counsel, filed an amended federal petition for writ of habeas corpus on April 21, 2009. I also spent one day out of the office, on April 15, 2009, reviewing documents in the possession of the Los Angeles County District Attorney's Office in response to an informal discovery request in another of my capital habeas cases, C.D. Cal. case no. CV 07-00519-FMC.

6. During the past 30 days, I have spent time reviewing the record, doing legal research, and drafting a portion of Mr. Cudjo's opening brief. However, I will be unable to continue working on Mr. Cudjo's opening brief, because I am expecting a baby sometime in the next two weeks and am scheduled to begin a six-month maternity leave on May 4, 2009. In my absence, my co-counsel on Mr. Cudjo's appeal, Deputy Federal Public Defenders Mark R. Drozdowski and John L. Littrell will complete and file the opening brief. Mr. Drozdowski and Mr. Littrell have case and other professional obligations that have prevented them from completing the necessary record review, legal research, and writing for the opening brief in this capital case. Mr. Drozdowski's supervisory and other case obligations, which have prohibited him from devoting substantial time to preparing the opening brief, are detailed in his attached declaration. Mr. Littrell's other case obligations are as follows:

7. Mr. Littrell has been assigned to represent the petitioner in another capital habeas case: *Bradford v. Woodford*, No. CV 97-6221-TJH. The traverse to the petition, which contains twenty-nine claims and sub-claims, most of which the Respondent contends are procedurally barred, is due on May 22, 2009.

8. Mr. Littrell is also counsel of record in two non-capital habeas cases, both of which involve prisoners serving terms of life: *Maldonado v. Scribner*, CV 06-2050-VAP (FMO) and *In re Paul Gaul on Habeas Corpus*, California Supreme Court case number S170759, in which Mr. Littrell assisted in drafting an original habeas petition that was filed in the California Supreme Court on February 25, 2009.

9. In addition to these capital and non-capital habeas cases, Mr. Littrell is counsel of record in approximately twenty-five federal criminal trial cases, several of which are set for trial in the coming months. He is currently preparing for trial in a fraud case, *United States v. Shanta Body*, CR 08-1403-SVW. Trial is set for June 9, 2009. It is expected to last three days.

10. In spite of these ongoing obligations in other cases, my co-counsel and I have exercised and will continue to exercise due diligence with respect to this appeal. Despite our diligence in pursuing Petitioner's appeal, we require additional time to complete the opening brief.

11. On April 29, 2009, I spoke with Deputy Attorney General James William Bilderback II, who is counsel of record for Respondent-Appellee, and informed him of my intention to file this motion. Mr. Bilderback advised me that Respondent has no objection to the motion.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on April 29, 2009, at Los Angeles, California.

/s/ Katherine Froyen Black
KATHERINE FRÖYEN BLACK

DECLARATION OF MARK R. DROZDOWSKI

I, Mark R. Drozdowski, declare:

1. I am an attorney licensed to practice law in the State of California and I am admitted to practice in this Court. I am a deputy federal public defender with the Office of the Federal Public Defender for the Central District of California (“FPD”). I am also the supervising attorney of the FPD’s capital habeas unit (“CHU”), and as such am responsible for overseeing the CHU’s 14 attorneys and its caseload of about 62 federal capital habeas cases (including two 28 U.S.C. § 2255 actions), roughly 34 federal noncapital habeas cases and direct appeals, and federal trial work. I am one of the attorneys assigned to represent Cudjo in this appeal. I make this declaration in support of Cudjo’s request for a 30-day extension of time, to and including June 5, 2009, to file and serve his appellant’s opening brief and excerpts of record.

2. I have been unable to complete my legal research and record review for the opening brief, and a draft of the portions of the brief that I have been assigned to write, because of my obligations in other cases and as CHU supervisor. Since the Court set the current due date for the brief on November 26, 2008, I have engaged in the following work in other cases:

3. I am the sole attorney representing Robert Fairbank in his capital habeas appeal *Fairbank v. Ayers*, Ninth Circuit Case No. 08-99018. Fairbank’s opening brief and excerpts of record are presently due by May 8, 2009. I have spent numerous hours the past several months reviewing the record and conducting legal research in his case.

4. I am the sole attorney representing Mario Guerra in his noncapital

habeas appeal *Guerra v. Felker*, Ninth Circuit Case No. 07-55891. I filed Guerra's opening brief and excerpts on January 20, 2009. I spent a lot of time in January working on the brief and conducting legal research and record review.

5. I am the sole attorney representing the appellant in the noncapital habeas appeal *Menefee v. Felker*, Ninth Circuit Case No. 08-55657. I filed Menefee's reply brief and supplemental excerpts of record on January 26, 2009. Because of an error in the ECF filing, the brief was submitted for review again the next day. I was solely responsible for researching and writing the reply brief, and I spent numerous hours in January working on the reply. On April 13, 2009, I filed a letter of supplemental authorities.

6. I am the sole attorney assigned to represent the appellant in the noncapital habeas appeal *Trotter v. Harrison*, Ninth Circuit Case No. 07-55451. I represented Trotter at the oral argument held on March 4, 2009, and I spent time beforehand preparing for the argument.

7. That same day, March 4, my co-counsel filed the appellant's opening brief in *Smith v. Harrison*, Ninth Circuit Case No. 08-56915. My co-counsel did the bulk of the work on the brief; however, I drafted two of the three legal arguments and spent numerous hours working on those arguments.

8. One of my duties as CHU supervisor is to review draft Ninth Circuit briefs prepared by other lawyers in our office or by outside co-counsel in cases in which our office is appointed. In January 2009, I spent a considerable amount of time reading and editing drafts of opening briefs filed in *McKenzie v. Brown*, Ninth Circuit Case No. 07-56135, *Earp v. Ayers*, Ninth Circuit Case No. 08-99005, and *James v.*

Woodford, Ninth Circuit Case No. 08-55216. I spent time in February trying to help an attorney prepare for the oral argument held on February 27 in *Visciotti v. Ayers*, Ninth Circuit Case No. 06-75628. I also spent time reviewing a reply brief that another attorney filed on March 9 in *Bamrick v. Martel*, Ninth Circuit Case No. 06-55080. In March and April, I spent a considerable amount of time reviewing the record and consulting with lawyers in *Atkins v. Ryan*, Ninth Circuit Case No. 08-55619, and *Lee v. Jacquez*, Ninth Circuit Case No. 08-55919, where our appellant's opening briefs are due next month, and reviewing the record and a draft reply brief in *Peterson v. Hall*, Ninth Circuit Case No. 08-55165, where the reply is due in May.

9. As CHU supervisor, I also had to spend time in February preparing status reports in two capital habeas cases in which our office was recently appointed, *Jennings v. Brown*, E.D. Cal. Case No. 91-CV-00684-OWW, and *Romero v. Wong*, C.D. Cal. Case No. CV 09-0410 JVS. I also spent time preparing for status conferences held in *Jennings* on March 25 and April 24, 2009.

10. My supervisory duties have consumed at least roughly 20 hours per week since the Court set the present briefing schedule in late November 2008, and that number has increased in the past month or so.

11. Since the prior extension request was filed in late March, I was out of the office (and unable to work on this appeal) on the following days: March 30 and 31 on vacation; April 1-3 at a mandatory national habeas corpus conference where I was on a panel for a presentation; and April 16-21 on a pre-planned and -paid vacation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on April 29, 2009 at Los Angeles, California.

/s/ Mark R. Drozdowski
MARK R. DROZDOWSKI

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2009, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By */s/ Katherine Froyen Black*
KATHERINE FROYEN BLACK
Deputy Federal Public Defender