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COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
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ABEL ACOSTA
CLERK

APPELLATE COURT CAUSE NUMBER 03—14—00088—CR
APPELLATE COURT CAUSE NUMBER 03—14—00408—CR

DARIUS DONTAE LOVINGS	IN THE COURT OF
V.	CRIMINAL APPEALS
STATE OF TEXAS	STATE OF TEXAS

APPELLANT'S MOTION TO EXTEND TIME FOR FILING OF PETITION FOR DISCRETIONARY REVIEW

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

COMES NOW THE APPELLANT, by and through his appointed attorney of record, Paul M. Evans, in the above entitled and numbered causes, and moves this Court, to grant the Appellant's Motion to Extend Time for Filing of Petition for Discretionary Review, and, in support thereof, would show the Court as follows:

I.

A Memorandum Opinion was issued by the Honorable Third Court of Appeals in the instant causes on March 17, 2016. Motions for Rehearing and Rehearing En Banc were overruled on April 22, 2016. By operation of Texas Rules of Appellate Procedure §§ 4.1(a) and 68.2(a), the deadline to file a Petition for Discretionary Review in the instant causes falls on this date, May 23, 2016.

FILED IN
COURT OF CRIMINAL APPEALS

May 24, 2016

ABEL ACOSTA, CLERK

Pursuant to Rule § 68.2(a), this Court "may extend the time for filing a petition for discretionary review if a party files a motion complying with Rule § 10.5(b) no later than 15 days after the last day for filing the petition." The undersigned counsel shall forthwith respectfully request that the deadlines for filing a Petition for Discretionary Review in the instant causes be extended to 5:00 PM Central Standard Time on June 3, 2016.

The undersigned counsel hereby wishes to relay "the facts relied on to reasonably explain the need for an extension." *See* Rule § 10.5(b)(1)(C).

II.

The undersigned counsel's best friend, Kenneth Lee Wagner, died at the premature age of 44 years on April 28, 2016. Mr. Wagner had endured 49 agonizing days in an intensive care unit at the time of his demise. The circumstances leading up to this event were tragic, and senseless, beyond comprehension. Said event has taken an enormous toll on the undersigned counsel, a solo practitioner with no support staff, and he has struggled to maintain his practice as well as his composure in the wake of this "event," for lack of a better word. Said event has changed the course of the undersigned counsel's entire life, in every aspect and manner.

III.

The undersigned counsel is still quite affected by the events and circumstances of the preceding months. "Traumatized" would be an appropriate term to employ, yet it fails miserably to adequately describe how the undersigned counsel feels. On the date of the filing of the instant motion, at the request of Mr. Wagner's mother, the undersigned counsel made arrangements to have his obituary printed in the Austin American Statesman on May 25, 2016. The undersigned counsel has hastily made arrangements to attend Mr. Wagner's funeral on May 28, 2016, in Camden, North Carolina.

IV.

On March 1, 2016, the undersigned counsel had been appointed to a client named Malique Jackson on a charge of Aggravated Robbery. On April 22, 2016, the undersigned counsel was informed that the Travis County District Attorney had indicted said charge as a Theft, Class B misdemeanor, trial court Cause Number C-1-CR-16—400493. Said offense was scheduled for a jury trial in Travis County Court at Law # 9 on the date of the instant filing, May 23, 2016. The Travis County Attorney dismissed the cause on this same date, after the undersigned counsel invested forty hours of his time during the course of last week alone on trial preparation

and investigation of the underlying circumstances. Additionally, during this same time frame, the undersigned counsel has put considerable time, effort, and energy towards completion of an Appellant's Brief in *Robleto v. State* before the Honorable Third Court of Appeals, Cause Numbers 03—15—00482—CR, 03—15—00483—CR, and 03—15—00484—CR, which is due on June 1, 2016.

V.

In sum, the deadline in the instant cause fell directly into the "perfect storm," so to speak, at a point where the undersigned counsel's powers of concentration and ability to maintain his composure have been compromised to a degree that the undersigned counsel has never personally experienced. Without causing undue sacrifice—if not outright violence—to the quality of representation to his other clients with pressing and urgent circumstances of their own, the undersigned counsel can assert in good faith that he could not have feasibly filed a presentable Petition for Discretionary Review in the instant causes on the "de facto" deadline of May 23, 2016. The undersigned counsel reluctantly begs this Honorable Court to grant its indulgence and allow the applicable deadline to be extended to Friday, June 3, 2016.

VI.

This Motion is not made for purposes of delay, but so that justice might be served.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully prays that this Court, upon good cause shown as cited above, grant the Appellant's Motion to Extend Time for Filing of Petition for Discretionary Review, so that the deadline may be extended to 5:00 PM Central Standard Time on Friday, June 3, 2016.

Respectfully submitted,
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_/s/ Paul M. Evans_____
PAUL M. EVANS
SBN 24038885
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was delivered by facsimile unto the office of the prosecuting attorney for the State of Texas—the Travis County District Attorney, mailing address P.O. Box 1748, Austin, TX, 78767, physical address 509 W. 11th Street, Austin, TX, 78701—on this the 23rd day of May, 2016.

I hereby further certify that a true and correct copy of the above and foregoing was delivered by facsimile unto the State's Prosecuting Attorney, Lisa C. McMinn—mailing address P.O. Box 13046, Austin, TX, 78701-3046, physical address 209 W. 14th Street, Austin, TX, 78701—on this the 23rd day of May, 2016.

_/s/ Paul M. Evans_____
PAUL M. EVANS

CERTIFICATE OF COMPLIANCE

I hereby certify that the present document contains 1018 words, all contents included.

_/s/ Paul M. Evans_____
PAUL M. EVANS