



TO: MOTIONS CLERK  
Appellate Division  
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HON. ROBERT JOHNSON  
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Bronx County  
215 East 161<sup>st</sup> Street  
Bronx, New York 10451

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

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THE PEOPLE OF THE STATE OF NEW YORK :

Respondent, :

-against- : AFFIRMATION

~~XXXXXXXXXXXX~~, : Bronx Cty.

Ind. 7708/98

Defendant-Appellant. :

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STATE OF NEW YORK )  
                          ) ss:  
COUNTY OF NEW YORK )

DAVID J. KLEM, an attorney duly admitted to practice in the Courts of this State, does hereby affirm under the penalties of perjury that the following statements are true, except those made upon information and belief, which he believes to be true:

1. I am associated with the office of Robert S. Dean, Center for Appellate Litigation, who was assigned by this Court on January 10, 2002, to represent appellant on appeal from a judgment rendered in the Supreme Court, Bronx County, on December 21, 2000, convicting him of manslaughter in the first degree and sentencing him to a prison term of ten years (Donnino, J., at plea and sentence). Appellant is presently confined pursuant to that judgment.

2. I make this affirmation in support of appellant's motion to enlarge the time in which to perfect his direct appeal in order to complete the pending litigation on his C.P.L. § 440.10 motion.

3. I have been authorized by the Bronx District Attorney's Office to state that they do not oppose this motion. [That authorization was placed on the record during a calendar call in Part 8, Bronx County Supreme Court, Criminal Term, on September 26, 2002.]

4. This Court has previously extended appellant's time to file his points and note of issue to 120 days from June 12, 2002, the date my office received the complete record on appeal. [The initial record on appeal that was filed in the Court on April 9, 2002, and received by my office on April 15, 2002, was incomplete as we so notified the Court on April 18, 2002.]

5. An extension of time in which to perfect this appeal is necessitated by the pendency of C.P.L. § 440.10 motion. Appellant filed that motion on July 8, 2002. To date, the prosecution has not filed their response. That § 440.10 motion is likely to render this appeal moot. Had the prosecution timely responded to that motion, this enlarge of time would not be necessary. In any event, the motion is likely to be granted and/or a new disposition to the case negotiated. Therefore, awaiting the disposition of that motion would conserve judicial resources by not unnecessarily forcing us to litigate a soon-to-be moot appeal.

WHEREFORE, we respectfully request that this Court enlarge appellant's time in which to perfect the appeal until the May 2003 Term of the Court.

Dated: New York, New York  
October 7, 2002

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DAVID J. KLEM