

NO. _____

STATE OF TEXAS) IN THE COURT OF APPEALS
VS.) FOURTH COURT OF APPEALS
JOE SMITH) DISTRICT, TEXAS

**JOINT MOTION TO EXTEND TIME
TO FILE DEFENDANT'S NOTICE OF APPEAL**

TO THE HONORABLE JUSTICES OF SAID COURT:

Joe Smith and the State of Texas jointly move this Court to grant an extension of time to file Mr. Smith's notice of appeal, pursuant to Rule 26.3 of the Texas Rules of Appellate Procedure, and for good cause show the following:

I.

Mr. Smith was convicted of the offense of Continuous Violence Against the Family following a jury trial in the 187th Judicial District Court of Bexar County, Texas. The trial court sentenced Mr. Smith to five years imprisonment, but suspended the sentence and placed him on community supervision on May 4, 2020. Appellant's motion for new trial was timely filed on June 2, 2020.

A hearing on the motion for new trial was scheduled for June 23, 2020. Before that hearing could be held, counsel for Mr. Smith, and Jay Brandon, counsel for the State of Texas, agreed that, because of the Covid-19 pandemic, additional time would be needed to present evidence on the motion for new trial. Accordingly, on July 7, 2020, the lawyers for both parties jointly filed with the trial court a Motion to Suspend Deadline for Motion for New Trial Hearing, pursuant to the Texas Supreme Court's 17th Emergency Order. That

motion was granted on July 7, 2020, and subsequently, the trial court scheduled the hearing on Mr. Smith's motion for new trial for August 11, 2020. Testimonial and documentary evidence was presented, and counsel argued their positions that day, and the next day, August 12, 2020, the trial court denied the motion for new trial. Mr. Smith filed his written notice of appeal with the trial court the same day, shortly after the trial court ruled.

II.

Since the motion for new trial was timely filed, Mr. Smith's notice of appeal would have been due on or before 90 days after sentencing, namely on August 2, 2020. TEX. R. APP. PROC. ANN. 26.2(a)(2). The defense was unable to file the motion on that date, however, because the timely filed motion for new trial had not been heard or ruled upon. That motion was not ruled upon until today, August 12, and less than one hour after the trial court denied the motion for new trial, Mr. Smith filed his notice of appeal in the trial court.

III.

This motion is jointly filed by Joe Smith and the State of Texas, and requests that this Court extend the time for filing the notice of appeal until August 12, 2020. As required by TEX. R. APP. PROC. ANN. 26.3, this motion for extension is filed within 15 days after the deadline for filing the notice of appeal; Mr. Smith has filed his notice of appeal in the trial court; and, this timely filed motion for extension complies with Rule 10.5(b), and shows good cause for the extension we request.

WHEREFORE, PREMISES CONSIDERED, Joe Smith and the State of Texas jointly pray that this Court grant this Joint Motion To Extend Time to File Defendant's Notice of Appeal until August 12, 2020.

Respectfully submitted:

/s/ Mark Stevens
MARK STEVENS
State Bar No. 19184200
310 S. St. Mary's Street
Tower Life Building, Suite 1920
San Antonio, TX 78205
(210) 226-1433
mark@markstevenslaw.com

Attorney for Joe Smith

/s/ Jay Brandon
JAY BRANDON
State Bar No. 02880500
Assistant District Attorney
Bexar County District Attorney's Office
101 W. Nueva St.
San Antonio, TX 78205
jay.brandon@bexar.org

Attorney for the State of Texas

CERTIFICATE OF SERVICE

I certify that a copy of this Joint Motion To Extend Time to File Defendant's Notice of Appeal has been electronically delivered to the Bexar County District Attorney's Office, Paul Elizondo Tower, 101 W. Nueva, San Antonio, Texas, on August 12, 2020.

/s/ Mark Stevens
MARK STEVENS