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Jul 07 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Certiorari to Calhoun County
Court of Common Pleas
The Honorable Robin B. Stilwell, Post-Conviction Relief Judge

Appellate Case No. 2019-000528

DAVID J. BENJAMIN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**MOTION FOR EXTENSION TO FILE BRIEF OF
RESPONDENT AND MOTION TO FILE OUT OF TIME**

Respondent, through its undersigned counsel, moves this Court, out of time, for a fourth and final ten-day extension of time to file the Brief of Respondent, up to and including July 18, 2022. In support of the requested, undersigned counsel would respectfully show unto this Court:¹

1. The Brief of Respondent was due to be filed with this Court and served on July 5, 2022. This Court has granted Respondent three previous extensions. Due to undersigned counsel's errors, the Brief was not filed on the above-mentioned due date.
2. Undersigned counsel believed she timely filed the Brief with this Court via ctappfilings@sccourts.org on July 5, 2022, as instructed by this Court in its June

¹ In compliance with: *In Re: Extensions in Criminal and Post-Conviction Relief Cases*, (S.C. Sup. Ct. order dated March 18, 2009) (Davis Adv. Sh. No. 13 at 1).

- 6, 2022, Order. On July 6, 2022, opposing counsel notified undersigned counsel by email that the Brief was not attached to her submission to this Court.
3. Because undersigned has been severely ill since the evening of July 5, 2022, she did not see the email from opposing counsel until the morning of July 7, 2022.
 4. Upon receiving this information, undersigned counsel immediately attempted to re-file the Brief. Unfortunately, undersigned counsel realized that she erroneously saved her draft version of the Brief as her final version. In doing so, the word document containing her final version was deleted.
 5. Pursuant to Rule 263, SCACR, Respondent respectfully requests that the rules be relaxed in order to file a fourth and final ten-day extension in which to prepare and submit the Brief of Respondent. *See* Rule 263(b), SCACR (“The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rule 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof.”).
 6. Undersigned counsel submits this extension request is supported by the above-referenced extraordinary circumstances and is not intended for purposes of delay. Opposing counsel has graciously consented to this request.

WHEREFORE, Respondent respectfully asks that this Court relax the requirements of Rule 243(g), SCACR; permit Respondent to file a request for a ten-day extension out of time; grant Respondent's request for a fourth extension; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

SAMANTHA J. WEIDAUER
Assistant Attorney General
S.C. Bar # 104883

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: *s/ Samantha J. Weidauer*
SAMANTHA J. WEIDAUER

**I concur that extraordinary circumstances have
been shown**

s/ Megan Harrigan Jameson
MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

July 7, 2022

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PROOF OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Motion for Extension to File Brief of Respondent and Motion to File Out of Time has been served upon opposing counsel by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS):

Tricia A. Blanchette, Esquire
blanchettelaw@gmail.com

This 7th day of July, 2022.

s/ Samantha Weidauer

Samantha J. Weidauer
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
sammieweidauer@scag.gov



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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

July 7, 2022

The Honorable Jenny Abbott Kitchings
Clerk of Court of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
(via e-filing only – ctappfilings@sccourts.org)

Re: David J. Benjamin v. State of South Carolina
Appellate Case No: 2019-000528

Dear Ms. Kitchings:

Respondent's Brief of Respondent in the above-referenced post-conviction relief appeal was due to be served and filed on July 5, 2022. Enclosed please find Respondent's Motion for Extension to File Brief of Respondent and Motion to File Out of Time.

Please let me know if I can provide the Court with any additional information regarding the enclosed motion.

Sincerely,

s/ Samantha J. Weidauer

Samantha J. Weidauer
Assistant Attorney General
SC Bar No. 104833

cc: Tricia A. Blanchette, Counsel for Petitioner (via email only)