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Sep 13 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County
The Honorable Paul M. Burch, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JAMES MONROE BROWN,

APPELLANT.

Appellate Case No. 2021-000469

**MOTION FOR FOURTH EXTENSION OF TIME TO FILE
INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER**

The undersigned counsel would respectfully request a fourth thirty (30) day extension in which to file the Initial Brief of Respondent and Designation of Matter in the above-referenced case. Counsel for Appellant has graciously consented to extension requests through September 30, 2022. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

Respondent's Initial Brief of Respondent and Designation of Matter is due to be filed on Wednesday, September 14, 2022. The undersigned attorney has been personally ill and had a number of state, and federal matters to attend to since August 12, 2022. Specifically:

1. Counsel was out of the office on **August 11, 2022** due to testing positive for COVID and being ill, and did not return to the Office until **August 19, 2022**;

2. Counsel filed the Respondent's Motion to Make a More Definite and Certain Statement pursuant to Rule 12(e), F.R.C.P., and to Dismiss without prejudice pursuant to Rule 41 (a)(1) & (2), F.R.C.P., or Rose v. Lunday, in the matter of Ron Santa McCray vs. Warden of Lieber Correctional Institution, C/A No. 1:22-1204-TLW-SVH (Federal Habeas Corpus) on **August 18, 2022¹**;

3. Counsel also filed the Respondent's Response to Motion to Vacate, Recuse, Renewing Motions, etc. [ECF #45] in the matter of Ron Santa McCray vs. Warden of Lieber Correctional Institution, C/A No. 1:22-1204-TLW-SVH (Federal Habeas Corpus), on **August 18, 2022²**;

4. Counsel filed the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of William D. Swaney, #249421 vs. Jonathan Nance, C/A No. 2:22-01294-JD-MGB (Federal Habeas Corpus) on **August 19, 2022**;

5. Counsel also filed the Respondent's Response and Opposition to Petitioner's Motion to Amend [ECF #34] in the matter of John Garvin, #355509 vs. Warden LeVern Cohen, C/A No. 2:22-994-DCN-MGB (Federal Habeas Corpus) on **August 22, 2022**;

6. Counsel prepared and filed the Brief of Respondent in the matter of The State vs. William C. Sellers, Appellate Case No. 2021-000910, an Edgefield County direct appeal murder case now pending in the South Carolina Supreme Court filed on **August 26, 2022**;

7. Counsel filed the Motion to Exceed Limit for Reply to Response, together with Reply to Response in Opposition to Motion for Summary Judgment [ECF #30] (37 pages) in the matter of Manuel A. Marin, #343371 vs. Warden of Lieber Correctional Institution, 2:22-00351-DCC-MGB (Federal Habeas Corpus)(murder) on **September 7, 2022**;

¹ This was completed remotely.

² This was also completed remotely.

8. Counsel prepared the Respondents/Appellees' Response to Motion for Motion to Reconsider Order consolidating appeals in the matter of Stephen C. Stanko vs. Bryan P. Stirling, Director, South Carolina Department of Corrections, and Lydell Chestnut, Deputy Warden of Broad River Correctional Institution, Nos. 22-2 and 22-3 (Capital Federal Habeas Appeal) in the United States Court of Appeals for the Fourth Circuit on **September 12, 2022**;

9. Counsel is also preparing the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Ron Santa McCray v. Warden of Lieber Correctional Institution, C/A No. 1:22-1204-TLW-SVH (Federal Habeas Corpus); and

10. Counsel has been involved in working **on other matters in state and federal court.**

11. Counsel has been actively working on this brief and has completed approximately one-half of the same.

Due to the issues raised in appellant's initial brief, Respondent has requested certain exhibits from the Solicitor's Office to ensure timely completion of the Initial Brief of Respondent.

WHEREFORE, for extra-ordinary circumstances shown, counsel respectfully requests a fourth thirty (30) day extension of time to serve and file the Initial Brief of Respondent and Designation of Matter. This request is made in good faith, and not for the purposes of delay. This extension will make Respondent's Initial Brief due October 14, 2022.

Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

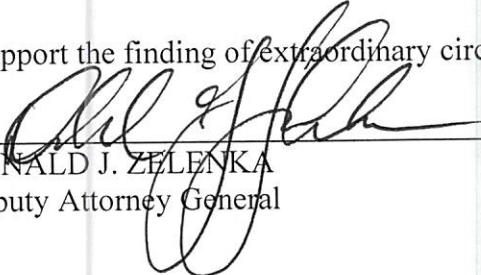
J. ANTHONY MABRY
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By: s/J. Anthony Mabry
J. ANTHONY MABRY
ATTORNEYS FOR RESPONDENT

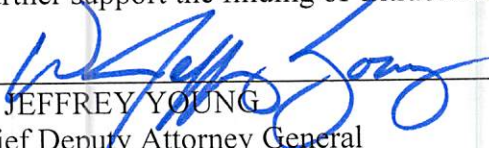
September 13, 2022.

I support the finding of extraordinary circumstances.



DONALD J. ZELENKA
Deputy Attorney General

I further support the finding of extraordinary circumstances.



W. JEFFREY YOUNG
Chief Deputy Attorney General

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JAMES MONROE BROWN,

APPELLANT.

Appellate Case No. 2021-000469

PROOF OF SERVICE

I, **Donna D'Alessio**, an employee of the Respondent and legal assistant to J. Anthony Mabry, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Fourth Extension of Time to File Initial Brief of Respondent and Designation of Matter has been forwarded to Appellant's counsel, Robert M. Dudek, Esq., via email today, September 12, 2022 to RDudek@sccid.sc.gov, and to his assistant at lmattthews@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 13th day of September, 2022.

s/ Donna D'Alessio

Donna D'Alessio, Legal Assistant to
J. Anthony Mabry
Senior Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

Donna D'Alessio

From: Donna D'Alessio
Sent: Tuesday, September 13, 2022 11:12 AM
To: 'rdudek@sccid.sc.gov'
Cc: 'lmatthews@sccid.sc.gov'
Subject: Brown, James Monroe - Appellate Case No. 2021-000469 - Fourth Extension of Time to file Initial Brief of Respondent
Attachments: Brown, James Monroe - Appellate Case No. 2021-000469 - Fourth Motion for Extension of Time to file IBOR 9-13-22 (03099699xD2C78).pdf

Dear Mr. Dudek:

Attached is a scanned copy of the Respondent's Fourth Motion for Extension of Time to File Initial Brief of Respondent and Designation of Matter regarding the above matter. The Fourth Extension of Time is being submitted to the South Carolina Court of Appeals through e-filing, along with a copy of this email.

Thank you and hope you are well.

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