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Nov 22 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JAMES L. GINTHER,

APPELLANT.

Appellate Case No. 2019-000672

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

The undersigned counsel would respectfully request a fifth thirty (30) day extension in which to file the Initial Brief of Respondent and Designation of Matter in the above-referenced case. The Initial Brief is currently due to be filed on Monday, November 28, 2022. Counsel for Appellant has graciously consented to extension requests through November 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 Monday, November 28, 2022. The undersigned attorney is actively working on this brief, and has completed approximately one-half of the brief, but was unable to complete same as he has had a number of state and federal matters to attend to since October 21, 2022, and personal medical issues. Specifically:

1. Counsel prepared and filed the Reply to Response to Motion for Summary Judgment [ECF #37] in the matter of Mike Tyrel Salley vs. Warden Wallace, Kirkland Correctional Institution, C/A No. 2:21-cv-3457-RMG-MGB (**Federal Habeas matter**) on **October 26, 2022**;

2. Counsel prepared the Return and Memorandum of Law in the matter of Leviticus D. Young vs. Warden T. James, C/A No. 8:22-cv-2290-SAL-JDA (**Federal Habeas matter**) filed on **October 27, 2022**;

3. Counsel assisted in the preparation for the capital post-conviction relief (PCR) matter of Ricky Lee Blackwell vs. State of South Carolina, Case No. 2018-CP-42-00928, a capital Spartanburg County matter. The capital Post-Conviction Relief hearing was scheduled for Monday, October 31, 2022, but was just continued until March, 2023;

4. Counsel also prepared, with another attorney, Respondent's Return to Petition for Writ of Certiorari in the matter of Mikal D. Mahdi vs. Bryan Stirling, et al., a Calhoun County Federal Habeas capital death penalty case now pending in the United States Supreme Court which was filed in that Court on **November 10, 2022**;

5. Counsel was out of the office on Thursday, **November 10, 2022** for an appointment at Duke Medical Center in North Carolina for a follow-up to heart and kidney transplants; and saw a neurologist due to recurring ocular migraine headaches. Counsel was also out of the office an additional day, November 17, 2022;

6. Counsel prepared and filed the Return to the Amended Petition for Federal Habeas Corpus Relief and Motion for Summary Judgment in the matter of John Garvin, #355509 vs. Warden LeVern Cohen, C/A No. 2:22-994-DCN-MGB (**Federal Habeas matter**) on **November 14, 2022**;

7. Counsel prepared and filed the Initial Brief of Respondent in the matter of State of South Carolina vs. James Monroe Brown, Appellate Case No. 2021-000469, a Chesterfield County murder appeal now pending in this Court, the South Carolina Court of Appeals, on **November 14, 2022;**

8. Counsel prepared and filed the Return and Memorandum of Law in the matter of April Hampton vs. Warden of Leath Correctional Institution, C/A No. 9:22-cv-967-JFA-MHC (**Federal Habeas matter**) on **November 16, 2022;**

9. Counsel prepared for oral argument on November 14th and 15th, 2022 and attended oral argument on behalf of the State in the South Carolina Supreme Court in the matter of State vs. Jody Lynn Ward, Appellate Case No. 2021-000702, on writ of certiorari from this Court on **November 16, 2022. Oral argument was heard at South Carolina State University in Orangeburg, S.C.;**

10. On **November 17, 2022** counsel filed the Respondent's Status Report as per TEXT Order [ECF #74] in the matter of Arthur L. Singleton, #300109 vs. Warden of Lee Correctional Institution, C/A No. 9:18-3300-SAL-MHC (**Federal Habeas matter**)[this matter was filed after telephonic consultation with counsel's legal assistant as counsel was out of the office on this date on personal leave];

11. Counsel filed the Status Report as per TEXT Order [ECF #33] in the matter of Milciades Alcantara vs. Warden of McCormick Correctional Institution, C/A No. 9:21-01498-RBH-MHC (**Federal Habeas matter**) also on **November 17, 2022** [this matter was filed after telephonic consultation with counsel's legal assistant as counsel was out of the office on this date on personal leave];

12. Counsel assisted in the preparation of the Petition for Certiorari to the Fourth Circuit Court of Appeals in Quincy Allen v. Warden, a capital federal habeas matter, now pending in the United States Supreme Court. The Petition for Certiorari was filed yesterday, **November 21, 2022**, in the United States Supreme Court;

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

14. The Attorney General's Office was closed for Veteran's Day, November 11, 2022, and will be closed on November 24th and 25th, 2022 for the Thanksgiving Holiday reducing the number of days Respondent could work on this brief;

A law clerk is assisting Respondent's attorney in this matter to assist in timely completion of the Initial Brief of Respondent and Designation of Matter. Respondent has also requested certain exhibits from the Solicitor's Office from the trial for review [recorded statements of the defendant] pertinent to the analysis of both issues raised in the Initial Brief of Appellant, to properly complete the Initial Brief of Respondent

WHEREFORE, for extraordinary circumstances shown, counsel respectfully requests a fifth 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 December 28, 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

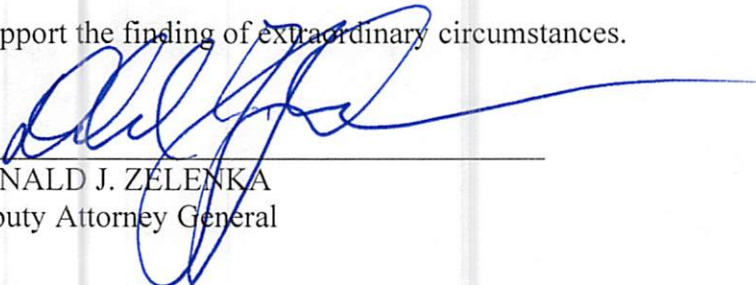
J. ANTHONY MABRY
Senior Assistant Attorney General
S.C. Bar No. 11973

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

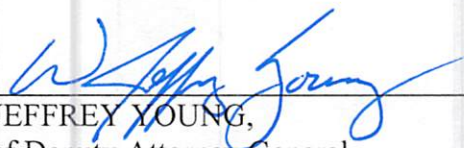
November 22, 2022.

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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APPELLANT.

Appellate Case No. 2019-000672

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 Fifth Extension of Time to File Initial Brief of Respondent and Designation of Matter has been forwarded to Appellant's counsel, Kathrine Hudgins, Esq., via email today, November 22, 2022 to KHudgins@sccid.sc.gov, and to her assistant at cstock@sccid.sc.gov.

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

This 22nd day of November, 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, November 22, 2022 11:41 AM
To: Hudgins, Kathrine
Cc: Stock, Chris
Subject: Ginther, James L. - Appellate Case No. 2019-000672 - Fifth Extension of Time to File Initial Brief of Respondent and DOM
Attachments: Ginther, James L. - Appellate Case No. 2019-000672 - Fifth Extension of Time to File IBOR and DOM 11-22-22 (03161180xD2C78).pdf

Dear Ms. Hudgins:

Attached is a scanned copy of the Respondent's Fifth Extension of Time to file Initial Brief of Respondent and Designation of Matter regarding the above matter. The 5th Extension Motion is being submitted to the South Carolina Court of Appeals through e-filing, along with a copy of this email.

Hope you are well.

Donna D'Alessio,
Legal Assistant
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Post Office Box 11549
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(803) 734-6305