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Mar 10 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
The Honorable Courtney Clyburn-Pope, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DAE' KWON JAHEEM SIMMONS,

APPELLANT.

Appellate Case No. 2021-000802

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

The undersigned counsel would respectfully request a FIFTH fifteen (15) 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 March 31, 2023. 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, March 13, 2023. The undersigned attorney has had a number of state, and federal matters to attend to since February 8, 2023. Specifically:

1. Counsel filed the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Michael Anthony Rogers vs. Warden George Dodkin, C/A No. 1:22-cv-3348-DCC-SVH on February 7, 2023;

2. Counsel prepared and filed the Brief of Respondent in the matter of The State vs. James Heyward, Appellate Case No. 2021-000122, a Richland County direct appeal matter now pending in the South Carolina Supreme Court on February 9, 2023;

3. Counsel prepared and filed the Initial Brief of Respondent and Designation of Matter in the matter of The State vs. Michael Christian Barclay, Appellate Case No. 2021-000976, a Florence County direct appeal matter now pending in the South Carolina Court of Appeals on February 21, 2023;

4. Counsel filed the Final Brief of Respondent in the matter of The State vs. Jonathan R. Rackley, Appellate Case No. 2021-001141, a Pickens County direct appeal matter now pending in the South Carolina Court of Appeals on February 22, 2023;

5. Counsel prepared the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Darrell L. Goss vs. Warden Brian Kendall, C/A No. 2:22-cv-103-BHH-MGB on March 1, 2023;

6. Counsel appeared before the South Carolina Supreme Court on behalf of the State for oral argument in the matter of The State vs. Richard Passio, Jr., Appellate Case No. 2021-001007, a Jasper County direct appeal matter on Wednesday, March 8, 2023;

7. Counsel is currently preparing the Informal Brief of Respondent in the case of Steven V. Bixby vs. Bryan Stirling, et al., Case No. 22-4, now pending in the United States Court of Appeals for the Fourth Circuit. Same is due to be filed on April 3, 2023;

8. This request is based on necessity and is not made for the purpose of simple delay. Respondent has begun its review of the record and drafting of the Initial Brief of Respondent in this matter, but additional time is needed for completion; and

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

WHEREFORE, for good cause shown, counsel respectfully requests a fifth fifteen (15) 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 on March 28, 2023.

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

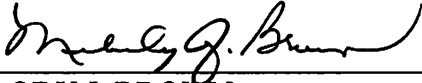
W. JOSEPH MAYE
Assistant Attorney General
S.C. Bar No. 100851

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

By: *s/W. Joseph Maye*
W. JOSEPH MAYE
ATTORNEYS FOR RESPONDENT

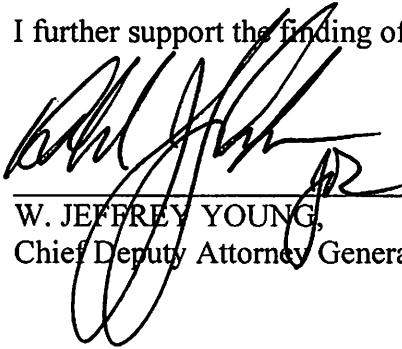
March 10, 2023.

I support the finding of extraordinary circumstances.



MELODY J. BROWN,
Senior Assistant Deputy Attorney General

I further support the finding of extraordinary circumstances.



W. JEFFREY YOUNG,
Chief Deputy Attorney General

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PROOF OF SERVICE

I, **Donna D'Alessio**, an employee of the Respondent and legal assistant to W. Joseph Maye, 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, Robert M. Dudek, Esq., via email today, March 10, 2023 to RDudek@sccid.sc.gov and to his assistant kwarren@sccid.sc.gov.

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

This 10th day of March, 2023.

s/ Donna D'Alessio
Donna D'Alessio, Legal Assistant to
W. Joseph Maye,
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305