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May 05 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Dillon County

Paul M. Burch, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

EARL GENE JOHNSON, JR.,

APPELLANT

APPELLATE CASE NO. 2022-001045

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MOTION FOR AN EXTENSION OF TIME TO  
SERVE AND FILE THE INITIAL BRIEF OF APPELLANT  
AND DESIGNATION OF MATTER

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Counsel for Earl Gene Johnson respectfully requests a **fifth and final twenty (20) business day extension from May 5, 2023 until June 2, 2023**, in which to serve and file the Initial Brief of Appellant and Designation of Matter in the above-referenced case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a fifth request for an extension. In support of this request, counsel shows:

1. The Initial Brief of Appellant and Designation of Matter in this case are due to be served and filed with the Court today.
2. Counsel for Earl Gene Johnson respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the

number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.

3. **Counsel is taking a prepaid scheduled trip from May 1, 2023 until May 13, 2023, and his other caseload commitments, including death penalty cases, prevented him from filing the brief and designation in this case as he hoped.** Counsel filed the reply brief of petitioner for the capital appeal in the case of Marion Alexander Lindsey v. The State on or about April 28, 2023. Counsel filed the Initial Reply Brief of Appellant in the case of The State v. Bowen Gray Turner with the Court of Appeals on April 25, 2023. Counsel filed the petition for rehearing in the death penalty case of The State v. Timothy Ray Jones, Jr. on April 13, 2023. Counsel filed the Initial Brief of Appellant and Designation of Matter in the murder case of The State v. Dabry Aunta James with the Court of Appeals on April 5, 2023. Counsel appeared before the Supreme Court for oral argument in the murder case of The State v. William C. Sellers on Thursday, March 30, 2023. Counsel and co-counsel Lara M. Caudy filed the Initial Brief of Appellant and Designation of Matter in the case of The State v. Bowen Gray Turner with the Court of Appeals on March 16, 2023. Counsel appeared before the Supreme Court for oral argument as the respondent in the attempted case of The State v. James Caleb Williams on March 8, 2023. Counsel conducted a CLE presentation and training on Preserving the Record for Appellate Review for the Sixteenth Circuit Public Defender's Office on March 3, 2023. Counsel was a panelist for a CLE presentation on Criminal Practice in South Carolina for the South Carolina Bar CLE Division on February 24, 2023. Counsel conducted a CLE presentation and training on Preserving the Record for Appellate Review for the Fifteenth Circuit Public Defender's Office on February 22, 2023. Counsel filed the brief of petitioner in the case of James A. Gardner v. The State with this Court on January 18, 2023. **Counsel also has extensive**

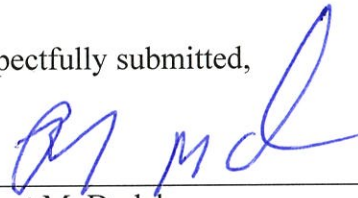
**administrative duties as the Chief Appellate Defender.**

4. Counsel makes this request in good faith and not for purpose of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become more manageable in the near future, and less extensions will need to be requested.

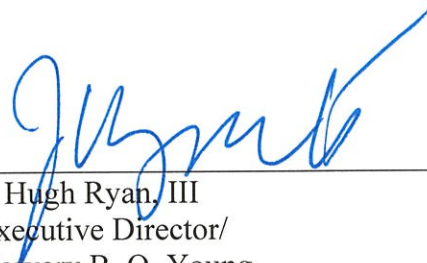
5. By copy of this letter, I am informing opposing counsel Melody Brown of the Office of the Attorney General of this request.

WHEREFORE, the undersigned counsel would respectfully request a **fifth and final twenty (20) business day extension from May 5, 2023 until June 2, 2023**, in which to serve and file the Initial Brief of Appellant and Designation of Matter in this case based upon the above exigent circumstances.

Respectfully submitted,



Robert M. Dudek  
Chief Appellate Defender



J. Hugh Ryan, III  
Executive Director/  
Hervey B. O. Young  
Deputy Director and General Counsel/  
W. Lawrence Brown  
Deputy General Counsel and Training Director

This 5th day of May, 2023.

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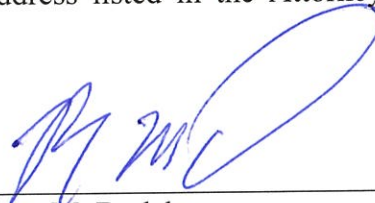
EARL GENE JOHNSON, JR.,

APPELLANT

APPELLATE CASE NO. 2022-001045

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Motion for Extension in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 5th day of May, 2023.



Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

**From:** [Warren, Kaylynn](#)  
**To:** [SC - BROWN MELODY](#)  
**Cc:** [Dudek, Robert](#); [Angela Brown](#)  
**Subject:** 2022-001045 The State v. Earl Gene Johnson Jr.  
**Date:** Friday, May 5, 2023 9:26:00 AM  
**Attachments:** [2022-001045 The State v. Earl Gene Johnson, Jr. Fifth Motion for Extension and COS.pdf](#)

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Good Morning,

Attached for service in the above-referenced case is the Fifth Motion for Extension which will be filed today, May 5, 2023, with the Court of Appeals via OneDrive.

Respectfully,  
Kaylynn

**Kaylynn Warren**

Administrative Assistant  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
(803) 734-1330