

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable Kristi Lea Harrington, Circuit Court Judge
Appellate Case No. 2011-203366

RECEIVED

JUN 28 2013

SC Court of Appeals

THE STATE,

Respondent,

vs.

CLARENCE J. FISHBURNE,

Appellant.

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

Respondent ("the State"), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

The Initial Brief of Respondent and Designation of Matter are due to be served and filed on June 28, 2013.

II.

Pursuant to RE: Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings: Order of the South Carolina Supreme Court dated March 18, 2009, the State moves for a fourth extension in the above-referenced criminal appeal and asks for an additional thirty days to complete the brief in this case. In the past few weeks, the undersigned has participated in oral argument at the Supreme Court in State v. Clarence Logan,

Jr. and State v. Paris Genici Avery, has participated in oral argument at this Court in State v. Anthony Marquese Martin, State v. Travell Hill, State v. Michael Milledge, State v. Ronald Lee McCauley, State v. Darren Gerome Scott, State v. Justin Ryan Hillerby, State v. James Allen Moore, and State v. Willie Poole, has submitted a Brief of Respondent to the Supreme Court in State v. Sams, has submitted Initial Briefs of Respondent to this Court in State v. Johnson, State v. Wilson, State v. House, State v. Robinson, State v. Portillo, State v. Oates, and State v. Mitchell, has filed a Petition for Rehearing in this Court in State v. Martin, has filed a Petition for Rehearing in the Supreme Court in State v. Avery, and has filed a Return to Petition for Certiorari in the Supreme Court in State v. Aiken.

III.

This extension request is not intended for purposes of delay, but rather to ensure that the Brief is properly researched and prepared. The Brief in the above case has required significant research because the case involves a significant evidentiary issue on appeal. Additionally, on June 12, 2013, the State received the Initial Brief of Appellant and Designation of Matter of Douglas M. Thompson, who was tried jointly with Appellant and is raising an identical issue to the one being raised by Appellant, and the case was recently assigned to the undersigned counsel. Because the issue raised in each of the appeals is identical and arose from a joint trial, the undersigned counsel believes it would be prudent to work on both appeals together and is also seeking this extension request for that reason. The undersigned is currently working on the Brief in this case and hopes to have it completed in a timely manner. I would therefore request an extension of time within which to serve and file the Brief.

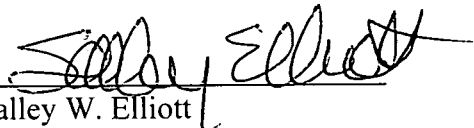
WHEREFORE, Respondent prays that the Court extend the deadline for the service and filing of the Brief of Respondent in this case for thirty (30) days from the date such relief is granted; and for such other and further relief as the Court may deem just and proper.

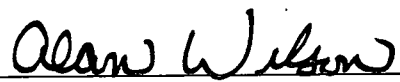
Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

By: 
Mark R. Farthing

By: 
Salley W. Elliott

By: 
Alan Wilson

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June 28, 2013

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Motion for Fourth Extension of Time Within Which to Serve and File Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 28th day of June, 2013.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

June 28, 2013

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SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. Clarence J. Fishburne – Appellate Case No. 2011-203366

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Motion for Fourth Extension of Time Within Which to Serve and File Initial Brief of Respondent and Designation of Matter, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Kathrine H. Hudgins, Esquire
Victim Services