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Sep 22 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County
The Honorable G.D. Morgan, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ZACHIR DEVAUGNTE SHYHIIM MCCALL,

APPELLANT.

Appellate Case No. 2022-000921

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

The undersigned counsel would respectfully request a THIRD 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, 2023. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

Respondent's Initial Brief and Designation of Matter is due to be filed Monday, September 25, 2023. The undersigned attorney has had a number of state, and federal matters to attend to since August 23, 2023. Specifically:

1. Counsel was out of the office on sick leave from Monday, August 21, 2023 through Wednesday, August 23, 2023;

2. Counsel filed the Initial Brief of Respondent in the matter of The State vs. Andre Junior Covington, Appellate Case No. 2022-000831 on August 25, 2023;

3. Counsel filed the Respondent's Response in Opposition to Motion to Strike [ECF #73] in the matter of Darrell L. Goss, Sr., #305517 vs. Warden Shane D. Jackson, C/A No. 2:22-00103-BHH-MGB on August 28, 2023;

4. Counsel prepared and filed the Respondent's Return to Second Amended Application for Post-Conviction Relief in the Horry County Capital post-conviction relief action of Luzenski Allen Cottrell, #6020 vs. State of South Carolina, 2018-CP-26-05709 on August 30, 2023;

5. Counsel filed the Respondent's Reply to Response in Opposition to Motion for Summary Judgment [ECF #23] in the matter of George S. Branham, II vs. Bryan Stirling and Shane Jackson, Warden, C/A No. 0:23-cv-745-SAL-PJG on September 6, 2023;

6. Counsel filed the Response in Opposition to Motion for Injunctive Relief in the matter of James C. Whaley v. Nick Gallam, C/A No. 4:23-2473-HMH-TER, a Federal Habeas case pending in the District Court on September 14, 2023;

7. Counsel also filed the Respondent's Response in Opposition to Motion for Summary Judgment in the matter of Chad Stalnaker vs. Warden, Lieber Correctional Institution, C/A No. 8:23-01335-BHH-JDA on September 18, 2023;

8. Counsel filed the Respondent's Reply to Objections to Report and Recommendation in the matter of Fred R. Halcomb, Jr. vs. Warden Truitt, C/A No. 8:22-1877-JD-JDA on September 19, 2023;

9. Counsel travelled to Richmond, Virginia on September 21, 2023 for oral argument before the United States Court of Appeals for the Fourth Circuit. Oral argument was today,

September 22, 2023 in the capital matter of Steven Bixby v. Bryan Stirling, No. 22-4, lower court case no. 4:17-00954-BHH; and

10. Counsel is also currently preparing the Initial Brief of Respondent in the matter of The State vs. Polo K. Salazar, a Dorchester County direct appeal matter pending in the South Carolina Court of Appeals; and,

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

WHEREFORE, for the following extraordinary circumstances, counsel respectfully requests a **THIRD** 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 on October 25, 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
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By: s/W. Joseph Maye
W. JOSEPH MAYE
ATTORNEYS FOR RESPONDENT

September 22, 2023.

I hereby support the finding of extraordinary circumstances.

By: 

MELODY J. BROWN,
Senior Assistant 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 Third Extension of Time to File Initial Brief of Respondent and Designation of Matter has been forwarded to Appellant's counsel, Breen Stevens, Esq., via email today, September 22, 2023 to Bstevens@sccid.sc.gov and to his assistant at sleverett@sccid.sc.gov.

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

This 22nd day of September, 2023.

s/ Donna D'Alessio

Donna D'Alessio, Legal Assistant to
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