

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

On Certiorari from Spartanburg County
Honorable William A. McKinnon, Circuit Court Judge
Appellate Case No. 2023-000724

BRIAN FOSTER,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

**MOTION TO FILE EXTENSION REQUEST OUT OF TIME
AND
MOTION FOR FIRST EXTENSION OF TIME WITHIN WHICH
TO SERVE AND FILE RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR
WRIT OF CERTIORARI AND APPENDIX**

Respondent, through its undersigned counsel, would respectfully show unto the Court as follows:

I.

The Respondent's Return to Appellant's Petition for Writ of Certiorari and Appendix were due to be served and filed on or about December 18, 2023. However, due to a calendaring error, imminent departure from the Office of the Attorney General and an extremely heavy caseload, counsel for the State mistakenly failed to file those documents on that date.

II.

As a result of the error, the State respectfully asks this Court to relax the requirements of Rule 208(a), SCACR, and Rule 209(a), SCACR, and permit the State to file a motion for a

second extension of time within which to serve and file the Respondent's Return to the Appellant's Petition for Writ of Certiorari and Appendix. See Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rule 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof."). The undersigned counsel apologizes for any inconvenience this request has caused to the Court and to the Appellant and does not believe this request will result in any prejudice to the Appellant, should it be granted.

III.

Additionally, 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 **second** extension in the above-referenced criminal appeal. Due to the volume of work required in other cases pending before this Court and the South Carolina Court of Appeals as well as the 15th, 4th and 7th Circuits, I have been unable to complete this return on time. This extension request is not intended for purposes of delay, but rather to ensure that the brief is properly researched and prepared. The undersigned is currently working on the brief in this case and hopes to have it completed in a timely manner. I would therefore ask this Court to accept the State's motion for an extension of time out of time and to grant an extension of time within which to serve and file the brief.

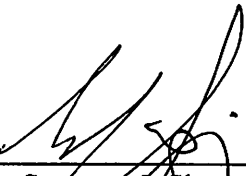
WHEREFORE, Appellant prays that the Court relax the requirements of Rule 242(f), SCACR; accept the filing of the Motion for First Extension of Time Within Which to Serve and File Initial Brief of Appellant and Designation of Matter out of time; extend the deadline for the service and filing of the Respondent's Return to Appellant's Petition for Writ of Certiorari and

Appendix 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,

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