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Jan 05 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Lancaster County  
The Honorable Kristi F. Curtis, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DERRICK A. MCILWAIN,

APPELLANT.

Appellate Case No. 2022-001425

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

The undersigned counsel would respectfully request a FOURTH thirty (30) day extension in which to file the Initial Brief of Respondent and Designation of Matter in the above-referenced case. The Initial Brief is currently due to be filed Monday, December 8, 2024. Counsel for Appellant has graciously consented to extension requests up to and including January 31, 2024. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

The undersigned attorney has had a number of state, and federal matters to attend to since December 6, 2023 including matters in this Court. Specifically:

1. Counsel filed the Respondent's Reply to Response in Opposition to Motion for Summary Judgment [ECF #43] in the matter of Kerwin S. Parker vs. Warden, Goodman Correctional Institution, C/A No. 1:23-251-MGL-SVH (FHC) (ABWIK), on **December 6, 2023**;

2. Counsel worked on the matter of The State vs. Delrico Edmonds, Appellate Case No. 2022-001716, a Richland County murder State's appeal matter now pending in the South Carolina Court of Appeals. Counsel drafted and filed a Motion to Hold Time Limits in Abeyance Pending Receipt of Transcripts in this matter on **December 6, 2023**, and also filed a Motion to Withdraw Notice of Appeal on **December 14, 2023**;

3. Counsel prepared and filed the Response/Objection to Motion for Leave to File Supplemental Appendix in the matter of Stephen Stanko v. Warden (Capital Federal Habeas Corpus action now in the Fourth Circuit Court of Appeals). This Response was directed by the Fourth Circuit Court of Appeals, and was filed on **December 11, 2023**;

4. Counsel attended the continuation of the evidentiary hearing before the Honorable Daniel Hall in York County in the matter of Ricky Lee Blackwell vs. State of South Carolina, Case No. 2018-CP-42-00928, a Spartanburg County capital death penalty matter on **December 15, 2023**;

5. Counsel has prepared and filed the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Antonio Collins vs. Warden of Kirkland Correctional Institution, C/A No. 5:23-cv-3696-DCC-KDW (murder) on **December 20, 2023**;

6. Counsel also filed the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Alonzo C. Jeter v. Warden Wilfredo Martell, C/A No. 9:23-cv-3253-MGL-MHC, (Federal Habeas Corpus) **with 17 grounds** on **December 27, 2023**;

7. Counsel is assisting with drafting the Brief of Appellant (State's Appeal) from the grant of PCR in the matter of Storm Riley Brian McCarthy v. State, to be filed in the South Carolina Court of Appeals which is due to be filed on **January 12, 2024**;

8. Counsel prepared the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of William Tyrel Flemming vs. Warden Peeple, C/A No. 5:23-cv-4034-BHH-KDW which is being filed today **Friday, January 5, 2023**;

9. Counsel filed the Respondent's Reply to Response in Opposition to Motion for Summary Judgment [ECF #50] in the matter of Jon Wynn Jarrard, Sr. vs. Warden, Wilfredo Martell, C/A No. 5:23-2588-SAL-KDW on **January 3, 2024**;

10. Counsel is also preparing the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Jaamal Hinson vs. Bryan Stirling, C/A No. 1:23-cv-3906-MGL-SVH (murder) (Federal Habeas Corpus);

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

A law clerk/paralegal has been assigned to assist in the completing of this brief.

WHEREFORE, for extraordinary circumstances shown, counsel respectfully requests a fourth 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 February 7, 2024.

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

J. ANTHONY MABRY  
Senior Assistant Attorney General

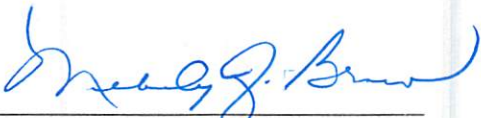
S.C. Bar No. 11973

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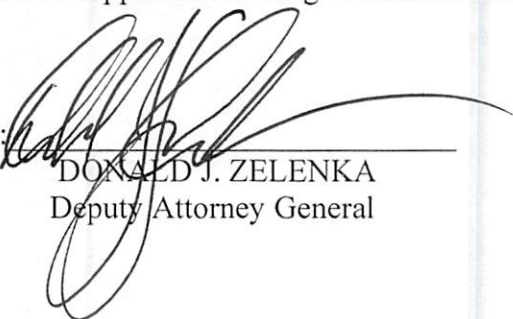
By: s/J. Anthony Mabry  
J. ANTHONY MABRY  
**ATTORNEYS FOR RESPONDENT**

January 5, 2024.

I support the finding of extraordinary circumstances.

By:   
MELODY J. BROWN  
Senior Assistant Deputy Attorney General

I further support the finding of extraordinary circumstances.

By:   
DONALD J. ZELENKA  
Deputy Attorney General

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\_\_\_\_\_  
**PROOF OF SERVICE**  
\_\_\_\_\_

I, **Donna D'Alessio**, an employee of the Respondent and legal assistant to J. Anthony Mabry, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the fourth Extension of Time to File Initial Brief of Respondent and Designation of Matter has been forwarded to Appellant's counsel, Joanna K. Delaney, Esq., via email today, January 5, 2024 to [jdelaney@sccid.sc.gov](mailto:jdelaney@sccid.sc.gov) and to her assistant at [kwarren@sccid.sc.gov](mailto:kwarren@sccid.sc.gov).

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

This 5<sup>th</sup> day of January, 2024.

*s/ Donna D'Alessio*  
Donna D'Alessio, Legal Assistant to  
J. Anthony Mabry  
Senior Assistant Attorney General  
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