

**RECEIVED**

**Feb 07 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 FIFTH EXTENSION OF TIME TO FILE  
INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER**  
\_\_\_\_\_

The undersigned counsel would respectfully request a FIFTH 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 today, Wednesday, February 7, 2024. Counsel for Appellant has graciously consented to extension requests up to and including February 29, 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 January 5, 2024 including matters in this Court. Specifically:

1. Counsel filed 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. 5:23-4034-BHH-KDW (Murder)(Federal Habeas Corpus) on **January 5, 2024**;

2. Counsel drafted and filed the Petition for Writ of Certiorari and prepared and filed the Appendix (State's Appeal) from the grant of PCR in the matter of Storm Riley Brian McCarthy v. State, in the South Carolina Court Supreme Court on **January 12, 2024**;

3. Counsel drafted and filed Respondent's Reply to Petitioner's Objections to the Report and Recommendation in Steven W. Oxendine v. Warden of Evans Correctional Institution, C/A 2:23-cv-160-SAL-MGB, (Federal Habeas Corpus) on **January 22, 2024**:

4. Respondent filed a Motion on **January 23, 2024** to file an Amended Final Brief of Respondent in State v. James Monroe Brown (Murder) in the South Carolina Court of Appeals, and has completed the Amended Final Brief of Respondent. Same will be filed tomorrow, **February 8, 2024**;

5. Counsel investigated, consulted, and resolved the matter of State v. Delrico Edmonds (State's Appeal) in the South Carolina Court of Appeals, by Motion to Dismiss the Appeal which was granted by this Court on **January 23, 2024**;

6. Counsel filed the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Christopher Heller vs. Warden of Lee Correctional Institution, C/A No. 5:23-cv-3456-JD-KDW (Murder, Federal Habeas Return and Motion for Summary Judgment) on **January 26, 2024**;

7. Counsel reviewed the Report and Recommendations of the U.S. Magistrate Judge in Kerwin Parker v. Warden (FHC) on **January 10, 2024** and Andre Richardson v. Warden (Murder)(FHC), on **January 26, 2024**;

8. Counsel assisted in editing the Return and Memorandum of Law in William Dickerson v. Warden (Capital FHC), filed in the last 2 weeks;

9. Counsel prepared the Respondent's Response to Motion to Compel [ECF #31] and Motion to Redo Caption [ECF #30] in the matter of Alonzo C. Jeter vs. Warden Wilfredo Martell, C/A No. 9:23-03253-MGL-MHC on **January 31, 2024**;

10. Counsel is currently 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), same is **due today. February 7, 2024, and no further extensions**;

11. Counsel is also currently preparing the Initial Brief of Respondent in the matter of The State vs. Quayshaun X. Clark, Appellate Case No. 2022-000962, a Lexington County murder appeal now pending in the South Carolina Court of Appeals;

12. Counsel also assisted in the preparation of the kidnapping and murder case of State vs. Thomas McDowell, which is currently taking place in Lexington County; and

13. 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 fifth 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 March 8, 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

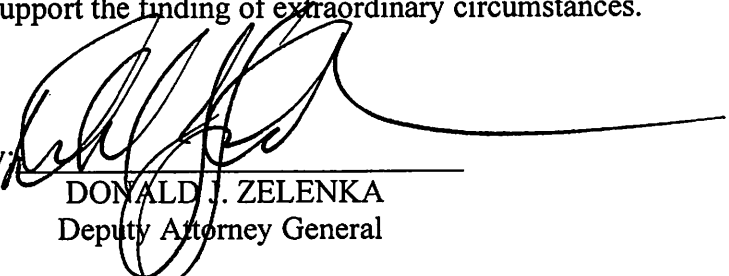
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Post Office Box 11549  
Columbia, South Carolina 29211-1549  
(803) 734-6305

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

February 7, 2024.

I support the finding of extraordinary circumstances.

By:

  
\_\_\_\_\_  
DONALD J. ZELENKA  
Deputy Attorney General

I further support the finding of extraordinary circumstances.

By:

\_\_\_\_\_  
W JEFFREY YOUNG  
Chief 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 fifth 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, February 7, 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 7<sup>th</sup> day of February, 2024.

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