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Mar 08 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 SIXTH EXTENSION OF TIME TO FILE
INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER**

The undersigned counsel would respectfully request a SIXTH 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, Friday, March 8, 2024. Counsel for Appellant has graciously consented to this extension requests through March 31, 2024. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

- A. The undersigned attorney has had a number of state, and federal matters to attend to since February 6, 2024 including matters in this Court. Specifically:

1. Counsel was out of the office on **Wednesday, February 21st, Thursday, February 22nd, Friday, February 23, 2024, and Monday, February 26th** for medical procedures, and/or appointments;

2. 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 was filed on **February 8, 2024;**

3. Counsel filed 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), on **February 7, 2024, with no further extensions;**

4. Counsel filed the Respondent's additional attachment to Response to Motion to Compel [ECF #31] in the matter of Alonzo C. Jeter vs. Warden Wilfredo Martell, C/A No. 9:23-03253-MGL-MHC on **February 8, 2024;**

5. Counsel filed the Respondent's Reply to Response to Motion for Summary Judgment and Related Motions [ECF #s 36, 36-1, 41 & 45], together with a Motion to exceed page limit for a Reply, also in the matter of Alonzo C. Jeter vs. Warden Wilfredo Martell, C/A No. 9:23-03253-MGL-MHC on **February 13, 2024;**

6. Counsel filed the Respondent's Response to Petitioner's Motions ECF #s 37, 42, 43 & 44 in the matter of Alonzo C. Jeter vs. Warden Wilfredo Martell, C/A No. 9:23-03253-MGL-MHC on **February 15, 2024;**

7. Counsel filed the Respondent's Reply to Objections to Report and Recommendation [ECF#50] in the matter of Kerwin S. Parker vs. Warden, Goodman Correctional Institution, C/A No. 1:23-251-MGL-SVH on **February 21, 2023**;

8. Counsel filed the Reply to Response to Petitioner's Objections to Report and Recommendation [ECF #25] in the matter of Andre Richardson vs. Levern Cohen, Warden of Ridgeland Correctional Institution, C/A No. 2:23-00818-JDA on **February 22, 2024**;

9. Counsel filed the Respondent's status report as per Text Order ECF #54 in the matter of Milciades Alcantara vs. Warden of McCormick Correctional Institution, C/A No. 9:21-01498-RBH-MHC on **February 28, 2024**;

10. Counsel also filed the Respondent's Reply to Response to Motion for Summary Judgment [ECF #38] in the matter of Christopher Heller vs. Warden of Lee Correctional Institution, C/A No. 5:23-3456-JD-KDW on **February 29, 2024**;

11. Counsel filed the Return to Petition for Rehearing in the matter of State of South Carolina vs. James L. Ginther, Appellate Case No. 2019-000672, a Sumter County murder appeal matter now pending in the South Carolina Court of Appeals yesterday, **Thursday, March 7, 2024**;

12. Counsel is also currently preparing for oral argument in the United States Court of Appeals for the Fourth Circuit in the capital matter of Stephen Stanko vs. Bryan Stirling, et al., Case Nos. 22-2 & 22-3. Oral argument is scheduled for **Tuesday, March 19, 2024**;

13. 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 matter now pending in the South Carolina Court of Appeals; and

WHEREFORE, for extraordinary circumstances shown, counsel respectfully requests a sixth 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 April 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
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By: s/J. Anthony Mabry
J. ANTHONY MABRY
ATTORNEYS FOR RESPONDENT

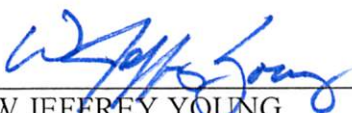
March 8, 2024.

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 sixth Extension of Time to File Initial Brief of Respondent and Designation of Matter has been forwarded to Appellant's counsel, Joanna K. Delany, Esq., via email today, March 8, 2024 to jdelaney@sccid.sc.gov and to her assistant at kwarren@sccid.sc.gov.

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

This 8th day of March, 2024.

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