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Apr 03 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Cherokee County  
Honorable J. Derham Cole, Circuit Court Judge  
Appellate Case No. 2023-001388

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THE STATE,

Respondent,

vs.

JASON BRYAN MCSWAIN,

Appellant.

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

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Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

The Initial Brief of Respondent and Designation of Matter are due to be served and filed on April 3, 2024.

**II.**

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 **fourth** extension in the above-referenced criminal appeal and asks for an additional thirty days to complete the brief in this case. Earlier today, the undersigned submitted a response to a pro se filing at the request of the Supreme Court in Charles W.

McCormick v. State. Additionally, in the past few weeks, the undersigned has submitted a response to a pro se filing at the request of the Supreme Court in Steven C. Wilson v. State; has filed a Petition for Writ of Certiorari and Appendix in the Supreme Court in Erick E. Wells v. State; has filed a letter in lieu of a formal return and Brief of Respondent Pursuant to White v. State in Brian Foster v. State; has filed the Brief of Respondent in the Court of Appeals in Raphael Lamarr Pontoo v. State; has filed the Initial Brief of Respondent and Designation of Matter in the Court of Appeals in State v. James B. Curry; and has filed a Final Brief of Respondent in the Court of Appeals in State v. Bryan Preston Cooper. Along with that, the undersigned counsel has attended to other responsibilities—including supervisory and administrative ones—in the office and has prepared for and presented at an event at the University of South Carolina School of Law for current law students.

### III.

The undersigned counsel submits this extension request is supported by extraordinary circumstances and is not intended for purposes of delay. The Brief in the above-referenced case involves an important issue related to the constitutionality of Section 23-3-462 of the South Carolina Code of Laws. The undersigned counsel is currently working on the Brief in this case and intends to have it finished in a timely manner. However, the undersigned counsel has not yet been able to finish the Brief due to a heavy workload, other significant challenges that have resulted from substantial staffing issues that continue to be experienced by the undersigned counsel's office, and some unanticipated matters that have required the undersigned counsel's attention. Accordingly, in order to ensure the Brief is properly researched and prepared, I would therefore request an additional extension of time within which to serve and file the Brief.

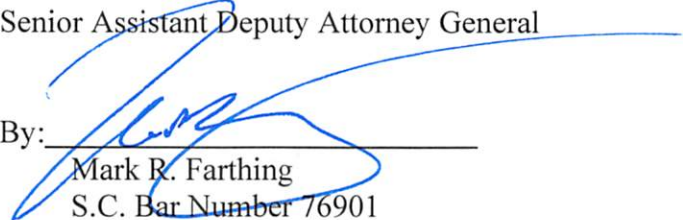
**WHEREFORE**, Respondent prays that the Court extend the deadline for the service and filing of the Initial Brief of Respondent and Designation of Matter in this case for thirty days

from the date such relief is granted; hold the matter in abeyance pending a ruling on Respondent's motion; and grant such other and further relief as the Court may deem just and proper.

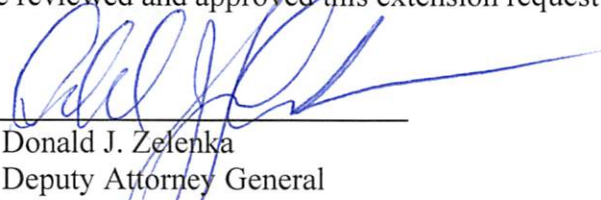
Respectfully submitted,

ALAN WILSON  
Attorney General

MARK R. FARTHING  
Senior Assistant Deputy Attorney General

By:   
Mark R. Farthing  
S.C. Bar Number 76901

I have reviewed and approved this extension request.

By:   
Donald J. Zelenka  
Deputy Attorney General

April 3, 2024

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IN THE COURT OF APPEALS

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Appeal from Cherokee County  
Honorable J. Derham Cole, Circuit Court Judge  
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THE STATE,

Respondent,

vs.

JASON BRYAN MCSWAIN,

Appellant.

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**PROOF OF SERVICE**


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I, Caroline Collins, certify I have served the within Motion for the Fourth Extension of Time Within Which to Serve and File Initial Brief of Respondent and Designation of Matter on Appellant by sending an electronic copy via email to the addresses listed in AIS for the following individuals:

Elizabeth Anne Franklin-Best, Esquire  
Elizabeth Franklin-Best, P.C.  
3710 Landmark Drive, Suite 113  
Columbia, South Carolina 29204

Meagan E. Johnson, Esquire  
Virtual Legal Associates LLC  
Post Office Box 421  
Greenwood, South Carolina 29648

I further certify all parties required by Rule to be served have been served.  
This 3rd day of April, 2024.

  
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CAROLINE COLLINS  
Administrative Coordinator  
Office of the Attorney General