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Apr 10 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 SEVENTH EXTENSION OF TIME TO FILE
INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER**

The undersigned counsel would respectfully request a SEVENTH 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, April 8, 2024. Counsel for Appellant has graciously consented to this extension requests through April 30, 2024. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances. Counsel is actively working on this brief, and *has completed a majority of the brief*, but has been unable to complete the same due to other matters in state and federal court, to wit:

1. 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 Supreme Court on **Thursday, March 7, 2024**;

this Court subsequently denied the petition for rehearing and the appellant has filed a Petition for Writ of Certiorari in the South Carolina Supreme Court, which will be further discussed below;

2. Counsel also **prepared for and attended 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 on **Tuesday, March 19, 2024 in Richmond, Virginia**;

3. Counsel filed the Appellees/Respondents' Renewed Motion to Grant It Access to Unredacted & Sealed Joint Appendix Volume XIX to Citations to the Matters in Appellant/Petitioner's Reply Brief in the capital matter of Stephen C. Stanko vs. Bryan P. Stirling, et al., Nos. 22-2 & 22-3 on **Friday, March 8, 2024**;

4. Counsel filed the Respondent's Response to Motion to Expand the Record [ECF #55], and also filed a Response to Petitioner's Motion for Order to Preserve Records and to Cease Fraudulent Concealment [ECF #56], in the matter of Alonzo C. Jeter vs. Warden, Wilfredo Martell, C/A No. 9:23-03253-MGL-MHC on **March 11, 2024**;

5. Counsel filed the Respondent's Amended Return and Memorandum of Law in Support of Motion for Summary Judgment, and Amended Motion for Summary Judgment as per Text Order ECF #57 in the matter of Milciades Alcantara vs. Warden of McCormick Correctional Institution, C/A No. 9:21-01498-RBH-MHC on **March 13, 2024**;

6. Counsel filed the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Tyrone Jenkins, #260214 vs. Warden, Allendale Correctional Institution, C/A No. 2:23-04993-SAL-MGB on **March 21, 2024**;

7. Counsel prepared and filed the Initial Brief of Respondent in the matter of State vs. Quayshaun X. Clark, Appellate Case No. 2022-000962, a Lexington County murder appeal

matter now pending in this Court, the South Carolina Court of Appeals, which was filed on **Friday, March 29, 2024;**

8. Counsel filed the Respondent's Response to Text Order ECF #30 in the matter of Jamaal Hinson v. Bryan Stirling, C/A No. 1:23-3906-MGL-SVH on **April 3, 2024;**

9. Counsel is currently preparing the Return to Petition for Writ of Certiorari in the Sumter County murder appeal from this Court of The State vs. James L. Ginther, Appellate Case No. 2024-000516. Same is currently pending in the South Carolina Supreme Court and is due to be filed on **May 2, 2024;** and

10. Counsel is currently preparing the Initial Brief of Respondent in this matter;

11. And, counsel is working on other matters.

A law clerk has been assigned to assist Respondent's attorney on this brief, and has been actively assisting Respondent's attorney in completion of this brief;

The law clerk obtained the relevant exhibits in this case from the Lancaster County Clerk of Court and the Solicitor's Office there and Respondent reviewed those exhibits in detail today, April 4, 2024 while actively working on this brief;

Respondent's attorney is actively working on this brief and will continue actively working on this brief so it may be completed.

WHEREFORE, for extraordinary circumstances shown, counsel respectfully requests a seventh 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 May 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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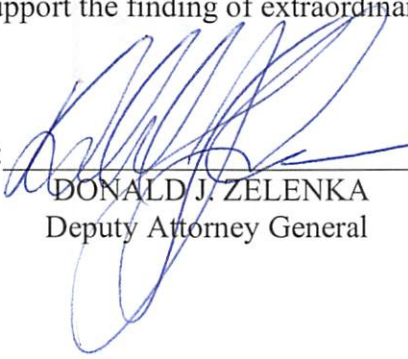
Office of the Attorney General
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By: s/J. Anthony Mabry
J. ANTHONY MABRY
ATTORNEYS FOR RESPONDENT

April 5, 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 seventh 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, April 5, 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 5th day of April, 2024.

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