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May 03 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

Respondent,

vs.

JASON BRYAN MCSWAIN,

Appellant.

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

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 May 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 **fifth** extension in the above-referenced criminal appeal and asks for an additional thirty days to complete the brief in this case. Earlier this week, the undersigned counsel participated in an oral argument before the Supreme Court at Coker University in

Hartsville, South Carolina in State v. Derrick Tyler Mills. Additionally, in the past few weeks, the undersigned counsel has submitted a response to a pro se filing at the request of the Court of Appeals in State v. Bryan Murray; has filed an Initial Brief of Respondent and Designation of Matter in the Court of Appeals in State v. Joquell Wayne Myers; has filed a Return to Petition for Writ of Certiorari in the Supreme Court in John Upson v. State; has filed the Final Brief of Appellant and Record on Appeal in the Court of Appeals in State v. Justin Tyler Anderson; and has filed the Final Brief of Respondent in the Court of Appeals in State v. James B. Curry. Along with that, the undersigned counsel has attended to other responsibilities—including supervisory and administrative ones—in the office.

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.

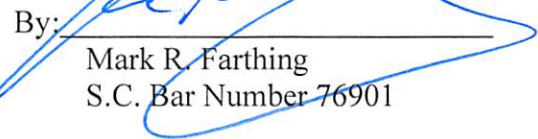
WHEREFORE, Respondent prays that the Court extend the deadline for the service and filing of the Initial Brief of Respondent and Designation of Matter in this case for thirty days from the date such relief is granted; hold the matter in abeyance pending a ruling on

Respondent's motion; and grant such other and further relief as the Court may deem just and proper.

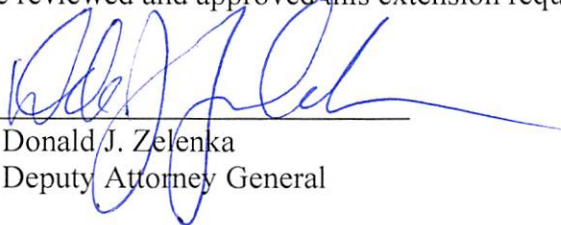
Respectfully submitted,

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

May 3, 2024

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Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Motion for the Fifth 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 May, 2024.



CAROLINE COLLINS
Administrative Coordinator
Office of the Attorney General