

OFFICE OF THE PUBLIC DEFENDER
13th JUDICIAL CIRCUIT
Greenville County Courthouse
305 East North Street (Rm 123)
GREENVILLE, SOUTH CAROLINA 29601

John I. Mauldin
Public Defender

TEL (864) 467-8522
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September 27, 2013

The Honorable William K. Suter
Clerk, Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

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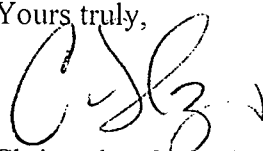
S.C. SUPREME COURT

Re: Jennifer Rayanne Dykes v. State of South Carolina

Dear Mr. Suter:

Enclosed please find for filing, with proof of service, the original and two (2) copies of the Motion for Extension of Time in which to File Petition for Writ of Certiorari in the above-referenced case that is directed to Chief Justice John G. Roberts.

Yours truly,



Christopher D. Scalzo
Deputy Public Defender

Enclosure

cc: J. Benjamin Aplin, Esquire
Assistant Attorney General

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2013

No. A-

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S.C. Supreme Court

JENNIFER RAYANNE DYKES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

APPLICATION FOR EXTENSION OF TIME IN WHICH
TO FILE PETITION FOR WRIT OF CERTIORARI

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the Fourth Circuit:

Petitioner Jennifer Rayanne Dykes prays that an order be entered extending the time for filing a petition for a writ of certiorari for a period of sixty (60) days to and including December 21, 2013. This application is submitted more than ten days prior to the scheduled filing date for the petition.

The pertinent dates are:

May 22, 2013: The South Carolina Supreme Court affirmed the mandatory imposition of Global Positioning Satellite (GPS) monitoring of Petitioner's physical location twenty-four hours per day by the state via court-ordered physical attachment of a GPS

monitor to her ankle without any basis or finding that Petitioner posed a risk of danger to the community, necessitating such GPS monitoring. The Court modified the original trial court order imposing mandatory GPS monitoring and required Petitioner submit to GPS monitoring for a minimum of ten years before she was entitled to review and/or removal. State v Jennifer Rayanne Dykes, 403 S.C. 499, 509-10, 744 S.E.2d. 505, 511 (2013).

July 24, 2013: The South Carolina Supreme Court denied Petitioner's timely petition for rehearing and filed a substituted opinion denying the remaining federal constitutional claims submitted by Petitioner. See Opinion No. 27124 (S.C. Sup. Ct. filed July 24, 2013) (Shearouse Adv. Sh. Foot Note 9). A copy of the South Carolina Supreme Court's order and modified opinion are attached.

October 22, 2013: Expiration of time for filing of a petition for writ of certiorari, unless extended.

December 21, 2013: Expiration of requested sixty-day extension of time for filing of a petition for writ of certiorari.

The petition will present three federal constitutional issues for review:

South Carolina statutorily mandates GPS monitoring be automatically imposed by court order solely because of a violation of probation and despite the person no longer being under any other continued state supervision. South Carolina's stated purpose is to (a) protect the public from sex offenders who pose a high risk of reoffending and (b) assist law enforcement in the investigation of future uncommitted crimes. South Carolina mandated Petitioner submit to physical attachment of a GPS monitor to her body regardless of the actual risk she posed and despite evidence that she does not pose a high risk of reoffending. South Carolina statutorily mandates that Petitioner may not have the monitoring requirement reviewed until ten (10)

years after the initial attachment. Under these circumstances:

1.

Does South Carolina violate the due process clause of the Fifth and Fourteenth Amendments by not providing judicial review prior to the initial attachment of the GPS monitor and not until ten years after the initial attachment?

2.

Does South Carolina violate the protection against *ex post facto* punishment provided in Article I, § 10 of the United States Constitution by requiring GPS monitoring based solely on a violation of probation and not on the potential risk posed by Petitioner?

3.

Does South Carolina violate the Fourth Amendment's protection against unreasonable searches and seizures by requiring GPS monitoring for the purpose of aiding future criminal investigations of crimes not yet committed?

The petitioner will invoke this Court's jurisdiction under 28 U.S.C. § 1257(a).

This extension of time is requested because:

(a) The issues in this case concern mandatory GPS monitoring of sex offenders and requires extensive research of the laws and procedures of other states regarding whether other states (1) require a finding of risk to the

community before requiring GPS monitoring and afford a hearing or otherwise provide due process, (2) consider GPS monitoring requirements to be punitive, and (3) consider using GPS monitoring to aid in the investigation of future, uncommitted criminal acts as violating the Fourth Amendment. This case also requires careful drafting so as to properly present the petitioner's federal constitutional claims to this Court.

(b) Counsel is deputy public defender and is tasked with administrative duties as well as representation of clients. Counsel represents clients charged with murder, criminal sexual conduct, aggravated assaults, and a wide variety of misdemeanor offenses.

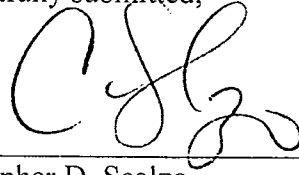
(c) Counsel is president of the South Carolina Public Defender Association (SCPDA) as well as its legal counsel. SCPDA has been accepted as *amicus curiae* before the South Carolina Supreme Court in the appeal *State v. Donta Kevon Reid*, Appellate Case No. 20-11-204288, with a filing deadline for briefing of October 8, 2013 and an oral argument during the week of November 11, 2013. SCPDA has also been accepted as *amicus curiae* before the South Carolina Supreme Court in a case being heard in the court's original jurisdiction, *Tyrone Aiken, et al. v. William Byars, et al.*, Appellate Case No. 2012-213286.

Counsel for the respondent State of South Carolina, Assistant Attorney General J. Benjamin Aplin, has advised the undersigned that the state does not have any opposition to this request.

WHEREFORE, Petitioner requests an order extending the time for filing her petition for a writ of certiorari to and including December 21, 2013.

(signature on next page)

Respectfully submitted,



By: _____

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Attorney for Petitioner

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Greenville, SC

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S.C. SUPREME COURT

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion for Extension in Which to File Petition for Writ of Certiorari has been served upon opposing counsel by mailing one (1) copy in an envelope properly addressed with postage prepaid this 27th day of September, 2013, to:

J. Benjamin Aplin, Esquire
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Respectfully submitted,

By: 

Christopher D. Scalzo

Attorney for Petitioner