



ALAN WILSON  
ATTORNEY GENERAL

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APR 30 2012

April 30, 2012

S.C. Supreme Court

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Re: Second Extension Request, Reply to Return to Petition for  
Writ of Certiorari  
*Kevin Mercer v. State of South Carolina*  
Appeal from Lexington County, Capital Post-Conviction Relief Case

Dear Mr. Shearouse:

Please find enclosed the original and six (6) copies of Respondent-Petitioner's Motion for Extension of Time to File Reply to Return to Petition for Writ of Certiorari with Proof of Service.

I am informing opposing counsel of my request by copy of this letter.

Sincerely,

Alphonso Simon, Jr.  
Assistant Attorney General

AS:dmd  
Enclosures  
cc: Emily Paavola, Esq. (w/two copies of encls.)

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal From Lexington County  
The Honorable James R. Barber, III, Circuit Court Judge

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KEVIN J. MERCER,

RECEIVED

APR 30 2012

Petitioner/Respondent,

S.C. Supreme Court

vs.

STATE OF SOUTH CAROLINA,

Respondent/Petitioner.

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MOTION FOR SECOND EXTENSION OF TIME TO FILE  
REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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The undersigned counsel for the State of South Carolina requests a second extension of nine (9) days within which to complete, serve and file the Reply to Return to Petition for Writ of Certiorari in the above-referenced appeal. The Reply is currently due to be served and filed today, April 30, 2012. This request is made in good faith and not for the purpose of delay.

The Court's March 18, 2009 Order *re: Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings* provides, in pertinent part, that:

(2) A second extension request may be granted upon a showing of good cause. The facts supporting good cause shall be set forth in the motion. The signature of the attorney on the motion shall be a certification that the

attorney believes that the extension is warranted and that there is good cause to seek the extension.

In compliance with that Order and in support of this motion, counsel would respectfully show the Court the following:

Counsel spent all available time on April 20-22 preparing for the evidentiary hearing in the Bobby Wayne Stone v. State, a capital post-conviction relief action pending in Sumter County. The main portion of the evidentiary hearing was heard by Judge Nettles on April 23-24, 2012. Three witnesses are scheduled to be heard at a later date. Counsel also spent a significant amount of time in the latter part of the week of April 23 addressing a discovery related matter in Norman Starnes v. State, a capital post-conviction relief action pending in Lexington County.

Counsel also nearly completed review of the transcript and research in preparation of the Initial Brief of Respondent in the Charleston County direct appeal murder case of State v. Jeffrey Herrmann. Counsel has also spent a substantial amount of time reviewing the file and has drafted significant portions of the Return to the federal habeas petition filed in the matter of Charles Gilbert, Jr., #254456 vs. Warden Cartledge, C/A No. 2:12-663-MBS-BHH.

Counsel has spent a substantial amount of time reviewing the Return and has drafted significant portions of the Reply. I understand the desire of the Court and petitioner/respondent's counsel for a speedy resolution of this case; however, due to Petitioner-Respondent's Return being forty-two (42) pages in length and with Petitioner-Respondent's inclusion of several alleged additional sustaining grounds,

this extension is essential to allow me to complete the Reply to Return to Petition for Writ of Certiorari with reasonable effectiveness.

Due to these and counsel's involvement in other matters pending in state and federal court, counsel was unable to timely complete his research and properly prepare the Reply to Return to Petition for Writ of Certiorari in this case. This request is made in good faith, and not for the purposes of delay.

I am serving petitioner's counsel two (2) copies of this Motion via regular mail today. The nine (9) day extension requested will make the Reply to Return to Petition for Writ of Certiorari due on May 9, 2012.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Assistant Deputy Attorney General

ALPHONSO SIMON, JR.  
Assistant Attorney General

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

BY: 

ALPHONSO SIMON, JR.  
Assistant Attorney General

April 30, 2012.

**THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

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**Appeal From Lexington County  
The Honorable James R. Barber, III, Circuit Court Judge**

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**KEVIN J. MERCER,**

**Petitioner/Respondent,**

**vs.**

**STATE OF SOUTH CAROLINA,**

**Respondent/Petitioner.**

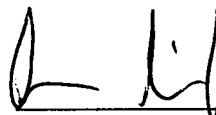
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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that on the 30<sup>th</sup> day of April, 2012, a copy of the Respondent/Petitioner's Motion for Extension of Time to File Reply to Return to Petition for Writ of Certiorari was served on counsel for the Petitioner/Respondent by depositing two (2) copies of the same in the United States mail, postage prepaid, and addressed as follows:

Emily Paavola, Esq.  
Death Penalty Resource & Defense Ctr.  
900 Elmwood Avenue, Ste. #101  
Columbia, SC 29201



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**ALPHONSO SIMON, JR.**  
Assistant Attorney General