

STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas (PCR)
The Honorable Doyet A. Early, III, Circuit Court Judge

C/A No.: 2005-CP-18-1368
(Capital PCR Action)
Appellate Case No. 2014-000387

Kenneth Simmons, #5066,

Respondent/Petitioner,

vs.

State of South Carolina,

Petitioner/Respondent.

**MOTION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI**

Petitioner, the State, moves this Court for an additional thirty (30) day extension of time in which to file the Petition for Writ of Certiorari. The timelines for filing the State's petition and Respondent's petition in the cross-appeal have been previously extended once before by Order of this Court dated May 2, 2014. Petitioner is this day serving a copy of the eleven (11) volume appendix on opposing counsel so that each party may have access to same in completing the petitions.

In support of Petitioner's request, undersigned counsel for Petitioner would respectfully show the Court:

1. In the last thirty (30) days, undersigned counsel has been reviewing files and identifying documents and transcripts to be included in the appendix for this appeal. The eleven (11) volume appendix, with detailed index, has been completed, and copies made of same. The appendix is today being served on opposing counsel. Petitioner is also today submitting a

proposed Transportation Order for the transportation of two CDs admitted during the PCR evidentiary hearing as State's Exhibits 18(a) and 18(b) [video depositions of witnesses, paper copies of the depositions are also included in the record]. Once those exhibits may be obtained and delivered to the Court, Petitioner will pre-file the Appendix with the Court.

2. In addition to work on, and completion of, the appendix in this matter, undersigned counsel has also been scheduled for a number of other state matters and federal matters in the last thirty (30) days. These include, but are not limited to, the following: prepared and presented oral argument in the South Carolina Court of Appeals in a non-capital murder direct appeal (*Clarence Jenkins*); prepared and filed a response in opposition to a motion to hold action in abeyance and a motion to amend the return in another federal habeas action (*John Dykeman*); prepared and filed an initial brief of respondent in a non-capital murder direct appeal in the South Carolina Court of Appeals (*Carvin Holman*); prepared and filed a Brief of Petitioner/Respondent in a capital post-conviction relief action on appeal in the Supreme Court of South Carolina (*Kamell Evans*); consulted and prepared a memorandum of law in another capital case reversed on direct appeal and pending before the state circuit court (*Steven Barnes*); prepared and served a response in opposition to a post-trial motion to amend in another capital post-conviction relief action pending in state circuit court (*Steven Bixby*); prepared and filed a return and memorandum of law in support of summary judgment in another federal habeas action (*Felipe Trujillo*); prepared and filed two responses to motions in another federal habeas action (*Miguel Ramirez*); prepared and filed a lengthy return and memorandum of law in support of motion for summary judgment addressing twelve grounds for relief (*John D. Springer*); and is currently preparing for filing today another return and memorandum of law in support of motion for summary judgment in another federal habeas action (*Michael Sarratt*). Further, the State was granted thirty (30) days from April 30, 2014, in order to locate an expert in genetic issues (the

applicant had offered an amendment on April 7, 2014 – one week before the hearing began – claiming two specific genetic conditions) and report back to the PCR judge before completing a capital post-conviction relief hearing that began April 14th (*Andres Torres*). Undersigned counsel for Respondent attempted to secure an expert which has necessitated research and phone conferences with several experts. In compliance with the limited time period, counsel reported to the Honorable Derham Cole on May 29, 2014 via a telephone conference. Judge Cole directed the State and opposing counsel to brief a point of law. That brief is due within ten (10) days from the conference.

3. Due to necessary work on the appendix for this matter, in addition to her remaining heavy case load, undersigned counsel for Petitioner has not been able to complete a proper petition. However, the completion of the appendix is a significant step in the process. Undersigned counsel will work diligently to complete the petition in this matter.

THEREFORE, undersigned counsel for Petitioner, the State, for all the foregoing reasons, respectfully requests an additional extension of thirty (30) days to complete the petition.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

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s/Melody J. Brown

BY:

MELODY J. BROWN

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June 4, 2014.
Columbia, South Carolina.

ATTORNEYS FOR PETITIONER/RESPONDENT

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CERTIFICATE OF SERVICE

I, Melody J. Brown, Senior Assistant Attorney General, certify that I have served the Petitioner's *Motion for Extension of Time to File Petition for Writ of Certiorari* on counsel for Respondent by depositing one copy of same in the United States mail, postage prepaid, addressed as follows:

James Morton, Esquire
Morton & Gettys, LLP
P.O. Box 707
Rock Hill, SC 29731

Emily C. Paavola, Esquire
Death Penalty Resource & Defense Center
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s/Melody J. Brown

This 4th day of June, 2014.

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ATTORNEY FOR PETITIONER/RESPONDENT

Hopkins, Debbie

From: CTrack Production
Sent: Monday, June 09, 2014 3:02 AM
To: Hopkins, Debbie
Subject: C-Track - Tickler Notification

The following ticklers assigned to you are now overdue:

- 05/30/2014 - Deficiency (2014-001049)
- 06/04/2014 - Determine Next Action (2013-000635)
- 06/06/2014 - Determine Next Action (2014-001058)
- 06/06/2014 - Remittitur to be Sent (2011-199687)
- 06/06/2014 - Remittitur to be Sent (2012-212948)
- 06/06/2014 - Return to Motion Due (2010-155629)

The follow ticklers assigned to you will become overdue within the next 3 days:

- 06/09/2014 - Status Update Due (2012-213008)
- 06/09/2014 - Rehearing Due (2014-001087)
- 06/09/2014 - Place on Agenda Ready List (2010-173586)
- 06/10/2014 - Determine Next Action (2014-000387)
- 06/11/2014 - Decision Pending (2012-206406)
- 06/11/2014 - RIB/DOM Due (2013-001128)
- 06/12/2014 - Rehearing Due (2012-212693)