

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUN 19 2014

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
Alexander S. Macaulay, Circuit Court Judge

S.C. Supreme Court

Case No. 2000-CP-01-210
Appellate Case Number: 2010-170387

John Kennedy Hughey, Respondent/Petitioner

v.

The State, Petitioner/Respondent.

Respondent/Petitioner's Petition for
Extension of Time to File Mr. Hughey's Brief

Counsel for Mr. Hughey respectfully petitions this Court for an additional 30 days to file his brief of respondent. Pursuant to this Court's order number 2009-03-18-01, this petition is the first request for an extension to file this brief. In support of this petition, counsel shows:

- 1) This case involves cross-appeals of an Order granting Mr. Hughey a new capital sentencing hearing.
- 2) On January 12, 2011, the State filed its petition for writ of *certiorari*. On March 29, 2011, Mr. Hughey filed his return to the State's petition.
- 3) On April 29, 2011, Mr. Hughey filed his petition for writ of *certiorari*. On August 11, 2011, the State filed its return to Mr. Hughey's petition. On September 2, 2011, Mr. Hughey replied.

4) By order dated April 16, 2014, this Court granted both the State and Mr. Hughey's cross-petitions for writs of *certiorari*.

5) During the *certiorari* petition phase of this appeal, both counsel for Mr. Hughey were public defenders for the Eighth Judicial Circuit, handling this appeal *pro bono* because of a conflict in interest of the Office of Appellate Defense. The PCR Court granted Mr. Hughey a new sentencing hearing based, in part, on ineffective assistance of appellate counsel.

6) Counsel are now in private practice and continue their *pro bono* representation of Mr. Hughey during this appeal.

7) This Court granted an extension to file Mr. Hughey's brief of petitioner. We filed that brief on June 16, 2014.

8) Because of other professional obligations, counsel has not had sufficient time to complete the brief consistent with their duty to provide effective assistance of counsel as guaranteed by the U.S.C.A. 6, 14. *See Evitts v. Lucey*, 469 U.S. 387 (1985) (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair); *Martinez v. Ryan*, 132 S. Ct. 1309, 182 L. Ed. 2d 272 (2012) (inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial). *See also Ezell v. State*, 345 S.C. 312, 548 S.E.2d 852 (2001); *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999); South Carolina Bar Ethics Advisory Committee, Advisory Op. 04-12 (2004) (citing the 2002 ABA maximum caseload standards of 25 appeals). *See generally Polk County v. Dodson*, 454 U.S. 312 (1981); *Gideon v. Wainwright*, 372 U.S. 335 (1963).

8) Counsel makes this request in good faith and not for purposes of delay.

Counsel, therefore, respectfully requests a 30-day extension to July 16, 2014 in which to file Mr. Hughey's brief of Respodnent.

IT IS SO MOVED.

Respectfully submitted,

By



E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
charles@groselawfirm.com

Tara Schultz Waters
Waters Law Firm, LLC
120 S. Magnolia Street
Summerville, SC 29483
(843) 834-3600
tara@waterslawsc.com

June 16, 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
Alexander S. Macaulay, Circuit Court Judge

Case No. 2000-CP-01-210
Appellate Case Number: 2010-170387

John Kennedy Hughey, Respondent/Petitioner

v.

The State, Petitioner/Respondent.

Certificate of Service

I certify that I have served a copy of the Respondent/Petitioner's Petition for Extension of Time to File Mr. Hughey's brief on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on date reflected below, addressed as follows:

Donald J. Zelenka, Esquire
SC Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211



E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

¹⁶
June 18, 2014
Greenwood, South Carolina