

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of General Sessions

Rivers Lawton McIntosh, Circuit Court Judge

Appellate Case No.: 2013-001895

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JUL 1 8 2014

SC Court of Appeals

State of South Carolina Respondent

v.

James Richard Barte, Jr. Appellant

**MOTION FOR EXTENSION OF TIME
TO FILE THE APPELLANT'S INITIAL BRIEF
AND DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL**

COMES NOW, Jack B. Swerling, attorney for the Appellant, requesting an extension in which to file the Initial Brief and Designation of Matter to be Included in the Record on Appeal. The Initial Brief and Designation of Matter to be Included in the Record on Appeal is due to be filed on July 21, 2014.

Appellate counsel was not the trial counsel in the case. The trial in this matter lasted six (6) days beginning on August 26, 2013, and concluded on

September 3, 2013. The transcript in this matter contains one thousand one hundred fifty-seven (1,157) pages. In addition to the trial, there were several pretrial hearings on February 8, 2013 and March 14, 2013.

The Appellant is currently incarcerated at Livesay Correctional Institution in Una, South Carolina. Appellate counsel has visited Appellant at least once since receipt of the transcript. Appellate counsel also believes it will be necessary to visit the Appellant again prior to the preparation of the brief in this case.

Counsel is in need of an extension for sixty (60) days for the following reasons:

1. Counsel's law firm is relatively small and includes counsel, a secretary/office manager, two paralegals and full time law clerk (my law clerk was a graduate of the Charleston School of Law who had worked for me while attempting to pass the Bar. He was employed in such capacity for almost two (2) years.

2. Starting in May our office has experienced a series of events beyond our control, and counsel's time has been stretched to the limit. My secretary/office manager's husband was put on home dialysis and she was off for six (6) days learning how to assist her husband. On May 26, 2014, her husband suffered a heart attack and then a stroke and stayed in the hospital until June 13, 2014. On July 1, 2014 he had a blood transfusion, and on July 10, 2014 through July 13, 2014, he was in the hospital for a heart cath. He is currently having dialysis outside the home every Monday, Wednesday, and Friday. He is scheduled for bypass surgery on August 5, 2014. As a result of these unfortunate events, my

secretary/office manager has been absent from the office for extended lengths of time as well as other days and hours in taking care of her husband.

3. On June 3, 2014, my paralegal/receptionist's father had a stroke and passed away. She was out of the office and returned on July 14, 2014.

4. On June 6, 2014 due to an unfortunate event, I had to discharge my law clerk who was of great assistance to me in investigation and research.

4. I am preparing for and starting a Pretrial Hearing to determine immunity under S.C. Code §16-11-410, et. seq., in a murder case and the hearing is expected to last three (3) days and begins in Kershaw County on July 28, 2014 (**State v. Memmert**). I am also preparing for and trying a PCR in Dillon County on July 31, 2014, which could last two (2) days, (**State v. Mumford**). I am also preparing for and will try an Internet solicitation case in Greenville on August 11, 2014, which will last several days (**State v. Joe Culler**).

5. Counsel is requesting a sixty (60) day extension because many of the events that are requiring an extension have yet to happen, but will happen through the week of August 11, 2014, so a thirty (30) day extension would not be adequate and counsel would have to file another extension request if only thirty (30) days were granted.

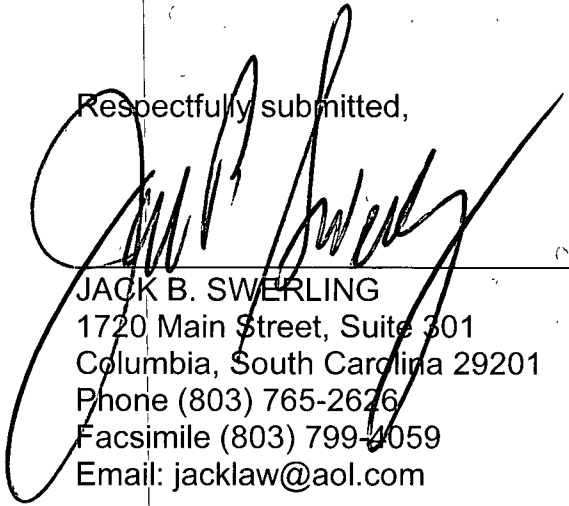
As a result of the above circumstances, Appellate counsel requests an additional sixty (60) days in which to file the Initial Brief and Designation of Matter to be Included in the Record on Appeal.

Appellate counsel, has consulted with Angela Bennett, Administrative Assistant to Salley W. Elliott, Senior Assistant Deputy Attorney General, and she

has no objection and consents to the request by counsel.

WHEREFORE, counsel prays the Court will grant sixty (60) day extension, until September 21, 2014, to file the Initial Brief and Designation of Matter to be Included in the Record on Appeal.

Respectfully submitted,



JACK B. SWERLING
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Email: jacklaw@aol.com

Attorney for Appellant

July 18, 2014

Columbia, South Carolina

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PROOF OF SERVICE

I, Kellie A. Switzer, certify that I have served the Initial Brief and Designation of Matter to be Included in the Record on Appeal on the following, by depositing a copy of it in the United States Mail, postage prepaid, on July 18, 2014, addressed to:

Salley W. Elliott, Senior Assistant Deputy Attorney General
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549



Kellie A. Switzer
Paralegal to Jack B. Swerling
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July 18, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State of South Carolina v. James Richard Bartee, Jr.
Appellate Case No.: 2013-001895

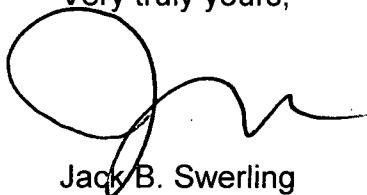
Dear Ms. Kitchings:

Enclosed for filing are the original and six (6) copies of the Motion for Extension of Time to File the Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal, along with the Proof of Service, in the above referenced matter. It would be greatly appreciated if you would clock the extra copy and return it to me in the enclosed envelope.

By copy of this letter, I am serving Salley W. Elliott, Senior Assistant Deputy Attorney General, with a copy of same.

If you have any questions, do not hesitate to contact me.

Very truly yours,



Jack B. Swerling

JBS/kas
Enclosure

cc: Salley W. Elliott, Senior Assistant Deputy Attorney General
James Richard Bartee, Jr. #00356847
Elizabeth Bartee
Kenneth R. Bartee

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