

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.

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 nine (9) days to file his brief of respondent/petitioner. Pursuant to this Court's order number 2009-03-18-01, this petition is the third 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.

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S.C. SUPREME COURT

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).

9) Mr. Grose has been involved in the following hearings: (a) *Davis v. Laughlin, et al.*, a Greenwood County Family Court child custody and termination of parental rights case on July 30 and 31, 2014; (b) Jury trial in *State v. Julio Sergio Cordero*, a Saluda County criminal sexual conduct with a minor case on August 5 and 6, 2014, which resulted in a mistrial; and (c) a motions hearing in *William Dickerson v. State*, a capital PCR, on August 12, 2014. Mr. Grose is also preparing for a jury trial in *State v. Michael Beatty*, a Laurens County murder charge, for the weeks of September 2 and 8, 2014.

10) Ms. Waters' practice is part time, as she divides her time between her law practice and caring for her one-year old son. She has recently relocated her office and will resume a fulltime practice later this month.

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

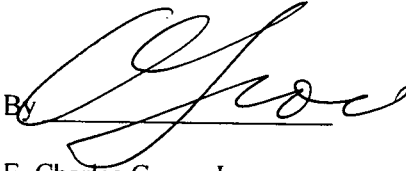
12) Counsel, therefore, respectfully requests a 9-day extension to Monday, August 25, 2014 in which to file Mr. Hughey's brief of Respondent. When we requested the second extension, we did not anticipate needing any additional extensions to complete this brief. We have made substantial progress on the brief and believe we can finish it in this additional time.

13) As both of us are sole practitioners, we both are signing this petition.

IT IS SO MOVED.

(signatures on next page)

Respectfully submitted,

By 

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August 14, 2014

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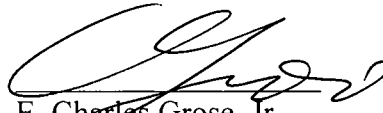
v.

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:

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August 14, 2014
Greenwood, South Carolina