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AUG 26 2014

SC Court of Appeals

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

**Appeal from Chesterfield County
J. Michael Baxley, Circuit Court Judge**

Appellate Case No. 2012-213655

THE STATE,

RESPONDENT,

v.

THOMAS STEWART,

APPELLANT

**RESPONDENT'S MOTION TO FILE INITIAL BRIEF
OF RESPONDENT AND DESIGNATION OF MATTER OUT OF TIME**

The Respondent, above-named, hereby makes a motion to this Court to file the Initial Brief of Respondent and extend the time for filing the Initial Brief of Respondent and Designation of Matter to Friday August 22, 2014. This Initial Brief of Respondent is attached. The Initial Brief of Respondent was not completed before midnight on August 20, 2014 when due. Due to intervening business events and personal word processing errors, the product was not completed until the business day on Friday August 22, 2014. Respondent request leave of the court to file the matter on this date.

Respondent have contacted opposing counsel Jarrett Coco concerning this matter and left a message on this matter. At the time of this filing, I am not aware of the position he is taking on this request. Respondent also emailed the final version of the Initial Brief of Respondent

on this date.

I.

Counsel for Respondent has also been working on drafts of the prioritized initial brief of Respondent in State v. Thomas Stewart on a fifth extension and an initial brief of respondent in State v. Antonio Gordon due on August 20, 2014 .

Since the prior request, below-signed counsel personally filed a response to stay of execution in the federal district court in Bayan Aleksey v. Warden death penalty habeas action on July 14, 2014; began preparation on death penalty PCR appeal State Brief of Respondent in John K. Hughey v. State which is presently 116 pages in incomplete draft form; deposition preparation and deposition in death penalty PCR case Andres Torres v. State on July 23, 2014; made a motion to dismiss appeal in State v. Kevin Howard on July 24; prepared and filed a federal habeas return in Bobby Rice v. Warden (2nd extension) on July 28, 2014; and a federal habeas corpus return in Bryan Ladner v. Warden on July 28, 2014; resolved an appeal and expedited issuance of a remittitur in State v. Dondre Scott on July 28; filed a federal habeas corpus return and memorandum of law (49 pages) and a response to an order in the federal habeas corpus action of Lentigus Floyd v. Warden's motion to stay on July 30; filed a Brief of Respondent in the Court of Appeals in State v. Orlando Smith on July 31, 2014; made a written response to motion to amend and supplemental return in federal habeas corpus matter of Steven Collins v. Warden on July 31, 2014; filed a federal habeas return and memorandum of law in Terry Smalley v. Warden (17 pages) on August 1, 2014; response to motion to amend in habeas matter of Kevin Mellette v. Warden on August 7, 2014; Return to Petition for Writ of Certiorari in Kevin Choice v. State in the South Carolina Supreme Court on August 8, 2014; filed a federal habeas response in Jason Riley v. Warden (43 pages) on August 13, 2014,

prepared and filed a memorandum of law in the death penalty PCR matter of Quincy Allen v. State on August 13, 2013; participated in telephone status conference with Judge Cothran in Quincy Allen v. State on August 13. In addition, Respondent's below-signed counsel sought status updates from opposing counsel in the following pending death penalty cases: James W. Wilson; Donald Jones; Mar-Reece Hughes; and Ronald Finklea.

III.

Wherefore Respondents respectfully request an extension to and including August 22, 2014 to complete this Initial Brief of Respondent.

Respectfully submitted,

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ATTORNEYS FOR RESPONDENT

By: 

Donald J. Zelenka
Office of the Attorney General
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Columbia, South Carolina 29211
SC Bar # 5758
803-734-6305

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CERTIFICATE OF SERVICE.

I, Donald J. Zelenka, hereby certify that I have served Respondents Motion to Allow

Filing Of Initial Brief of Respondent out of time on:

Jarrett O. Coco, Esquire
Nelson Mullins Riley and Scarborough LLP
1320 Mains Street – 17th Floor
PO Box 11070
Columbia, SC 29211-1070

Robert M. Dudek, Esquire
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201

by depositing a copy in the Mail with sufficient postage this 22nd day of August, 2014.



DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

Orr, Jacklyn

From: COA Extensions
Sent: Tuesday, August 26, 2014 7:35 AM
To: Orr, Jacklyn
Subject: FW: State v. Thomas Stewart - Motion to Allow Filing - Appellate Case Number - 2012-213655
Attachments: Stewart - Motion to file Brief Out of Time (00421827xD2C78).pdf; Stewart - IBOR (00421817xD2C78).pdf

From: Don Zelenka [<mailto:DZelenka@scag.gov>]
Sent: Monday, August 25, 2014 9:51 AM
To: COA Extensions
Cc: jarrett.coco@nelsonmullins.com; Robert M. Dudek
Subject: FW: State v. Thomas Stewart - Motion to Allow Filing - Appellate Case Number - 2012-213655

Dear Clerk of Court:

On Friday August 22, 2014, I filed by mail a Motion to File the Initial Brief of Respondent Out of Time and the Initial Brief of Respondent. At the time of the motion I had not been advised of the position of Appellant's counsel on my request. This morning I received consent from Mr. Coco which is attached. I am attaching copies of the August 22, 2014 Motion and Initial Brief of Respondent for the Court's information.

If further information is necessary, please advise.

Sincerely,

Don Zelenka

Donald J. Zelenka
Senior Assistant Deputy Attorney General
South Carolina Attorney General's Office
P.O. Box 11549
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803-734-3601
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From: Jarrett Coco [<mailto:jarrett.coco@nelsonmullins.com>]
Sent: Monday, August 25, 2014 9:39 AM
To: Don Zelenka; Robert M. Dudek
Subject: RE: State v. Thomas Stewart - Motion to Allow Filing

Mr. Zelenka,
We do not object.
Thanks,

Jarrett Coco | NELSON MULLINS RILEY & SCARBOROUGH LLP |
(e) jarrett.coco@nelsonmullins.com | (p) 803.255.5536 | (f) 803.256.7500

From: Don Zelenka [<mailto:DZelenka@scag.gov>]
Sent: Friday, August 22, 2014 5:36 PM
To: Jarrett Coco; Robert M. Dudek
Subject: State v. Thomas Stewart - Motion to Allow Filing

Please find attached the motion to allow filed this date. Please advise me of your position. Thank you for your cooperation and consideration in this matter.

Donald J. Zelenka
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