

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

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NOV 14 2014

SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Don-Survi Chisolm,

Appellant.

Appellate Case No. 2011-200186

**MOTION FOR EXTENSION OF TIME TO FILE
INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER**

Respondent, the State, moves this Court for an additional thirty (30) day extension of time in which to file the Initial Brief of Respondent and Designation of Matter. This is Respondent's second request for an extension of time in which to file the brief after receipt of additional transcripts. In support of the request, undersigned counsel would respectfully show the Court:

1. Undersigned counsel has been preparing for a capital PCR evidentiary hearing to begin Monday, November 17, 2014. Counsel received the last requested transcript on October 21, 2014, in the midst of hearing preparations and addressing other cases already scheduled, which prompted new time limits.¹ Counsel requested one fourteen (14) day extension in addition to the ten (10) days originally granted by the Court and attempted to complete the brief before the hearing. However, counsel has received additional discovery responses and an amended application for review before the hearing this upcoming Monday. Counsel has been unable to

¹ Respondent requested and received three extensions prior to the matter being held in abeyance.

complete the brief.

2. Counsel has completed the following work in the last thirty (30) days: completed and filed returns and memoranda of law in three (3) other federal habeas actions that were on prior extensions (*Dayvonn Valentine, Troy Zeigler, and John Mills*); prepared and filed a response in opposition to motion to amend in another habeas action (*Kevin L. Grant*); prepared and filed a motion to supplement the return in another habeas action (*Darnell Harper*); completed and filed an initial brief of respondent addressing six issues in this Court in a non-capital murder direct appeal (*Marcus Bailey*); prepared and filed a reply to return in opposition to petition for writ of certiorari due to exceptional circumstances in the Supreme Court of South Carolina in another capital case (*Steven Barnes*); prepared and submitted a proposed order to recognize waiver of attorney client privilege in a capital case (*Quincy Allen*); prepared and filed a return to a petition for writ of certiorari in a non-capital murder direct appeal (*Clarence Jenkins*); and, prepared and filed a return to motion to amend scheduling order and to continue evidentiary hearing in another post-conviction death penalty action (*William Dickerson*). Counsel has also met with and interviewed witnesses, attended a deposition of prior counsel, prepared and filed a motion to compel and a motion for a more definite statement, received and reviewed updated discovery responses and is drafting legal memoranda in preparation for the capital evidentiary hearing scheduled to begin on November 17, 2014 (*Quincy Allen*).

3. Counsel also worked on the brief for the instant case, but, as noted, has not completed same not only because of other work, but also, due to the delay in receipt of the transcript, counsel must review prior work and transcript notes to be able to adequately incorporate the new information and to complete the factual statement and designation of matter. This takes additional time not originally anticipated when counsel requested only ten (10) days to complete

the brief upon receipt of the additional transcripts. Further, due to her heavy case load, particularly with hearing preparations for the *Quincy Allen* capital case that is scheduled to begin November 17, 2014, undersigned counsel has not been able to complete the brief with the additional ten (10) days extension.

4. This is the second request for an extension of time in which to file a response after receipt of the late requested transcripts.

5. The capital PCR hearing is scheduled for the entire week of November 17, 2014, and counsel will be unable to work on the brief for that week. Undersigned counsel requests an extension of thirty (30) days to avoid additional requests, but will file the brief as soon as completed. Counsel is cognizant of the time requested in this matter as a whole, and will make completion of the initial brief of respondent in this appeal the first priority after the hearing.

6. This request is made out of necessity and not as a matter of pure delay.

7. Undersigned counsel's immediate supervisor has reviewed and approved this request as evidenced by signature below.

THEREFORE, undersigned counsel for Respondent respectfully requests an additional extension of thirty (30) days to complete the initial brief and designation of matter.

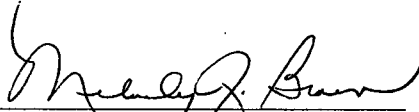
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General

BY: 

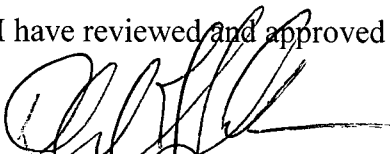
MELODY J. BROWN

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

November 14, 2014
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT

I have reviewed and approved this request:



DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

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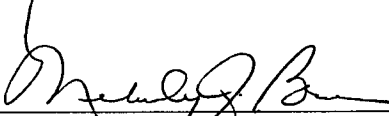
Appellate Case No. 2011-200186

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served Respondent's *Motion for an Extension of Time to File Initial Brief of Respondent and Designation of Matter* on counsel for Appellant, by depositing one copy of same in the United States mail, postage prepaid, to counsel for appellant, addressed as follows:

Robert M. Dudek, Chief Appellate Defender
Lara M. Caudy, Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

This 14th day of November, 2014.



MELODY J. BROWN

Office of Attorney General
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Columbia, SC 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT



ALAN WILSON
ATTORNEY GENERAL

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

Re: The State v. Don Survi-Chisolm
Appeal from Dorchester County
Appellate Case No. 2011-200186

Dear Ms. Kitchings:

Enclosed please find the original and one (1) copy of the Respondent's Motion for Extension of Time to file Initial Brief of Respondent and Designation of Matter, dated today, together with a Proof of Service in the above-referenced matter.

Thank you for your assistance in this matter. Please call this office if you need any additional information.

Sincerely,

Melody J. Brown
Senior Assistant Attorney General

MJB/mv

cc: Robert M. Dudek, Chief Appellate Defender
Lara M. Caudy, Appellate Defender

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