

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Court of Common Pleas Case No. 2011-CP-26-3907
(Capital PCR Action)
Appellate Case No. 2014-000904

LOUIS MICHAEL WINKLER, JR.,

Respondent/Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Petitioner/Respondent.

**MOTION FOR THIRD EXTENSION OF TIME TO FILE
RETURN TO PETITION FOR WRIT OF CERTIORARI**

The undersigned counsel would respectfully request a thirty (30) day extension in which to file the Return to Petition for Writ of Certiorari in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following:

Petitioner/Respondent's Return is due today, December 31, 2014, upon this Court's grant of Petitioner/Respondent's second request for an extension filed on December 1, 2014.

Counsel for Respondent was out of the office the week of Monday, December 22, 2014 due to influenza. Furthermore, counsel makes this request due to his involvement in other matters in both state and federal court within the past thirty days.

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Specifically, counsel completed and filed the Motions for Summary Judgment, Returns and Memoranda of Law in Support of Motions for Summary Judgment in Luis Ozorio, #347959 vs. Warden of Perry Correctional Institution, C/A No. 8:14-03688-RMG-JDA; James S. Blanding, #329153, a/k/a James Stanley Blanding vs. Warden, Lee Correctional Institution, C/A No. 6:14-2748-TMC-KFM; Timothy Blassingame, #213064 vs. Leroy Cartledge, Warden, C/A No. 4:14-2814-JMC-TER; and Donques Hood, #333563 vs. Warden, Perry Correctional Institution, C/A No. 5:14-3478-JMC-KDW, all federal habeas actions pending in the United States District Court for the District of South Carolina.

Counsel has also reviewed the files and completed a significant amount of work on the Motions for Summary Judgment, Return and Memoranda of Law in support of Motions for Summary Judgment in Patrick Spigner, #340898 vs. Warden Lieber Correctional Institution, C/A No. 4:14-3570-TMC-TER; Travonte Williams, #346287 vs. Warden Perry Correctional Institution, C/A 9:14:3903-JMC-BM; Lawrence Pinckney, #337981 vs. Joseph McFadden (Warden), C/A No. 6:14-4274-MGL-KFM; Shaheen Cabbagestalk, #295567, v. Warden J. McFadden, C/A No. 5:14-3771-RMG-KDW; and Tonnie Nathaniel Baldwin, II, #273682 vs. Warden Leroy Cartledge, C/A No. 8:14-3726-DCN-JDA; and Harold Lee Greer, Jr., #277417 vs. Warden Perry Correctional Institution, C/A No. 2:14-3502-BHH-WWD; all federal habeas actions pending in the United States District Court for the District of South Carolina. Counsel also did a substantial amount of work investigating and preparing for an evidentiary hearing in Leroy Archie, #317590 vs. Leroy Cartledge, C/A No. 2:13-3052-RMG-WWD, another federal habeas action pending before the United States District Court for the District of

South Carolina. The evidentiary hearing was set to be heard by the Honorable Wallace W. Dixon, United States Magistrate Judge, on December 9, 2014, but was cancelled because documents found during preparation for the hearing resolved the factual dispute.

Counsel filed Respondent's Reply to Response in Opposition to Motion for Summary Judgment in Jamie Goss, #294885 vs. Joseph McFadden, Warden, Lieber Correctional Institution, C/A No. 4:14-1299-MGL-TER; another federal habeas action pending in the United States District Court for the District of South Carolina. Counsel also filed the Respondent's Response in Opposition to Motion for Default Judgment and the Respondent's Response in Opposition to Motion for Summary Judgment in Shaheen Cabbagestalk, #295567, v. Warden J. McFadden, C/A No. 5:14-3771-RMG-KDW.

Counsel also filed a Response in Opposition to a Motion for a Stay in Abdiyyah Ben Alkebulanyahh, #SK-6012, (fka Tyree Alphonso Roberts) vs. William R. Byars, Jr., Commissioner, South Carolina Department of Corrections; Wayne C. McCabe, Warden of Lieber Correctional Institution, C/A No. 6:13-918-TLW, a capital federal habeas action now pending before the United States District Court for the District of South Carolina.

Counsel has also reviewed the files and completed a substantial amount of work on the Initial Brief of Appellant in State vs. Whitlee Jones, a State's appeal to a grant of immunity under the Protection of Persons and Property Act now pending before the South Carolina Supreme Court. Counsel has also completed a significant amount of work on the Return and Motion to Dismiss in Abdiyyah Ben Alkebulanyahh, #SK-6012, (fka Tyree Alphonso Roberts) vs. State of South Carolina, Case No. 2014-CP-07-2994,

a successive capital post-conviction relief action now pending in the Beaufort County Court of Common Pleas. The Return is being filed within the next week.

Further, counsel has also done a significant amount of work in drafting the Return to the federal habeas petition in Johnny O'Landis Bennett, Jr. v. Bryan P. Stirling, Commissioner, South Carolina Department of Corrections, and Joseph McFadden, Warden of Lieber Correctional Institution, C/A No. 2:13-03191-RMG-WWD, a federal habeas action in a capital case now pending before the United States District Court for the District of South Carolina.

Due to counsel's involvement in these and other matters pending in state and federal court, counsel is unable to timely complete the Return to Petition for Writ of Certiorari in this proceeding. Thus, counsel is requesting an extension of time in which to file the Petition in this matter. This request is made in good faith, and not for the purposes of delay. Undersigned counsel has contacted opposing counsel regarding this request, and opposing counsel has indicated that they consent to the request.

WHEREFORE, premises considered, counsel hereby respectfully requests a thirty (30) day extension of time to serve and file the Return to Petition for Writ of Certiorari.

Respectfully Submitted,

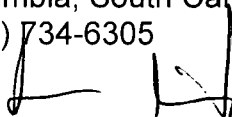
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

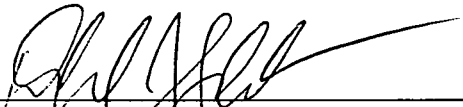
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By: 

ALPHONSO SIMON, JR.

By: 

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

I support the finding of good cause.

December 31, 2014.

ATTORNEYS FOR PETITIONER/RESPONDENT

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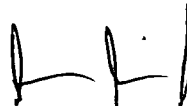
Petitioner/Respondent.

PROOF OF SERVICE

I, Alphonso Simon, Jr., of counsel for the Petitioner/Respondent, certify that I have served two (2) copies of the within motion for a third extension to file Return to Petition for Writ of Certiorari via U.S. mail to his attorneys of record, Emily C. Paavola, Esq., Death Penalty Resource and Defense Center, 900 Elmwood Avenue, Ste. #101, Columbia, South Carolina 29201, and to John R. Mills, Esq., Law Offices of John R. Mills, 3145 Geary Blvd., #213, San Francisco, California 94118.

I further certify that all parties required by Rule to be served have been served.

This 31st day of December, 2014.



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