

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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MAR 06 2015

SC Court of Appeals

Appeal from Charleston County
Stephanie P. McDonald, Circuit Court Judge

Appellate Case No. 2014-002129

STATE OF SOUTH CAROLINA,

Appellant,

v.

MARVIN BROWN,

Respondent.

**MOTION TO ENLARGE TIME FOR
FILING INITIAL BRIEF OF APPELLANT AND
DESIGNATION OF MATTER**

The Appellant State of South Carolina, above-named, hereby make a third motion to this Court to extend the time for filing the Initial Brief of Appellant and Designation of Matter from **March 4, 2015** for a period of thirty (30) days up to and including **April 3, 2015**.

This Initial Brief of Appellant concerns the pre-trial suppression of the dying declaration of the decedent as a result of a shooting and may address issues related the correctness of the assessment by the trial judge in concluding whether the standard of review of the judge in the suppression hearing, issues whether there was evidence of the victim's state of mind that he was of a belief that death was imminent when the declaration was made and the effect or relevance of medical evidence on the suppression decision when the victim continued to receive treatment subsequent to the statement . The State submits that the suppression of decedent's statement is immediately appealable because it significantly impairs the prosecution of the case. State v. McKnight, 287 S.C. 167, 337 S.E.2d 208 (1985).

The State, through the Attorney General's Office makes this request due to other court responsibilities it had during the time period and resolution of responsibility in the state appeal with the Ninth Circuit Solicitor's office. Below-signed counsel has received transcripts and motions and attachments and believe that resolution of the Initial Brief of Appellant will be completed by April 3, 2015.

Below-signed counsel was within the time period has prepared and filed a number of filings in state and federal court including a motion in State v Jeremy McMillian; a Brief of Respondent with the Solicitor's office in the S.C. Supreme Court in State v. Manuel Marin; oral argument in the Court of Appeals in State v. Keith Letmon on February 3, 2015; court ordered response in the Court of Appeals in Alfonso Ware v. State on February 6, 2015; return and memorandum of law in Douglas Thompson v. Warden on February 6, 2015 and assisted in a Petition for Writ of Certiorari filed in the U.S. Supreme Court on February 9, 2015 in Aiken et. al. v. Byars ; on February 9, 2015 made a Response to a Status Report in the federal habeas matter of Joshua Jeter v. Warden; on February 11, 2015 filed a Brief of Respondent in the South Carolina Court of Appeals in Herman L. Hughes v. State, on February 13, 2015 filed a Response to Petition for Court Oversight of Capital PCR Action in the South Carolina Supreme Court in Stephen Stanko v. State; on February 17, 2015 filed a Return and Motion for Sanctions in Christopher Lane v. South Carolina in the original jurisdiction of the South Carolina Supreme Court; on February 19, 2015 filed a return and memorandum in the federal habeas corpus matter of Michael Anthony Allen v. Warden; on February 23, 2015 filed a Response to a petition for rehearing in State v. Jaquwn Brewer in the South Carolina; and on February 23, 2015 filed a response to a Motion for discovery in Bayan Aleksey v. Warden; made a response concerning deficiencies in the record on appeal in Antonio Gordon v. Warden; made a court-ordered return in the federal

habeas matter of Kimjaro Presley v. Warden on February 27, 2015; made a Return to Motion for Extraordinary Relief to the Supreme Court in Marion Lindsey v. State filed March 2, 2015, traveled to Conway S.C. and prepared and handled the death penalty PCR hearing in Stephen Stanko v. State before Judge Culbertson on March 2-3, 2015.

II.

Counsel discussed the matter with Respondent's counsel, Susan Hackett of this request who advised counsel that she had no objection to the request.

III.

Wherefore Appellant respectfully request an extension of a period of time of thirty (30) days up to and including April 3, 2015 to complete this Initial Brief of Appellant and Designation of Matter.

Respectfully submitted,

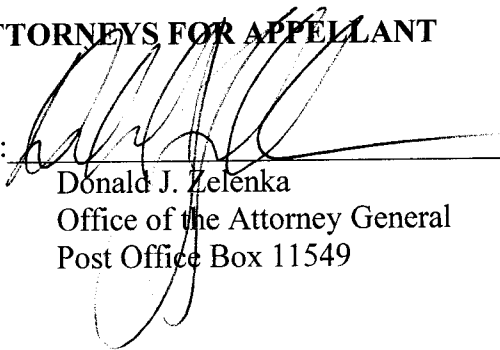
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
S.C. Bar No. 5758

BENJAMIN C. SIMPSON
Assistant Solicitor
Ninth Judicial Circuit Solicitor's Office
Charleston, S.C.

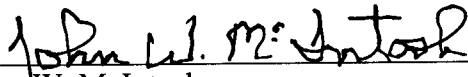
ATTORNEYS FOR APPELLANT

By: 
Donald J. Zelenka
Office of the Attorney General
Post Office Box 11549

Columbia, South Carolina 29211
803-734-6305

March 4, 2015.

I have reviewed and approved this request.



John W. McIntosh
Chief Deputy Attorney General

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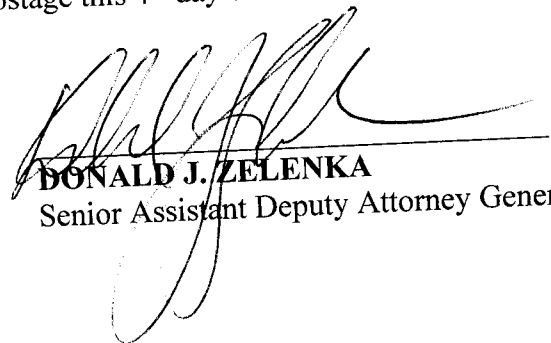
Respondent.

CERTIFICATE OF SERVICE

I, Donald J. Zelenka, hereby certify that I have served Respondents **Motion to Enlarge Time for Filing Initial Brief of Appellant and Designation of Matter** on:

Susan Hackett, Esq.
Appellate Defender
SCCID/Division of Appellate Defense
PO Box 11589
Columbia, SC 29211

by depositing a copy in the Mail with sufficient postage this 4th day of March, 2015.


DONALD J. ZELENKA
Senior Assistant Deputy Attorney General



ALAN WILSON
ATTORNEY GENERAL

March 4, 2015

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

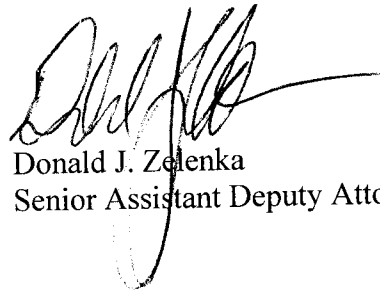
Re: The State v. Marvin Brown
Appeal from Charleston County
Appellate Case No. 2014-002129

Dear Ms. Kitchings:

Enclosed please find the original and one (1) copy of Appellant's Motion to Enlarge Time for filing Initial Brief of Appellant 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,



Donald J. Zelenka
Senior Assistant Deputy Attorney General

DJZ/lm
Enclosures

cc: Susan Hackett, Appellate Defender

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