

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

APR 22 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

RYAN P. DELESTON,

APPELLANT

APPELLATE CASE NO. 2013-002224

RESPONDENT'S MOTION TO EXTEND TIME TO FILE
INITIAL BRIEF OF RESPONDENT

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The Respondent, above-named, hereby make a fourth motion to the Court to extend the time of filing the Initial Brief of Respondent and Designation of Matter until May 22, 2015, 2015. The Initial Brief of Respondent in the above action is due to be filed April 22, 2015. Respondent's below-signed counsel submits that extraordinary circumstances have been shown:

I.

This motion is made because the Respondent has not been able to respond within the allotted time for the following reasons:

1. Counsel has reviewed the record and an outline of the 1166 page transcript has been prepared. However, final version of the brief has not been completed.

2. Counsel for the undersigned has had a number of other commitments in State and Federal court that have precluded timely completion of the Return. In the last month, below-signed counsel below-signed counsel was also actively preparing for a merit hearing on April 27, 2015 in the Stephen Stanko v. State PCR action related to the Georgetown convictions, but due to an intervening issue is no directly longer directly involved in the handling of the matter other than through supervision because of a medical issue. Respondent has filed a Return and 93 page memorandum of law in Stephen Beckham v. Warden for the federal habeas action on March 26, 2015; on March 25, counsel filed a Return to a Petition for a Writ of Habeas Corpus in Marcus Martin v. Warden, and on March 31, 2015 counsel filed a Return and Memorandum of Law in Randy Elders v. Warden; on April 2, 2015, counsel filed a Return before the South Carolina Supreme Court in Dontavarios Mack v. State, et al. On March 30 and April 1, 2015, below-signed counsel was lead counsel in an evidentiary hearing before Judge Cothran in the death penalty PCR action of Quincy Allen v. State. On April 8, attended as co-counsel oral arguments before the South Carolina Supreme Court in Steven Barnes v. State and State v. Manuel Marin; on April 14 argued State v. Thomas Stewart before the South Carolina Court of Appeals; on April 15, made a Rule 59 motion in Gena Beatty v. Warden in the United States District Court; on April 15 made an oral argument before the South Carolina Court of Appeals in State v. Roderquiz Cook; on April 17, 2015 made a Supplemental Return in Deborah Sanders v. State.
3. On April 21, 2015, below-signed counsel is scheduled for a heart procedure at Richland Heart Hospital and it is anticipated that he will be on medical leave through April 28, 2015.

4. Respondent's below signed counsel's current calendar presently has the following matters due in the next thirty days.

- a. April 23 – State v. Derekee Johnson – Initial Brief of Respondent
- b. *April 27, 2015 - James Russell v. Warden – Return
- c. April 27 – James Bell v. State – DNA Appeal - Initial Brief of Respondent
- d. *April 27 - James R. Wood v. State – Reply to Response in DP PCR.
- e. April 27 - Steven Stanko v. State _DP PCR Hearing – handled by Anthony Mabry.
- f. May 1 – Joseph Urato v. Warden - Federal Habeas Return
- g. May 1 – Frank Green, Jr. v. Warden – Federal Habeas Return
- h. *May 4, 2014 – State v. Marvin Brown - STATE APPEAL
- i. *May 4, 2014 – Kevin Mellette v. Warden - Federal Habeas Corpus – Court Ordered Court Order Response to Amended Federal Habeas petition.
- j. *May 4 – Ismael Cruz v. Warden - Federal Habeas Corpus – Court Ordered Supplemental Response.
- k. May 6 – Joshua Manning v. Warden - Federal Habeas Corpus – Return.
- l. May 6 – State v. Ernest Daise – Initial Brief of Respondent (2)
- m. May 6 – State v. Jeffrey Chronister – Initial Brief of Respondent
- n. *May 12 – John R. Wood – PCR Motion Hearing – Judge Mark Hayes – Death Penalty.
- o. May 18 – State v. Armando Chestnut – Initial Brief of Respondent
- p. May 18 – Jesse Sapp v. State – DP PCR Return
- q. May 20 – Curtis Pratt v. Warden - Federal Habeas Return
- r. May 20 – Landis Moragne v. Warden – Federal Habeas Return

- s. *May 22, 2015 – State v. Ryan Deleston - Projected Initial Brief of Respondent.
- t. *May 23, 2015 – State v. Derekee Johnson - projected Initial Brief of Respondent.
- u. May 26 - Samuel Stokes v. Warden – Federal Habeas Return
- v. June 1 – Terry Davis v. Warden - Federal Habeas Return.

II. PRIORITIES

Respondent's below-signed counsel has established the following priorities to insure no further extension will be required on this briefing:

- a. *April 27, 2015 - James Russell v. Warden – Return
- b. *May 4, 2014 – State v. Marvin Brown - STATE APPEAL (4th)
- c. *May 4, 2014 – Kevin Mellette v. Warden - Federal Habeas Corpus – Court Ordered Court Order Response to Amended Federal Habeas petition.
- d. *May 4 – Ismael Cruz v. Warden - Federal Habeas Corpus – Court Ordered Supplemental Response.
- e. *May 12 – John R. Wood – PCR Motion Hearing – Judge Mark Hayes – Death Penalty.
- f. *May 22, 2015 – State v. Ryan Deleston - Projected Initial Brief of Respondent.
- g. *May 23, 2015 – State v. Derekee Johnson - projected Initial Brief of Respondent.

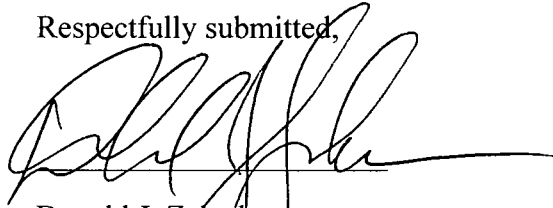
III.

Counsel has contacted the office of opposing counsel, Chief Appellate Defender Robert M. Dudek, and he consents to this request on behalf of his client.

II.

Wherefore Respondents respectfully request an extension of a period of thirty days up to and including May 22 to complete the Initial Brief of Respondent upon a showing of good cause for the request.

Respectfully submitted,



Donald J. Zelenka
Senior Assistant Deputy Attorney General
S.C. Bar #5758
Attorney for Respondent

April 20, 2015

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I concur that extraordinary circumstances have been shown.



Alan Wilson

Attorney General

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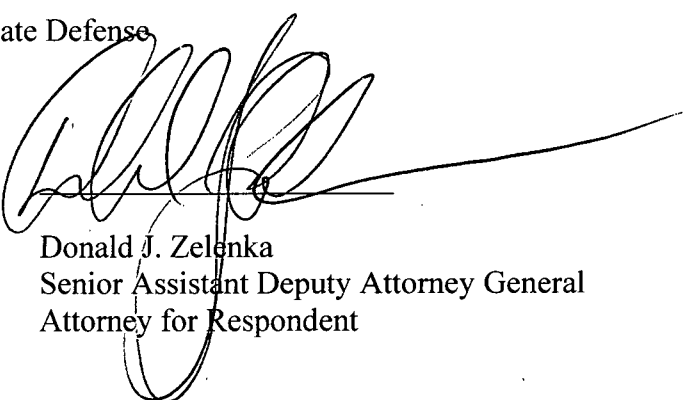
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion to extend time to file the State's Initial Brief of Respondent and Designation of Matter in the above referenced case has been served upon counsel for Appellant by depositing one copy of same in the United States Mail, postage prepaid, to each attorney, addressed as follows:

Robert M. Dudek, Esq.
Chief Appellate Defender
SCCID/Division of Appellate Defense
PO Box 11589
Columbia, SC 29211

Lara M. Caudy
Appellate Defender
SCCID/Division of Appellate Defense
PO Box 11589
Columbia, SC 29211

This 21st day of April, 2015



Donald J. Zelenka
Senior Assistant Deputy Attorney General
Attorney for Respondent



ALAN WILSON
ATTORNEY GENERAL

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APR 22 2015

SC Court of Appeals

April 21, 2015

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: The State v. Ryan P. Deleston
Appellate Case No. 2013-002224

Dear Ms. Kitchings:

Enclosed please find a Motion to Enlarge Time for filing Initial Brief of Respondent and Designation of Matter in the above-captioned matter for filing in your office. By copy of this letter, I am serving opposing counsel with same.

Sincerely,

Lonetta B. Brawley
Legal Assistant to Donald J. Zelenka
Senior Assistant Deputy Attorney General

/lbb
Enclosure

cc: Robert M. Dudek, Esquire
Lara M. Caudy, Esquire