

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Case No. 2014-002129

RECEIVED

MAY 07 2015

SC Court of Appeals

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 final motion to this Court to extend the time for filing the Initial Brief of Appellant and Designation of Matter from May 4, 2015 for a period up to and including **Tuesday May 12, 2015**. Counsel submits that extraordinary circumstances were shown based upon counsel's hospitalization on April 21, 2015 and medical leave for recovery from the heart procedure through that week with limited work through last week.

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 May 12, 2015.

1. 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 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, on April 29, counsel had filed a status report response in the federal habeas corpus action in Lentigus Floyd v. Warden per court order and on May

1, 2015 counsel filed a court ordered amended response and motion for summary judgment in the Kevin Mellette v. Warden federal habeas corpus action due May 4, 2015. Counsel anticipates filing an amended return and amended motion for summary judgment pursuant to court-ordered response on May 4, 2015 in Ismael Cruz v. Warden federal habeas corpus action.

2. On April 21, 2015, below-signed counsel is had a heart procedure at Richland Heart Hospital and was on medical leave through April 28, 2015 with limited work through May 1, 2015.

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

- a. *May 4, 2014 – State v. Marvin Brown - STATE APPEAL
- b. *May 4, 2014 – Kevin Mellette v. Warden - Federal Habeas Corpus – Court Ordered Court Order Response to Amended Federal Habeas petition.
- c. *May 4 – Ismael Cruz v. Warden - Federal Habeas Corpus – Court Ordered Supplemental Response.
- d. May 6 – Joshua Manning v. Warden - Federal Habeas Corpus – Return.
- e. May 7 – State v. Ernest Daise – Initial Brief of Respondent (2)
- f. *May 12 – John R. Wood – PCR Motion Hearing – Judge Mark Hayes – Death Penalty.
- g. May 18 – State v. Armando Chestnut – Initial Brief of Respondent
- h. May 18 – Jesse Sapp v. State – DP PCR Return
- i. May 20 – State v. Jeffrey Chronister – Initial Brief of Respondent
- j. May 20 – Curtis Pratt v. Warden - Federal Habeas Return

- k. May 20 – Landis Moragne v. Warden – Federal Habeas Return
- l. *May 22, 2015 – State v. Ryan Deleston - Projected Initial Brief of Respondent.
- m. *May 22, 2015 0 Jesse Sapp v. State – Appointment of counsel hearing – Judge Nettles – Berkeley County.
- n. *May 23, 2015 – State v. Derekee Johnson - projected Initial Brief of Respondent.
- o. May 26 - Samuel Stokes v. Warden – Federal Habeas Return
- p. May 27, 2015 – John J. Bell v. State – Return to Certiorari – SCSCt – DNA Appeal.
- q. May 27, 2015 – James Russell v. Warden – FHC Return (2)
- r. June 1 – Terry Davis v. Warden - Federal Habeas Return.

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II. PRIORITIES

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

- a. ***May 12, 2014 – State v. Marvin Brown - STATE APPEAL**
- b. *May 4, 2014 – Kevin Mellette v. Warden - Federal Habeas Corpus – Court Ordered Court Order Response to Amended Federal Habeas petition.
- c. *May 4 – Ismael Cruz v. Warden - Federal Habeas Corpus – Court Ordered Supplemental Response.
- d. *May 12 – John R. Wood – PCR Motion Hearing – Judge Mark Hayes – Death Penalty.
- e. * May 14, 2015 – State v Antonio Gordon – Final brief of Appellant

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, Appellate Defender Susan Hackett and she 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.

Handwritten initials

Respectfully submitted,



May 4, 2015

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

I concur that extraordinary circumstances have been shown.

John W. McIntosh
~~John W. McIntosh~~ John W. McIntosh

Chief Deputy Attorney General

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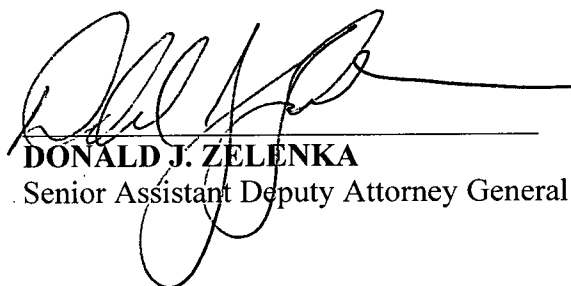
CERTIFICATE OF SERVICE

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 May, 2015.



DONALD J. ZELENA
Senior Assistant Deputy Attorney General



ALAN WILSON
ATTORNEY GENERAL

May 4, 2015

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SC Court of Appeals

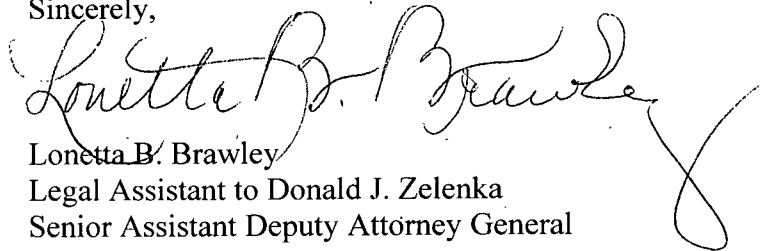
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Marvin Brown
Appellate Case No. 2014-002129

Dear Ms. Kitchings:

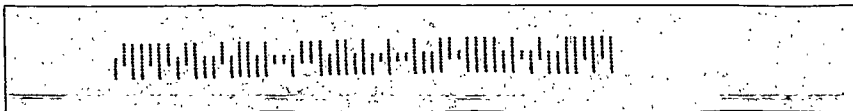
Enclosed please find the original and one (1) copy of Appellant's final Motion to Enlarge Time for filing Initial Brief of Appellant and Designation of Matter in the above-referenced matter for filing in your office. By copy of this letter, I am serving opposing counsel with same.

Sincerely,


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

/lbb
Enclosure

cc: Susan Hackett, Esquire



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SC Court of Appeals

S.C. Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

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