

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
Appeal from Charleston County
Kristi Lea Harrington, Circuit Court Judge

RECEIVED
MAY 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 FOR TWO WEEKS UNTIL JUNE 5, 2015**

By #1

The Respondent, above-named, hereby make a final motion to the Court to extend the time of filing the Initial Brief of Respondent and Designation of Matter from May 22, 2015, 2015 for two weeks until June 5, 2015. Respondent submits that extraordinary circumstances have been shown by the hospitalization and medical leave during the initial part of the period. In addition, out of state travel involving a death penalty PCR hearing de bene esse deposition this week to Raleigh, N.C., and a hearing scheduled in a death penalty PCR action today in Berkeley County (May 22, 2015) which were not scheduled at the time of the earlier request. This limited two week request is supported by the fact that no matters are currently scheduled between June 1 and June 5 which should allow for the completion of this brief.

Opposing counsel has no objection to the request. 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 worked on and not 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 Initial Brief of Respondent. 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 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; filed a court-ordered amended return and amended motion for summary judgment on May 4, 2015 in Ismael Cruz v. Warden federal habeas corpus action; and on May 6, 2015 filed a return and memorandum of law in the federal habeas matter of Joshua Manning v. Warden; on May 12 in State v. Marvin Brown - STATE APPEAL filed an Initial Brief of Appellant; on May 12,

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#2.

2015 had a hearing in John Wood v. State, a death penalty PCR action before Judge Mark Hayes concerning the state's motion to dismiss; on May 14 in State v. Antonio Gordon filed a Final Brief of Respondent; on May 14, 2015 prepared a Court-ordered response to motion for transcript in State v Prince Snipes in the South Carolina Court of Appeals for filing on May 18, 2015; **on May 17, 2015 traveled to Raleigh, N.C. for a May 18 for a de bene esse deposition in Quincy Allen v. State – DP PCR hearing**; on May 20, 2015 filed a federal habeas corpus Return and Memorandum of Law in Curtis Pratt v. Warden

3. On April 21, 2015, below-signed counsel had a heart procedure at Richland Heart Hospital and was 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. *May 22, 2015 – State v. Ryan Deleston - Projected Initial Brief of Respondent.
 - b. **May 22, 2015 – Jesse Sapp v. State – appointment hearing – Judge Nettles – Berkeley County - death penalty related PCR matter.**
 - c. *May 26, 2015 – State v. Derekee Johnson - projected Initial Brief of Respondent.
 - d. **May 26, 2015 – Stephen Beckham v. Warden - Rsply to Response for Motion for Summary Judgment**
 - e. May 26 - Samuel Stokes v. Warden – Federal Habeas Return .
 - f. May 27 – State v. John James Bell –DNA Appeal – Return to Petition for Certiorari

- g. May 27 - James Russell v. Warden – Federal Habeas Return
- h. May 28, 2015 – John Hughey v. State – Petition for Rehearing.- Supreme Court
- i. May 28, 2015 – Kamell Evans v. State – Petition for Rehearing. – Supreme Court
- j. May 28, 2015 – Jonathan Binney v. State – Petition for Rehearing – Supreme Court
- k. June 1 – Terry Davis – FHC Return.
- l. June 8 – State v. Ernest Daise – Initial Brief of Respondent
- m. June 8 – Steven Roberts – FHC Return.
- n. June 17 – State v. Armando Chestnut – Initial Brief of Respondent
- o. June 19 - Landis Moragne v. Warden – Federal Habeas Return –
- p. June 19 – State v. Jeffrey Chronister – Initial Brief of Respondent
- q. June 22, 2015 – Donald Weatherhall v. Warden - FHC Return
- r. June 26 – State v. Kevin Howard – Initial Brief of Respondent

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#4.

5. 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.

II. PRIORITIES

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

- a. * **May 22, 2015 – Jesse Sapp v. State – appointment hearing – Judge**

Nettles – Berkeley County - death penalty related PCR matter.

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#5
- b. ***May 26, 2015 – State v. Derekee Johnson - projected Initial Brief of Respondent.**
 - c. **May 26, 2015 – Stephen Beckham v. Warden - Rsply to Response for Motion for Summary Judgment**
 - d. May 28, 2015 – John Hughey v. State – Petition for Rehearing.- Supreme Court
 - e. May 28, 2015 – Kamell Evans v. State – Petition for Rehearing. – Supreme Court
 - f. May 28, 2015 – Jonathan Binney v. State – Petition for Rehearing – Supreme Court
 - g. May 27, 2015 - James Russell v. Warden – Return
 - h. ***June 4, 2015 – State v. Ryan Deleston - Projected Initial Brief of Respondent.**
 - i. ***May 23, 2015 – State v. Derekee Johnson - projected Initial Brief of Respondent.**

III.

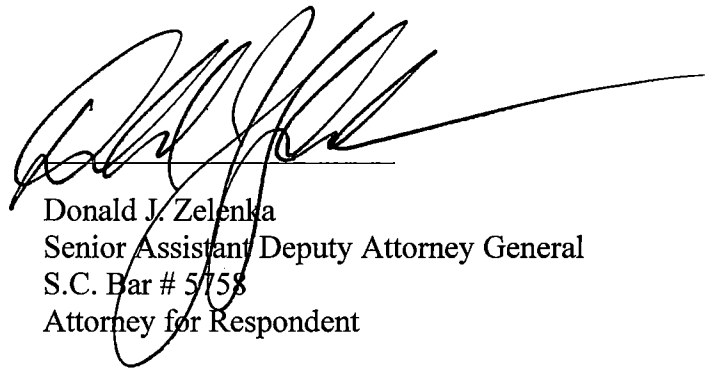
Counsel has contacted the office of opposing counsel, Appellate Defender Lara Caudy, and she consents to this request on behalf of his client.

II.

Wherefore Respondents respectfully request an extension of a period of two weeks up to and including June 5 to complete the Initial Brief of Respondent upon a showing of good cause for the request.

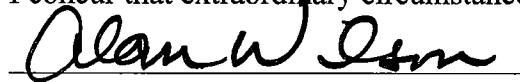
Respectfully submitted,

May 22, 2015



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

I concur that extraordinary circumstances have been shown.



Alan Wilson

Attorney General

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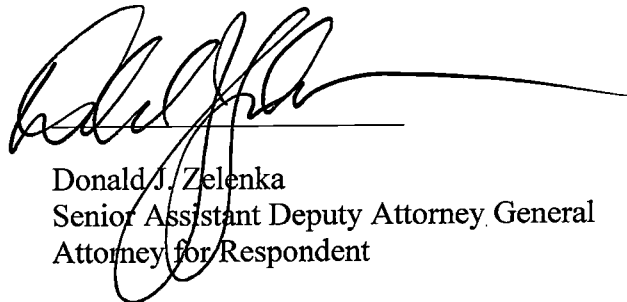
APPELLATE CASE NO. 2013-002224

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:

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

This 22nd day of May, 2015



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