

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUN 25 2015

Appeal from Lancaster County
The Honorable R. Knox McMahon, Circuit Court Judge

SC Court of Appeals

General Sessions Case No. 2013-GS-29-00758; 00760; 00759
Appellate Case No. 2014-000166

THE STATE,

Respondent,

vs.

DAVID STALK,

Appellant.

**MOTION FOR THIRD EXTENSION OF TIME TO FILE
INITIAL BRIEF OF RESPONDENT**

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

Respondent's Brief is due today, June 25, 2015, upon this Court's grant of Respondent's second request for an extension filed on May 28, 2015.

Counsel makes this request due to his involvement in other matters in both state and federal court within the past thirty days. Specifically, counsel completed and filed the Motions for Summary Judgment, Returns and Memoranda of Law in Support of Motions for Summary Judgment in: Maurice A. Kelley, #288629 vs. Ceila Reynolds, C/A

No. 1:15-620-TMC-SVH; Carmichael Trevon Flowers, #335945 vs. Lavern Cohen, C/A No. 8:15-1309-TMC-JDA; Jesse R. Lane, #345702 vs. Warden Reynolds, C/A No. 5:15-390-SB-KDW; Samuel Harmon, #328335 vs. Robert Stevenson, Warden, C/A No. 5:15-1620-HMH-KDW; Donald Scott Jones, #336980 vs. Joseph McFadden, C/A No. 4:15-1401-BHH-TER; and Russell Lee Sims, #319755 vs. Warden McFadden, CA No. 0:15-1510-BHH-PJG, 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, Returns and Memoranda of Law in Support of Motions for Summary Judgment in Eric Hemingway, #290037 vs. Warden Lieber Correctional Institution, C/A No. 4:15-367-MBS-TER; Melcelus Toland, #275858, a/k/a Melcelous Toland vs. Joseph McFadden, Warden, C/A No. 8:15-1311-PMD-JDA; and James Wilkinson, #322936 vs. Warden of Tyger River Correctional Institution, C/A No. 6:15-1877-MGL-KFM, all federal habeas actions pending in the United States District Court for the District of South Carolina.

Counsel filed Respondent's Response in Opposition to Motion to Stay Proceedings Pending Exhaustion of State Remedies [ECF #30] in the matter of Wayne D. Cooper, #331763 vs. Joseph McFadden, Warden, C/A 9:14-4500-BHH-BM; and a Status Report in the matter of Terrence Dimingo Terry, #307935 vs. Mr. Leroy Cartledge, Warden of McCormick Correctional Institution, C/A No. 6:10-02006-BHH-KFM, both federal habeas actions pending in the United States District Court for the District of South Carolina.

Counsel has also spent a substantial amount of time investigating and preparing discovery responses in Johnny Bennett vs. Bryan P. Stirling, Commissioner, South Carolina Department of Corrections; and Joseph McFadden, Warden, Lieber Correctional Institution, C/A No. 2:13-3191-RMG-MGB, a federal habeas action in a capital case now pending in the United States District Court for the District of South Carolina. The responses were ordered by the Honorable Mary Gordon Baker, United States Magistrate Judge on June 8, 2015, and the responses are due to be filed on June 29, 2015.

Counsel is also completing and filing a Petition for Rehearing in State vs. Calvin Jermaine Pompey, a State's appeal to a grant of immunity under the Protection of Persons and Property Act that is pending before this Court.

Counsel filed the Initial Brief of Respondent in the matter of State vs. Tavish Dominique Yeargin, a direct appeal in a Pickens County murder case pending before this Court. Counsel is also completing the Final Brief of Respondent in State vs. Gerald Bernard Haltiwanger, Jr., a Richland County direct appeal matter, which is currently due to be filed on Monday, June 29, 2015.

Counsel has done a substantial amount of work in preparing the Initial Brief of Respondent in this matter. However, due to counsel's involvement in these and other matters pending in state and federal court, counsel is unable to timely complete the Initial Brief of Respondent in this proceeding. Thus, counsel is requesting an extension of time in which to file the Initial Brief of Respondent in this matter. This request is made in good faith, and not for the purposes of delay.

WHEREFORE, premises considered, counsel hereby respectfully requests a thirty (30) day extension of time to serve and file the Initial Brief of Respondent.

Respectfully Submitted,

ALAN WILSON
Attorney General


JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ALPHONSO SIMON, JR.
Assistant Attorney General
Bar No. 74713

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

By: 
ALPHONSO SIMON, JR.

By: 
DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
ATTORNEYS FOR RESPONDENT

I support of the finding of good cause.

June 25, 2015.

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PROOF OF SERVICE

I, Alphonso Simon, Jr., of counsel for the Respondent, certify that I have served two (2) copies of the within motion for a third extension to file Initial Brief of Respondent via U.S. mail to his attorneys of record, Raia Jane Hirsch, Esq. 9 Sweet Bay Drive, Columbia, SC 29209, and to Robert M. Dudek, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201.

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

This 25th day of June, 2015.



ALPHONSO SIMON, JR.
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
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ALAN WILSON
ATTORNEY GENERAL

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JUN 25 2015

SC Court of Appeals

June 25, 2015

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

Re: The State v. David Stalk
Appeal from Lancaster County
Appellate Case No. 2014-000166

Dear Ms. Kitchings:

I hereby request an extension of thirty (30) days in which to file the Initial Brief of Respondent and Designation of Matter in the above-referenced case. The Initial Brief is currently due to be served and filed today, June 25, 2015. However, because of my involvement in other matters in state and federal court, I have been unable to timely complete the Initial Brief.

Therefore, I am enclosing an original and six (6) copies of a Motion for Third Extension of Time to File Initial Brief of Respondent. I have contacted opposing counsel and have obtained consent to this request.

Sincerely,

Alphonso Simon, Jr.,
Assistant Attorney General

AS/dmd
Enclosures

cc: Raia Jane Hirsch, Esq. (w/two copies of encls.)
Robert M. Dudek, Esq. (w/two copies of encls.)