

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUL 17 2015

SC Court of Appeals

Appeal from Beaufort County
Carmen Tevis Mullen, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

v.

EARNEST STEWART DAISE,

Appellant

Appellate Case No. 2013-002394

**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 August 16, 2015. The Initial Brief of Respondent in the above action is due to be filed July 17, 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 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 request, below-signed counsel filed an Initial Brief of Respondent in State v. Ryan Deleston on June 9, 2015; assisted in the preparation of a Brief of Respondent in James Robertson v. State filed on June 8, 2015; filed an opposition to summary judgment in Mellette v. Warden on June 10, 2015 in the District Court; filed a return and memorandum of law in the habeas case of Sylvester Boone v. Warden on June 15, 2015; filed a habeas return and memorandum of law in the District Court in Abraham Kelty v. Warden on June 15, 2015; and prepared for filing a return and memorandum of law in Landis Moragne v. Warden for June 19, 2015; and is filing an Initial Brief of Respondent in the Court of Appeals in State v. Derekee Johnson on June 25, 2015; filed in the death penalty federal habeas corpus action in Bayan Aleksey v. Warden a response to motion to stay of proceedings for exhaustion of state remedies on June 26, 2015; filed a court-ordered response to the federal court in Favian Hayes v. Warden on June 26, 2015; filed a return and memorandum of law in the federal habeas corpus matter of Michael Watts v. Warden on June 29, 2015; on June 30, 2009 was present at evidentiary hearing in death penalty PCR hearing in Andres Torres v. State before Judge Cole in Spartanburg, S.C.; on July 1, 2015 filed a return and memorandum of law in federal habeas matter of Terry Davis v. Warden, on July 8, 2015 filed Motion for Extraordinary Relief in the South Carolina Supreme Court in In re Favian Hayes; on July 8, 2015 filed a return and memorandum of law in the federal habeas matter of Steven Roberts v. Warden; on July 9, 2015 prepared a return for the successive post-conviction relief action in Bayan Aleksey v. State; on July 15, 2015 filed a return and memorandum of law in the federal habeas corpus action in Santiago Rios v. Warden, on July 15, 2015 reviewed petition for rehearing for filing in State v. Steven

Barnes , prepared for filing a federal habeas corpus action a return and memorandum of law in Marcus Greene v. State on July 16-17.

2. Respondent's below signed counsel's current calendar presently has the following projected matters due in the relevant time period.

- a. July 20, 2015 – Ernest Richardson v. Warden – Brief in Opposition – U. S. Supreme Court.
- b. July 20, 2015 – State v. Jeffrey Chronister – Initial Brief of Respondent (2)
- c. July 20, 2015 - State v. Armando Chestnut – Initial Brief of Respondent (2)
- d. July 22, 2015 – Donald Weatherhall v. Warden - FHC Return (1)
- e. July 27 – Samuel Stokes v. Warden – Federal Habeas Corpus Return (2)
- f. July 27 – State v. Kevin Howard – Initial Brief of Respondent (1)
- g. July 27 – State v. John James Bell –DNA Appeal – Return to Petition for Certiorari. (4).
- h. July 27, 2015 – State v. Joshua Griffith – Initial Brief of Respondent
- i. July 28, 2015- Bayan Aleksey v. State – DP PCR Hearing – Judge Early – Barnwell, SC
- j. July 29, 2015 – State v. Sally Memmert – State appeal – Initial Brief of Appellant.
- k. August 3, 2015 – John Wood v. State – Death penalty 2nd PCR – motion for summary judgment due.
- l. August 5, 2015 – State v. Ryan Deleston – Final Brief of Respondent
- m. August 5, 2015 – Berry Bolin v. Warden – FHC Return (1)
- n. August 9, 2015 – Andre Martin v. Warden - FHC Return
- o. August 9 – James Wesley Boone v. Warden – FHC Return.

- p. August 13, 2015 – State v. Shaheed Hayes – Initial Brief of Respondent
- q. August 13, 2015 – State v. Blaton Smith – Initial Brief of Respondent
- r. August 17, 2015 – State v. Ernest Daise – Initial Brief of Respondent – S.C. Court of Appeals.(projected)(4)**
- s. August 17, 2015 – Frank Tolen v. Warden - FHC Return
- t. August 17, 2015 – Marcus Greene v. Warden – FHC Return (1)
- u. August 20, 2015 – State v. Frank Singleton, III – Initial Brief of Respondent.
- v. September 4, 2015 – Kevin Walton v. Warden - FHC Return.

II. PRIORTIES

Respondent has established the following highest priorities to insure that no further requests for extensions in this matter will be required:

1. August 17, 2015 – State v. Ernest Daise – Initial Brief of Respondent – S.C. Court of Appeals.(projected)(4)
2. July 27 – State v. John James Bell –DNA Appeal – Return to Petition for Certiorari. (4).
3. July 28, 2015- Bayan Aleksey v. State – Hearing – Judge Early – Barnwell, SC – Death Penalty PCR action - preparation of Return and collateral motions.
4. July 20, 2015 – State v. Jeffrey Chronister – Initial Brief of Respondent (2).
5. August 3, 2015 – John Wood v. State – Death penalty 2nd PCR – motion for summary judgment due.
6. July 27, 2015 – Samuel Stokes v. Warden – Federal Habeas Corpus Return (2)
7. July 20, 2015 - State v. Armando Chestnut – Initial Brief of Respondent (2)
8. August 17, 2015 – Marcus Greene v. Warden – FHC Return (1).

III.

Counsel has contacted opposing counsel, Chief Appellate Defender Robert M. Dudek and A. Mattison Bogan, and have been advised by email for counsel Dudek that they consent to this request on behalf of their client.

III.

Wherefore Respondents respectfully request an extension of a period of thirty (30) days

up to and including August 16 to complete the Initial Brief of Respondent upon a showing of extraordinary circumstances for the request.

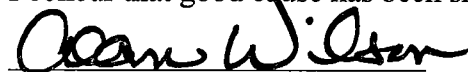
Respectfully submitted,



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

July 17, 2015

I concur that good cause has been shown.



Alan Wilson

Chief Deputy Attorney General

CERTIFICATE OF SERVICE

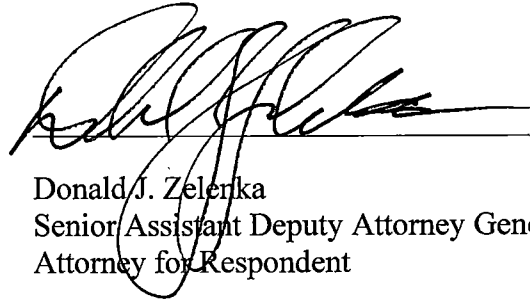
I, **Donald J. Zelenka**, hereby certify that a true copy of the Motion to extend time to file the Initial Brief of Respondent and Designation of Matter in the above referenced case has been served upon counsel for Appellant by depositing one copy of same in the United States Mail, postage prepaid, to each attorney, addressed as follows:

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

A. Mattison Bogan, Esquire
Nelson Mullins Riley & Scarborough, LLP
PO Box 11070
Columbia, SC 29211

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SC Court of Appeals

This 17th day of July, 2015.



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



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ALAN WILSON
ATTORNEY GENERAL

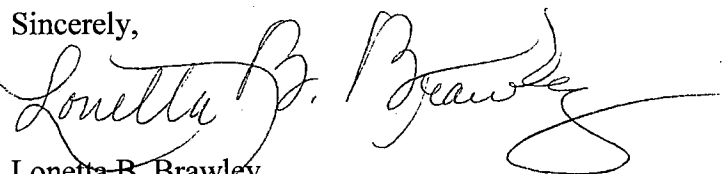
July 17, 2015

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

Re: The State v. Earnest Stewart Daise
Appellate Case No. 2013-002394

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: A. Mattison Bogan, Esquire
Robert M. Dudek, Esquire