

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

AUG 12 2015

SC Court of Appeals

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Appeal from Beaufort County  
Carmen Tevis Mullen, Circuit Court Judge

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STATE OF SOUTH CAROLINA,

Respondent,

v.

EARNEST STEWART DAISE,

Appellant

Appellate Case No. 2013-002394

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

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The Respondent, above-named, hereby make a fifth motion to the Court to extend the time of filing the Initial Brief of Respondent and Designation of Matter until September 16, 2015. The Initial Brief of Respondent in the above action is due to be filed August 17, 2015. The trial record in this case, which was tried as a death penalty case resulting in a life sentence, consists of 3185 pages and a pretrial transcript of 132 pages. The Appellant's brief raises seven (7) separate grounds. While below-signed counsel has attempted to prioritize this matter over the last month, he has been unable to complete the matter.

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

behalf of their client.

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. Since the last request, 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 and assisted in 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; filed a return and memorandum of law in the federal habeas corpus action in Donald Wetherall v. Warden on July 22, 2015, filed a federal habeas corpus return and memorandum of law in Samuel Stokes v. Warden on July 27, 2015, and filed a return to certiorari in the DNA application appeal in John James Bell v. State on July 27, 2015, and filed a Final Brief of Respondent in State v. Ryan Deleston on July 27, 2015; filed a petition for rehearing in State v. Thomas Stewart in the South Carolina Court of Appeals on July 28, 2015; attend a status and appointment hearing in the successive death penalty PCR action in Bayan Aleksey v. State before Judge Early in Barnwell, S.C.; on August 3, 2015 filed a motion for summary judgment and memorandum of law in support in death penalty PCR action in John Wood v. State before Judge Mark

Hayes; prepared a return and collateral motion for filing in death penalty PCR matter of Bayan Aleksey v. State on August 6, 2015; in Aleksey v. State, filed motion for mental retardation evaluation, motion for production of documents, and motion for first set of interrogatories on August 6, 2015, on August 10, 2015 filed a return and motion for summary judgment in the federal habeas matter James W. Boone v. Warden on August 10, 2015, filed a Response to Motion for Summary Judgment and Response to Motion for New trial in Terry Davis v. Warden federal habeas matter on August 6, 2015, and currently preparing a brief and proposed order in death penalty PCR matter of Quincy Allen v. State by August 17, 2015.

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

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- a. August 17, 2015 - Quincy Allen v. State - projected proposed order of dismissal - DP PCR
  - b. August 17, 2015 - Marcus Greene v. Warden - FHC Return (1)
  - c. August 19, 2015 - State v. Armando Chestnut (3) - IBOR
  - d. August 19, 2015 - State v. Jeffrey Chronister - IBOR (3)
  - e. August 26, 2015 - State v. Kevin Howard - IBOR - projected (2)
  - f. August 27, 2015 - State v. Joshua Griffith - Initial Brief of Respondent - (1)
  - g. September 4, 2015 - Kevin Walton v. Warden - FHC Return.
  - h. September 4, 2015 - Berry Bolin v. Warden - FHC Return -projected date (2).
  - i. September 9, 2015 - Andre Martin v. Warden - FHC Return (1)
  - j. Sept. 14, 2015 - Marshall Miller v. Warden - Federal habeas Return
  - k. September 14, 2015 - Jonell Parker - Federal Habeas Return.
  - l. September 16, 2015 - State v. Ernest Daise - Initial Brief of Respondent (IBOR) - S.C. Court of Appeals.(5) (projected)
  - m. September 17, 2015 - Frank Tolen v. Warden - FHC Return (1)

## II. PRIORITIES

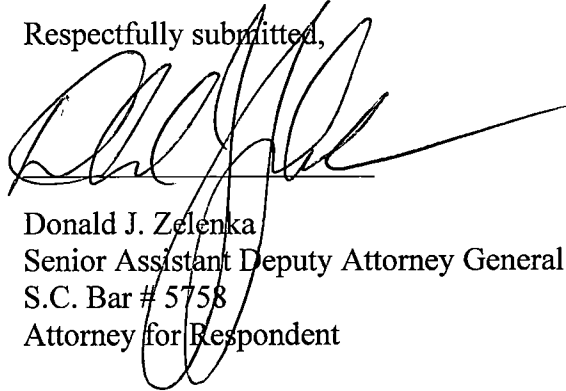
Respondent has established the following highest priorities to insure that no further requests for extensions in this matter will be required:

1. Quincy Allen v. State – Brief and Proposed Order of Dismissal Preparation – Death Penalty PCR – due by August 17, 2015 – Judge Cothran
2. September 16, 2015 – State v. Earnest Daise – Initial Brief of Respondent – S.C. Court of Appeals.(projected)(5)
3. August 19, 2015 – State v. Jeffrey Chronister – Initial Brief of Respondent (3).
4. August 19, 2015 - State v. Armando Chestnut – Initial Brief of Respondent (3)
5. August 17, 2015 – Marcus Greene v. Warden – FHC Return (2).

III.

Wherefore Respondents respectfully request an extension of a period of thirty (30) days up to and including September 15 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

August 12, 2015

I concur that extraordinary circumstances have been shown.



Alan Wilson

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:

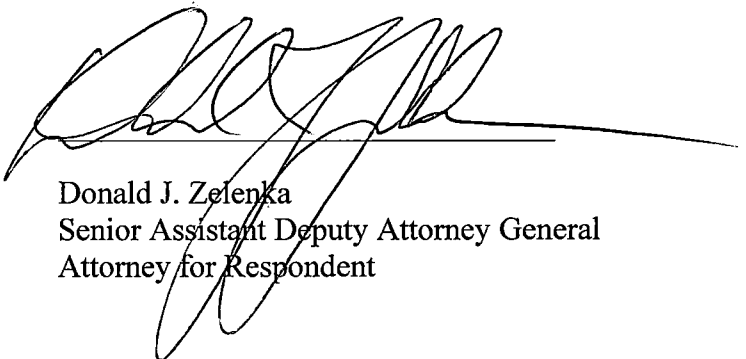
Robert M. Dudek, Esq.  
Chief Appellate Defender  
SCCID/Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211

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

This 12<sup>th</sup> day of August, 2015.

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