

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. Supreme Court

G. Edward Welmaker, Circuit Court Judge
Circuit Case No. 2010-CP-23-9792

Appellate Case No. 2013-001945

Charles Christopher Williams,

Petitioner,

v.

The State of South Carolina,

Respondent.

MOTION TO SUPPLEMENT THE APPENDIX

The undersigned prepared the appendix in the above case and now wishes to add eight (8) attached pages that are copies of email correspondence between the trial judge and the parties. On page 5 of the State's Return, the State footnotes, "The Order of Dismissal was completed without input from either party." As can be seen by the attached emails, Judge Welmaker granted certain extensions for post trial briefs and noted that June 10, 2013 would "likely be the last extension he is willing to consider." (Page 2). The undersigned delivered his post trial brief on June 10, 2013, and the State requested additional extensions which were not addressed. In a July 17 email from Judge Welmaker's law clerk, the clerk noted a draft order was attached and because the judge wanted to finalize the order before the clerkship ended, the order was likely to be filed the next week and any motions should be made promptly as the clerk did "not expect the Judge to be amenable to any extension".

The Order of Dismissal was received on July 26; the petitioner's motion to reconsider was mailed on Monday August 5, and the order denying the motion to reconsider was filed on August 9 without a hearing.

Based on Order 2009-03-18-01, Petitioner's counsel was granted a thirty (30) day extension to file his petition, and based on good cause he was granted an additional thirty (30)

day extension, and one seven (7) day extension. The State was granted seven (7) extensions to file their Return. The petitioner was granted a thirty (30) day extension to file his Reply based on Order 2009-03-18-01, and requested an additional thirty (30) days, noting in part that it was the first chance Petitioner had to see many of the arguments in the State's 168 page Return. The Court granted a fifteen (15) day extension to file the Reply.

Petitioner believes the attached emails are necessary to complete the record, especially because of the State's footnote, but also to show that Petitioner had limited time to respond to the State's 168 pages of argument, where the State made many arguments for the first time and without any reference to the PCR judge's order, particularly in the first 85 pages of the State's Return which addresses the Question in which certiorari was granted.

On behalf of petitioner, I so move.

September 14, 2015



Derek J. Enderlin
ROSS AND ENDERLIN, PA
330 East Coffee Street
Greenville, SC 29609
864-647-7205

Derek@rossenderlin.com

Attorney for: Petitioner,



Derek Enderlin <derek@rossenderlin.com>

Transcript - Williams PCR

2 messages

Derek Enderlin <derek@rossenderlin.com>

Mon, Mar 4, 2013 at 10:05 AM

To: Eddie Welmaker <gwelmakersc@sccourts.org>, "Welmaker, G. Edward Law Clerk (Sean J. Hinton)" <gwelmakerlc@sccourts.org>

Cc: Don Zelenka <agdzelenka@scag.gov>, Rick Vieth <rvieth@hbvlaw.com>

Dear Judge Welmaker:

I requested the above transcript on February 8, or two days after our last hearing. Mr. Zelenka also requested it that week. Susan, your court reporter, has indicated her typing schedule has increased dramatically and that she is expecting a grandchild very soon, and has asked me if she can have more time to deliver the transcript, but she has also indicated to me, if I am not mistaken, that she could have the transcript within a few weeks if I really need it. I feel caught in a dilemma, because I believe I need the transcript for preparation of post-trial briefs, but I do not want to burden her unnecessarily. She has suggested she hopes to deliver the transcript by April 15.

You originally ordered our briefs due by April 15. If you and Mr. Zelenka do not object to an additional thirty days to submit the brief, I can easily work with Susan's new schedule, but I will certainly follow the court's direction in that regard.

Thank you for your kind attention to this matter.

--
Derek J. Enderlin
Ross and Enderlin, PA
330 East Coffee Street
Greenville, SC 29601
864-647-7205
Fax: (888) 850-3522

Welmaker, G. Edward Law Clerk (David Brown) <gwelmakerlc@sccourts.org>

Wed, Mar 6, 2013 at 11:38 AM

To: Derek Enderlin <derek@rossenderlin.com>, Don Zelenka <agdzelenka@scag.gov>, Rick Vieth <rvieth@hbvlaw.com>

Cc: "Welmaker, G. Edward Secretary (Gale Farrier)" <gwelmakersc@sccourts.org>

Gentlemen,

Judge Welmaker would like to have the briefs by May 10. If our court reporter is unable to complete the transcript by April 15, as she has indicated, the Judge is willing to revisit this new May 10 deadline. Please let me know if you have any further concerns with this revised deadline.

Thanks,

David



Derek Enderlin <derek@rossenderlin.com>

Chris Williams Post Trial Briefs

2 messages

Derek Enderlin <derek@rossenderlin.com>

Fri, Apr 26, 2013 at 10:42 AM

To: Eddie Welmaker <gwelmakersc@sccourts.org>, "Welmaker, G. Edward Law Clerk (Sean J. Hinton)" <gwelmakerlc@sccourts.org>, Rick Vieth <rvieth@hbvlaw.com>; Don Zelenka <agdzenka@scag.gov>

Dear Judge Welmaker:

I am still making my way through the transcript and asked Don if he would have a problem with me asking for some more time to submit briefs. Don indicated he has 4 appellate briefs and 3 oral arguments set for the next 2 weeks and would not be opposed to a 30 day extension. If you are generous enough to give us a 30 day extension, I feel confident this case will still be seen as being pursued in a timely manner.

Sincerely,

—
Derek J. Enderlin
Ross and Enderlin, PA
330 East Coffee Street
Greenville, SC 29601
864-647-7205
Fax: (888) 850-3522

Welmaker, G. Edward Law Clerk (David Brown) <gwelmakerlc@sccourts.org>

Mon, Apr 29, 2013 at 4:31 PM

To: Derek Enderlin <derek@rossenderlin.com>, Rick Vieth <rvieth@hbvlaw.com>, Don Zelenka <agdzenka@scag.gov>

Cc: "Welmaker, G. Edward Secretary (Gale Farrier)" <gwelmakersc@sccourts.org>

Judge Welmaker has granted your request for an additional 30 day extension to submit briefs. Accordingly, the revised date for submitting briefs is **June 10, 2013**. Because the Judge will need some time to complete his Order in this matter after receiving your briefs, this will likely be the last extension he is willing to consider. Please let me know if you have any questions or concerns.

Best,

David Brown

Law Clerk to Judge Welmaker

From: Derek Enderlin [mailto:derek@rossenderlin.com]**Sent:** Friday, April 26, 2013 10:42 AM**To:** Welmaker, G. Edward Secretary (Gale Farrier); Welmaker, G. Edward Law Clerk (David Brown); Rick Vieth; Don Zelenka**Subject:** Chris Williams Post Trial Briefs

[Quoted text hidden]



Derek Enderlin <derek@rossenderlin.com>

**Charles C. Williams v. State - Respondent's Requested Extension to Friday
June 14, 2013**

Don Zelenka <DZelenka@scag.gov>

Sun, Jun 9, 2013 at 5:42 PM

To: "Welmaker, G. Edward Law Clerk (Sean J. Hinton) (gwelmakerlc@sccourts.org)" <gwelmakerlc@sccourts.org>, "gwelmakerj@sccourts.org" <gwelmakerj@sccourts.org>

Cc: "derek@rossenderlin.com" <derek@rossenderlin.com>, "rvieth@hbvlaw.com" <rvieth@hbvlaw.com>, Al Simon <asimon@scag.gov>

Judge Welmaker –

This is to request an extension from Monday June 10 to Friday June 14, 2013 to provide you and opposing counsel our post-hearing brief in the Charles Williams state PCR matter pending before you. I was unexpectedly involved in some unexpected internal matters this past week which removed my ability to complete this matter before the end of the business Monday. I should have addressed this with you before Friday, but hoped my efficiency would have improved.

I communicated with opposing counsel Derek Enderlin and Rick Vieth by email and Mr. Enderlin kindly did not oppose it yesterday and I just received a similar email from Mr. Vieth expressing a similar position.

In making the request, I advised opposing counsel that I had no objection to providing whatever materials they may desire to you without service upon me until after they are in receipt of my material, since it is likely there will be an anticipated need to respond to each others memorandum.

As a follow-up, there was an indication at the close of the arguments that there may be some fact-finding by the court in advance after you received the transcript concerning matters of disclosure concerning drinking and FAS with mitigation investigator Vogelsang, counsel, some of the experts and family members. TR.p. 840-841. Compare, 805-806, 809-810, (Vogelsang), 807-808, (Richards); 819-820 (family members credibility). I am addressing these concepts in the alternative concern the representations made by Ms. Vogelsang to counsel, and Mr. Mauldin' endorsement of her credibility in the case. (Tr.p. 153 – 154) (trust whatever Jan says in this case").

Again, I regret the need to ask for this brief delay, but feel that I must. If you have any questions, please advise.

Sincerely,

Don Zelenka



Derek Enderlin <derek@rossenderlin.com>

Brief

2 messages

Derek Enderlin <derek@rossenderlin.com>

Mon, Jun 10, 2013 at 2:11 PM

To: Don Zelenka <agdzenka@scag.gov>, Rick Vieth <rvieth@hbvlaw.com>

Don: I have to pick up my kids at summer camp at 3:30 and because we have not heard back from Judge Welmaker, I am going to drop off my brief at his office with a letter that says the following:

Based on Mr. Zelenka's request to file his documents on Friday, I am forwarding you my brief but I have not filed it with the Clerk of Court. I will file it Friday unless I hear differently from you. If there are no objections, I may continue to proof read it, but the substance should not change unless you have further directives.

--
Derek J. Enderlin
Ross and Enderlin, PA
330 East Coffee Street
Greenville, SC 29601
864-647-7205
Fax: (888) 850-3522

Don Zelenka <DZelenka@scag.gov>

Mon, Jun 10, 2013 at 2:36 PM

To: Derek Enderlin <derek@rossenderlin.com>

Thank you.

Don

From: Derek Enderlin [mailto:derek@rossenderlin.com]

Sent: Monday, June 10, 2013 2:11 PM

To: Don Zelenka; Rick Vieth

Subject: Brief

[Quoted text hidden]



Derek Enderlin <derek@rossenderlin.com>

**Charles C. Williams v. State - Respondent's Requested Extension to Friday
June 14, 2013**

Don Zelenka <DZelenka@scag.gov>

Fri, Jun 14, 2013 at 3:44 PM

To: "Welmaker, G. Edward Law Clerk (Sean J. Hinton) (gwelmakerlc@sccourts.org)" <gwelmakerlc@sccourts.org>, "gwelmakerj@sccourts.org" <gwelmakerj@sccourts.org>

Cc: "derek@rossenderlin.com" <derek@rossenderlin.com>, "vieth@hbvlaw.com" <vieth@hbvlaw.com>, Al Simon <asimon@scag.gov>

Judge Welmaker –

I am still working on Respondent's Post-Hearing Memorandum in the Williams matter. Despite my efforts in working through last weekend and the evenings this week, it has not been completed. Unfortunately, it will not be mailed before midnight tonight and I expect to be working on it through this weekend and hopefully mailed on Monday. I regret this delay, but this project, in anticipation of argument to be made by Applicant is taking longer than expected. My apologies to the Court and opposing counsel.

Sincerely,

Don Zelenka

Donald J. Zelenka

Senior Assistant Deputy Attorney General

South Carolina Attorney General's Office

PO. O. Box 11549

Columbia, S.C. 29211

803-734-3601

dzelenka@scag.gov

From: Don Zelenka**Sent:** Sunday, June 09, 2013 5:42 PM



Derek Enderlin <derek@rossenderlin.com>

Draft Order Williams PCR

Welmaker, G. Edward Law Clerk (David Brown) <gwelmakerlc@sccourts.org> Wed, Jul 17, 2013 at 10:54 AM
To: "Gmail (derek@rossenderlin.com)" <derek@rossenderlin.com>, "Rick Vieth (rvieth@hbvlaw.com)" <rvieth@hbvlaw.com>, "agdzelenka@scag.gov" <agdzelenka@scag.gov>

Gentlemen,

Judge Welmaker is working on finalizing his order in the Williams case. Attached to this email is a draft of the order. He may tweak some portions of this draft order.

We would like to finalize the order before my clerkship with the Judge is over at the beginning of August. Accordingly, I anticipate the Judge will file his final order early next week, after which any motions should be promptly made pursuant to the relevant rules of court. I do not expect the Judge to be amenable to any extensions, so I wanted to provide you all with a draft copy in advance, in case you wanted to start reviewing it.

Please let me know if you have any questions.

Best,

David Brown

Law Clerk for The Honorable G. Edward Welmaker

Post Office Box 899

Pickens, SC 29671

OFFICE: (864) 898-5790

FAX: (864) 898-5792

DRAFT Williams PCR Order.pdf
304K



Derek Enderlin <derek@rossenderlin.com>

Draft Order Williams PCR

Don Zelenka <DZelenka@scag.gov>

Wed, Jul 17, 2013 at 11:16 AM

To: "Welmaker, G. Edward Law Clerk (David Brown)" <gwelmakerlc@sccourts.org>, "Gmail (derek@rossenderlin.com)" <derek@rossenderlin.com>, "Rick Vieth (rvieth@hbvlaw.com)" <rvieth@hbvlaw.com>

To all –

I am still finalizing my Post-Hearing Memo which is well over 100 pages. I will use this draft order to shorten the matters. My apology for the delay, but this aids in the manner that Judge is addressing the issues.

Don Zelenka

From: Welmaker, G. Edward Law Clerk (David Brown) [mailto:gwelmakerlc@sccourts.org]**Sent:** Wednesday, July 17, 2013 10:54 AM**To:** Gmail (derek@rossenderlin.com); Rick Vieth (rvieth@hbvlaw.com); Don Zelenka**Subject:** Draft Order Williams PCR

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Derek Enderlin <derek@rossenderlin.com>

Order in Williams PCR

Welmaker, G. Edward Law Clerk (David Brown) <gwelmakerlc@sccourts.org> Thu, Jul 25, 2013 at 10:40 AM
To: "Gmail (derek@rossenderlin.com)" <derek@rossenderlin.com>, "agdzelenka@scag.gov"
<agdzelenka@scag.gov>, "Rick Vieth (rvieth@hbvlaw.com)" <rvieth@hbvlaw.com>

Judge Welmaker has finalized his Order for the Christopher Williams PCR. The Order has been filed with the clerk's office and a copy was mailed to you all. I have attached a copy of the final Order to this email. The only significant change from the prior draft is the addition of Footnote 11 on page 37, although other minor changes were made throughout the document. Please let me know if you have any questions or concerns.

Best,

David Brown


Law Clerk for The Honorable G. Edward Welmaker

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 **Williams PCR Order ~ Final.pdf**
309K