

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Court of Common Pleas Case No. 2011-CP-26-3907
(Capital PCR Action)
Appellate Case No. 2014-000904

RECEIVED

SEP 23 2015

LOUIS MICHAEL WINKLER, JR.,

S.C. Supreme Court

Respondent.

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

PETITION FOR SECOND EXTENSION OF TIME TO FILE
BRIEF OF PETITIONER AND APPENDIX

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

Petitioner's Brief is due today, September 23, 2015, upon this Court's grant of Petitioner's first request for an extension filed on August 25, 2015. Counsel for Petitioner has obtained the consent of Respondent's counsel to this extension request.

Counsel makes this request because he has been unable to complete the Brief of Petitioner in this matter due to his involvement in other matters in both state and federal court in the past thirty days. The undersigned attorney for the Respondent has had a number of state and federal matters to attend since August 24, 2015. Specifically, Specifically, counsel completed and filed the Motions for Summary Judgment, Returns, and Memoranda of Law in Support of Motions for Summary Judgment in James Wilkinson, #322936 v. Warden of Tyger River Correctional Institution, C/A No. 6:15-1877-MGL-KFM; and Isaiah F. Walker v. Warden Reynolds, C/A No. 2:15-02174-SB-MGB; both federal habeas actions pending in the United States District Court for the District of South Carolina. Counsel also filed Respondent's Response in Opposition to Motion for Appointment of Counsel [Docket Entry #37] in the matter of Carmichael Trevon Flowers, #335945 vs. Lavern Cohen, C/A No. 8:15-1309-TMC-JDA; a Reply to Response in Opposition to Motion for Summary Judgment in the matter of Melcelus Toland, #275858 a/k/a Melcelous Toland vs. Joseph McFadden, Warden, C/A No. 8:15-1311-PMD-JDA; a Response in Opposition to Petitioner's Second Motion to Stay Proceedings Pending Exhaustion of State Remedies, and a Reply to Petitioner's Objection to Report and Recommendation in the matter of Wayne D. Cooper vs. Joseph McFadden, Warden, C/A No. 9:14-4500-BHH-BM; and a Reply to Response in Opposition to Motion for Summary Judgment in the matter of Ikeef Brailsford, #264172 vs. Warden Willie Eagleton, Evans, CI, C/A No.: 6:15-1800-GRA-KFM, all federal habeas actions pending in the United States District Court for the District of South Carolina.

Counsel has also done a significant amount of work in reviewing the files and preparing the Returns and Memoranda of Law in Support of Motions for Summary Judgment in Chas Lamous Smith vs. Bryan P. Stirling, Dir. SC Dept. of Corrections, Cecilia Reynolds, Warden, Lee Correctional Institution, and State of South Carolina, C/A No.: 2:15-2533-HMH-MGB; Jeremy R. Phillips vs. Warden Bernard McKie, C/A No. 5:15-02458-HMH-KDW; Princeton Thrower, #300701 v. Robert Stevenson, C/A No. 0:15-1955-JMC-PJG; and Terrance V. Smith, #292962 vs. Warden Cecilia Reynolds, C/A No. 1:15-2996-DCN-SVH; all federal habeas actions pending in the United States District Court for the District of South Carolina. Counsel has also done a significant amount of work in reviewing the files and preparing the Return to the Amended Petition and Respondent's Reply to Petitioner's Motion to Lift Stay per Order [Doc. #140] 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, another federal habeas action pending in the United States District Court for the District of South Carolina.

Counsel drafted and filed the Initial Reply Brief and the Record on Appeal in State v. Whitlee Jones, a State's appeal to the grant of immunity under the Protection of Persons and Property Act currently pending before this court. Counsel also filed the Brief of Respondent in State v. Tawanda Allen, a direct appeal in a Williamsburg County murder case in which certiorari was granted by this court.

Counsel engaged in additional investigation and filed a Second Supplement to Response to Requests for Production of Documents, as per [Docket Entry #78], in Johnny O'Landis Bennett, Jr. vs. Bryan P. Stirling, Commissioner, South Carolina

Department of Corrections, Joseph McFadden, Warden of Lieber Correctional Institution, C/A No. 2:13-03191-RMG-MGB on September 11, 2015, another federal habeas action in a Lexington County capital case now pending in the United States District Court for the District of South Carolina.

Counsel was also out of the office on leave for personal reasons from August 27, 2015 to September 8, 2015.

Due to counsel's involvement in these and other matters pending in state and federal court, counsel is unable to timely complete the Brief of Petitioner in this proceeding. Thus, counsel is requesting an extension of time in which to file the Brief of Petitioner and additional copies of the Appendix 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 Brief of Petitioner and additional copies of the Appendix.

Respectfully Submitted,

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By: 

ALPHONSO SIMON, JR.
ATTORNEYS FOR PETITIONER

September 23, 2015.

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PROOF OF SERVICE

I, Alphonso Simon, Jr., of counsel for the Petitioner, certify that I have served two (2) copies of the within Petition for a second extension of time to file Brief of Petitioner and additional copies of the Appendix via U.S. mail to his attorneys of record, Emily C. Paavola, Esq., Death Penalty Resource and Defense Center, 900 Elmwood Avenue, Ste. #200, Columbia, South Carolina 29201, and to John R. Mills, Esq., 836 Harrison Street, San Francisco, CA 94107.

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

This 23rd day of September, 2015.



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