

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Beaufort County  
Carmen Tevis Mullen, Circuit Court Judge

---

RECEIVED  
SEP 16 2015  
SC Court of Appeals

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

---

BS  
#1

The Respondent, above-named, hereby make a sixth motion to the Court to extend the time of filing the Initial Brief of Respondent and Designation of Matter until October 16, 2015. The Initial Brief of Respondent in the above action is due to be filed September 16, 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, below-signed counsel:
  - a. filed a court ordered response in the Court of Appeals in Alfonso Ware v. State on Aug. 14, 2015,
  - b. filed a brief and return and motion for summary judgment in the federal habeas matter of Marcus Greene v. Warden on August 17, 2015;
  - c. filed a motion and proposed order in death penalty PCR matter of Quincy Allen v. State on August 17, 2015;
  - d. attended a South Carolina Common pleas Docket Management meeting on August 18;
  - e. filed an Initial Brief of Respondent in the Court of Appeals in State v. Jeffrey Chronister on August 19, 2015;
  - f. filed an Initial Brief of Respondent in State v. Kevin Howard in the Court of Appeals on August 26, 2015; on September 4, 2015 made a response to a federal habeas matter in Favian Hayes v. Warden,
  - g. on September 4, 2015 filed a 93 page Return and motion for summary judgment in Berry Bolin v. Warden,
  - h. on September 4, 2015 filed a return and motion for summary judgment in the federal habeas corpus matter of Xavier Perry v. Warden,
  - i. on September 8, 2015 counsel filed a response to a motion to stay in the death penalty matter of Bayan Aleksey v. State before the state court; and a Return and motion for summary judgment in the federal habeas corpus matter of Christopher Ashe v. Warden;
  - j. on September 15, 2015 attended a motion hearing in Bayan Aleksey v. State before Judge Early in Barnwell, S.C. on the state's motion to dismiss the application, opposition to motion to stay and state motion for a mental

retardation - intellectual disability evaluation;

- k. on September 16, 2015 prepared for filing a return and motion in the federal habeas corpus matter of Andre Martin v. State; and
- l. worked on Initial Brief of Respondent in State v. Armando Chestnut for filing Friday September 18, 2015.

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

- a. September 17, 2015 – Frank Tolan v. Warden - FHC Return (1)
- b. September 18, 2015 – State v. Armando Chestnut (4) - IBOR
- c. September 21, 2015 – State v Thomas Stewart - PCR Cert Petition in SCSCt.
- d. September 21, 2015 – Ron Finklea v. State – DP PCR Status Hearing – Lexington - Judge Keesley.
- e. Sept. 24, 2015 – State v. Quanell McIlvain - IBOR –
- f. September 25, 2015 – Raymond McCarter v. Warden – FHC Return.
- g. September 28, 2015 – State v. Joseph Griffith – IBOR (2).
- h. September 28, 2015 – State v. Calvert Myers – IBOR
- i. October 1, 2015 – State v Derekee Johnson - FBOR
- j. October 2, 2015 – Terrence Goodman v. Warden - FHC return
- k. October 5, 2015 – Kevin Walton v. Warden - FHC Return.
- l. October 5-9, 2015 – Donald Jones v. State – DP PCR Hearing – Judge Burch
- m. October 5-9, 2015 – Mar-Reece Hughes v. State – DP PCR Hearing – Judge Burch
- n. October 8, 2015 – James Robertson v. State – Oral Argument – SCSCt.
- o. October 9, 2015 – Andre Martin v. Warden - FHC Return (1)
- p. October 13, 2015 – State v. Demetriss Glenn – oral argument- SC Court of Appeals.
- q. October 13, 2015 – Matthew Jameson v. State - FHC Return
- r. October 14, 2015 – Marshall Miller v. Warden - Federal habeas Return (1)
- s. October 14, 2015 – Jonell Parker v. Warden – Federal Habeas Return (1).
- t. October 15, 2015 – State v Sandy Westmoreland - IBOR
- u. October 16, 2015 – State v. Ernest Daise – Initial Brief of Respondent (IBOR) – S.C. Court of Appeals.(5) (projected).
- v. October 22, 2015 – Jernell Robinson v. Warden - FHC Return.
- w. October 23, 2015 – State v. Robert Kronsberg - IBOR
- x. October 26, 2015 – Otis Compton v. Warden - FHC Return
- y. November 4, 2015 – John Hughey v. SC – US Supreme Court Certiorari Due.
- z. November 4, 2015 – Kamel Evans v. SC – US Supreme Court – Certiorari Due.
- aa. November 4, 2015 – Jonathan Binney v. SC – US Supreme Court – certiorari due.

## II. PRIORITIES

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

1. **State v. Earnest Daise – Initial Brief of Respondent – S.C. Court of Appeals.(projected)(6) - October 16, 2015.**
2. State v. Armando Chestnut – Initial Brief of Respondent (4) -September 18, 2015
3. **State v. Thomas Stewart – Certiorari Petition – SCSCT – Sept. 21, 2015.**
4. State v. Joshua Griffith – IBOR (2).
5. DP PCR HEARINGS Before Judge Burch – October 5-9, 2015 – Donald Jones v. State ; Mar-Reece Hughes v. State.
6. State v. Demetriss Glenn - Oral Argument – October 13, 2015.

## III.

Wherefore Respondents respectfully request an extension of a period of thirty (30) days up to and including October 15, 2015 to complete the Initial Brief of Respondent upon a showing of extraordinary circumstances for the request.

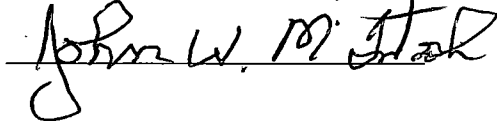
Respectfully submitted,



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

September 16, 2015

I concur that extraordinary circumstances have been shown.



John W. McIntosh

Chief Deputy Attorney General

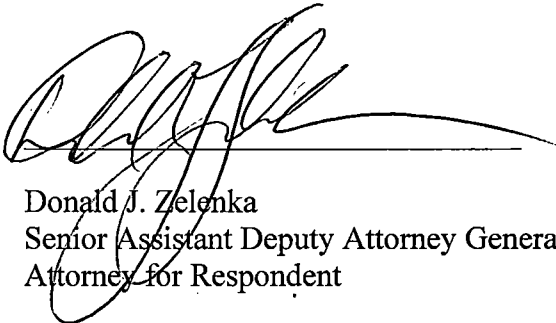
**CERTIFICATE OF SERVICE**

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

This 16<sup>th</sup> day of September, 2015.



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

**RECEIVED**  
SEP 16 2015  
SC Court of Appeals



ALAN WILSON  
ATTORNEY GENERAL

September 16, 2015

RECEIVED  
SEP 16 2015  
SC Court of Appeals

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,

Melissa Vail  
Legal Assistant to Donald J. Zelenka  
Senior Assistant Deputy Attorney General

DJZ  
Enclosure

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