

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas (PCR)
The Honorable Doyet A. Early, III, Circuit Court Judge

C/A No.: 2005-CP-18-1368
(Capital PCR Action)
Appellate Case No. 2014-000387

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DEC 23 2015

S.C. Supreme Court

Kenneth Simmons, #5066,.....Respondent/ Petitioner

vs.

State of South Carolina,.....Petitioner/Respondent.

**MOTION FOR SECOND EXTENSION OF TIME
TO FILE BRIEF OF RESPONDENT**

Respondent, the State, moves this Court for an additional thirty (30) day extension of time in which to file the Brief of Respondent. This is Respondent's second request for an extension of time in which to file the brief. In support of the request, undersigned counsel would respectfully show the Court:

1. Undersigned counsel for Respondent completed the following work within the past thirty (30) days: prepared and filed a return and memoranda of law in support of motion for summary judgment in another federal habeas action (*Wilbur Moses (amended petition)*) and aided in the preparation of, and reviewed for filing, two returns and memoranda in other federal habeas actions (*Elizabeth Tillman; Anthony Odom*); prepared and filed a notice of filing of additional state court records in a capital case also in federal habeas (*Stephen Corey Bryant*); prepared and filed a brief in opposition in the Supreme Court of the United States in another non-capital murder direct appeal (*Christopher Whitehead*); and, prepared for an evidentiary hearing

that began December 7, 2015 (previously scheduled to begin October 19, 2015) in another capital case in post-conviction relief (*William Dickerson*). Further, counsel had just completed and filed on November 18, 2015, a one-hundred and eighteen (118) page initial brief of respondent addressing seven (7) issues including issues arising from the state's process on determining intellectual disability and consideration of appellant's evidence of same in a capital case on direct appeal in this Court, along with preparation and filing of a redacted version of the brief and designation for the public record pursuant to court order (*Ricky Blackwell*). Further still, counsel is currently working on a petition for writ of certiorari in another capital case to be filed in the Supreme Court of the United States on or before January 3, 2016, the State having requested and received one prior extension (*Kamell Evans*). Undersigned counsel is also aiding in the preparation of two other petitions in companion cases to the referenced *Evans* case also to be filed in the Supreme Court of the United States on or before January 3, 2016, and similarly on extension.

2. Additionally, undersigned counsel experienced major health problems the week of November 30th which required a multi-day hospital admission and extensive testing. Counsel has been on a reduced work schedule during recovery.

3. Due to her case load, and health issues, undersigned counsel for Respondent has not been able, in a timely fashion, to complete the return.

4. This is the second request for an extension of time in which to file a response. However, the request is not made for simple delay, but due to the circumstances as outlined above.

WHEREFORE, undersigned counsel for Respondent respectfully requests an additional extension of thirty (30) days to complete the Brief of Respondent.

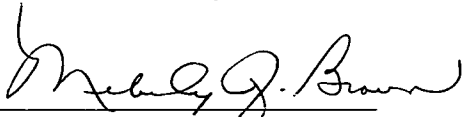
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
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BY: 
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December 23, 2015.
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT

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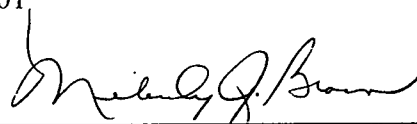
PROOF OF SERVICE

I, Melody J. Brown, certify that I have served Respondent's Motion for a Second Extension of Time on opposing counsel, by depositing one copy of same in the United States mail, postage prepaid, addressed as follows:

James Morton, Esquire
Morton & Gettys, LLP
P.O. Box 707
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Emily C. Paavola, Esquire
Death Penalty Resource & Defense Center
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This 23rd day of December, 2015.



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