

The Supreme Court of South Carolina

Bradley J. Ishman,

Respondent,

v.

State of South Carolina,

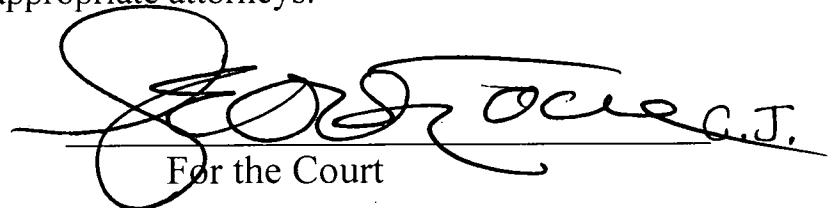
Petitioner.

The Honorable Alexander S. Macaulay
Anderson County
Trial Court Case No. 2008-CP-04-00104

ORDER

Petitioner seeks an extension until April 25, 2012 (one-week ext) to serve and file the Brief of Respondent, and asserts that extraordinary circumstances justify this extension. The opposing party consents to the extension. The request for an extension is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extensions will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

 C.J.
For the Court

Columbia, South Carolina

April 20, 2012

cc: Assistant Attorney General Kaelon E. May
Appellate Defender Kathrine H. Hudgins

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

Appeal from Anderson County
Alexander S. Macaulay, Circuit Court Judge

RECEIVED

APR 18 2012

S.C. Supreme Court

BRADLEY ISHMAN,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

(4)

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE BRIEF OF RESPONDENT

Counsel for Bradley Ishman petitions the Court for a **final one week extension, until April 25, 2012** in which to file the brief of respondent in this case. In support of this petition, counsel shows:

1. The brief of respondent is due to be filed with the Court today.
2. Counsel for Mr. Ishman respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.
3. Counsel filed the petition for writ of certiorari and accompanying appendix in Dominic Derricotte v. State on April 5, 2012 and the petition for rehearing in Rodney Murray v. State. Counsel had an oral argument in the South Carolina Court of Appeals in Antonio Bordeaux v. State on March 27, 2012. Counsel filed the brief of petitioner in State v. Mark Baker on March 26, 2012. Counsel had an oral argument before the Supreme Court in Wendell Williams v. State on March 13, 2012. Counsel filed petitions for rehearing in Joseph Walker v. State and State v. Mike Salley on March 8, 2012. Counsel filed the initial brief of appellant and designation of matter in State v. Marion Stewart on March 5, 2012.

Counsel filed the initial brief of appellant and designation of matter in State v. Marion Stewart on March 5, 2012.

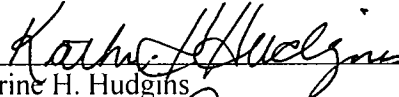
4. Counsel has not had time to complete the brief of respondent in this case. As a result, counsel respectfully asks this Court for a **final one week extension, until April 25, 2012** in which to file the brief of respondent. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

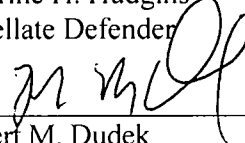
5. As indicated by signature below, Kaelon E. May, of the South Carolina Attorney General's Office, does not oppose this request.

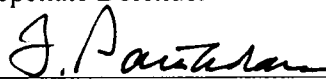
6. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully requests a **final one week extension, until April 25, 2012**, in which to file the brief of respondent in this case based upon the above circumstances.

Respectfully submitted,

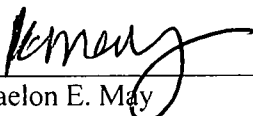

Kathrine H. Hudgins
Appellate Defender


Robert M. Dudek
Chief Appellate Defender


T. Patton Adams
Executive Director
J. Hugh Ryan, III
General Counsel

April 18, 2012

I do not oppose:


Kaelon E. May

The Supreme Court of South Carolina

Bradley J. Ishman, Respondent,

v.

State of South Carolina, Petitioner.

The Honorable Alexander S. Macaulay
Anderson County
Trial Court Case No. 2008-CP-04-00104

ORDER

For good cause shown, the request for an extension until April 18, 2012 to serve and file the Brief of Respondent in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY


Clerk

Columbia, South Carolina

March 20, 2012

cc: Assistant Attorney General Kaelon E. May
Appellate Defender Kathrine H. Hudgins

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Appeal from Anderson County

RECEIVED

Alexander S. Macaulay, Circuit Court Judge

MAR 19 2012

S.C. Supreme Court

BRADLEY ISHMAN,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE BRIEF OF RESPONDENT

(3)

Counsel for Bradley Ishman petitions the Court for a **final thirty day extension, until April 18, 2012** in which to file the brief of ~~petitioner and additional copies of the appendix~~ *respondent* in this case. In support of this petition, counsel shows:

1. The brief of respondent is due to be filed with the Court today.
2. Counsel for Mr. Ishman respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.
3. Counsel had an oral argument in the Supreme Court in Wendell Williams v. State on March 13, 2012. Counsel filed petitions for rehearing in Joseph Walker v. State and State v. Mike Salley on March 8, 2012. Counsel filed the initial brief of appellant and designation of matter in State v. Marion Stewart on March 5, 2012. On February 23, 2012, counsel filed the initial brief of appellant and designation of matter in State v. Gregory Velez. The brief of petitioner in State v. Mack Green was filed on February 20, 2012. Counsel filed the initial brief of appellant and designation of matter in State v. Lorenzo Inman on February 17, 2012. The petition for writ of certiorari and accompanying appendix

was filed in Todd Sowell v. State on February 10, 2012. The petitions for rehearing were filed in State v. Norman Mitchell and State v. Robert Phipps on February 9, 2012. The brief of petitioner was filed in Clarence Gibbs v. State on February 8, 2012. Counsel filed the initial brief of appellant and designation of matter in State v. Robert Mackey on February 6, 2012. The initial brief of appellant and designation of matter were filed in State v. Supreme Ackbar on February 3, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in Michael Murray v. State on February 2, 2012.

4. Counsel has not had time to complete the brief of respondent in this case. As a result, counsel respectfully asks this Court for a **final thirty day extension, until April 18, 2012** in which to the brief of respondent. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

5. As indicated by signature below, Kaelon E. May, of the South Carolina Attorney General's Office, does not oppose this request.

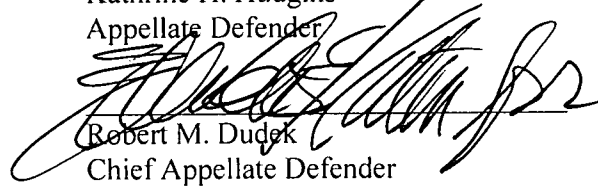
6. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully requests a **final thirty day extension, until April 18, 2012**, in which to file the brief of respondent in this case based upon the above circumstances.

Respectfully submitted,



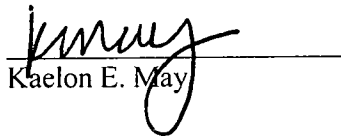
Kathrine H. Hudgins
Appellate Defender



Robert M. Dudek
Chief Appellate Defender

March 19, 2012

I do not oppose:



Kaelon E. May

The Supreme Court of South Carolina

Bradley J. Ishman,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable Alexander S. Macaulay
Anderson County
Trial Court Case No. 2008-CP-04-00104

ORDER

For good cause shown, the request for an extension until March 19, 2012 to serve and file the Brief of Respondent is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Dwenda J. Shady*
Clerk

Columbia, South Carolina *Chief Deputy*

February 21, 2012

cc: Assistant Attorney General Kaelon E. May
Appellate Defender Kathrine H. Hudgins

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Appeal from Anderson County

RECEIVED

Alexander S. Macaulay, Circuit Court Judge

FEB 17 2012

S.C. Supreme Court

BRADLEY ISHMAN,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER

(2)

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE BRIEF OF RESPONDENT

Counsel for Bradley Ishman petitions the Court for a thirty day extension in which to file the brief of petitioner and additional copies of the appendix in this case. In support of this petition, counsel shows:

1. The brief of respondent is due to be filed with the Court today.
2. Counsel for Mr. Ishman respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.
3. Counsel filed the petition for writ of certiorari and accompanying appendix in Kenneth Whitmore v. State on February 16, 2012. Counsel filed the petition for writ of certiorari and the accompanying appendix in Todd Sowell v. State on February 10, 2012. Counsel filed petitions for rehearing in State v. Robert Phipps and State v. Norman Mitchell on February 9, 2012. Counsel filed the brief of petitioner in Clarence Gibbs v. State on February 8, 2012. Counsel filed the initial brief of appellant and designation of matter in State v. Rodney Mackey on February 6, 2012. Counsel filed the initial brief of appellant and designation of matter in State v. Supreme Ackbar on February 2, 2012. Counsel filed the petition for writ of certiorari and accompanying appendix in Michael Murray v. State on February 1,

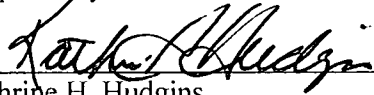
2012. Counsel filed the initial brief of appellant and designation of matter in State v. Joseph Kelly State v. Joseph Kelly on January 27, 2012. Counsel filed the return to petition for writ of certiorari in Michael Witcher v. State on Counsel filed the initial brief of appellant and designation of matter in State v. David Chavez on January 20, 2012. Counsel filed the initial brief of appellant and designation of matter in State v. Lorenzo Inman and the return to petition for writ of certiorari for Shanna Kranchick v. State on January 17, 2012. Counsel filed the initial brief of appellant and designation of matter in State v. Craig Keeling on January 9, 2012. Counsel filed the petition for rehearing in Lorenzo R. Nicholson v. State on January 5, 2011.

4. Counsel has not had time to complete the brief of respondent in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to the brief of respondent. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

5. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully requests a thirty day extension, in which to file the brief of respondent in this case based upon the above circumstances.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

February 17, 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

BRADLEY ISHMAN,

RESPONDENT,


V.

STATE OF SOUTH CAROLINA,

PETITIONER

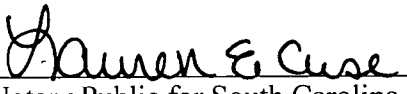
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the petition for extension of time in which to file the brief of petitioner and additional copies of the appendix in the above referenced case has been served upon Kaelon E. May, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 17th day of February, 2012.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me
this 17th day of February, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

The Supreme Court of South Carolina

Bradley J. Ishman, Respondent,

v.

State of South Carolina, Petitioner.

The Honorable Alexander S. Macaulay
Anderson County
Trial Court Case No. 2008-CP-04-00104

ORDER

The request for an extension until February 17, 2012 to serve and file the Brief of Respondent is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

January 19, 2012

cc: Assistant Attorney General Kaelon E. May
Appellate Defender Kathrine H. Hudgins



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 18, 2012

RECEIVED

JAN 18 2012

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

S.C. Supreme Court

Re: Bradley Ishman v. The State

Dear Mr. Shearouse:

The brief of respondent is due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting a thirty day extension in which to serve and file the petition.

By copy of this letter, I am informing Kaelon E. May, Esquire, of the Attorney General's Office, of my request.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/lec

cc: Kaelon E. May, Esquire



ALAN WILSON
ATTORNEY GENERAL

December 19, 2011

RECEIVED

DEC 19 2011

S.C. Supreme Court

Kathrine H. Hudgins, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211

Re: Bradley Ishman v. State of South Carolina
2008-CP-04-104

Dear Ms. Hudgins:

Enclosed please find two (2) copies of the Brief of Petitioner along with proof of service in the above-referenced case.

Sincerely,

Kaelon E. May
Assistant Attorney General

KEM/ab
Enclosures

cc: The Honorable Daniel E. Shearouse
(original & 14 enclosed)
(13 copies of Appendix enclosed)
Ms. Trisha Allen - with enclosure

The Supreme Court of South Carolina

Bradley J. Ishman, Respondent,

v.

State of South Carolina, Petitioner.

The Honorable Alexander S. Macaulay
Anderson County
Trial Court Case No. 2008-CP-04-00104

ORDER

For good cause shown, the request for an extension until December 19, 2011 to serve and file the Brief of Petitioner in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

November 21, 2011

cc: Assistant Attorney General Kaelon E. May
Appellate Defender Kathrine H. Hudgins



ALAN WILSON
ATTORNEY GENERAL

November 18, 2011

3

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RECEIVED

NOV 18 2011

S.C. Supreme Court

RE: Bradley Ishman v. State of South Carolina
2008-CP-04-00104

Dear Mr. Shearouse:

The Brief of Petitioner in the above appeal is due to be served and filed today. However, this is to respectfully request a 30-day extension to serve and file this Brief of Petitioner.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload and is for good cause.

Sincerely,

Kaelon E. May
Assistant Attorney General

In compliance with:

In Re: Extensions in Criminal and Post-Conviction Relief Cases, (S.C. Sup. Ct. order dated March 18, 2009) (Davis Adv. Sh. No. 13 at 1).

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KATHRINE H. HUDGINS
Attorney for Respondent

The Supreme Court of South Carolina

Bradley J. Ishman,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable Alexander S. Macaulay
Anderson County
Trial Court Case No. 2008-CP-04-00104

ORDER

For good cause shown, the request for an extension until November 18, 2011 to serve and file the Brief of Petitioner is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Luzinda J. Shealy*
Clerk

Columbia, South Carolina

October 20, 2011

cc: Assistant Attorney General Kaelon E. May
Appellate Defender Kathrine H. Hudgins



ALAN WILSON
ATTORNEY GENERAL

October 19, 2011

RECEIVED

OCT 19 2011

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

(2)

RE: Bradley Ishman v. State of South Carolina
2008-CP-04-00104

Dear Mr. Shearouse:

The Brief of Petitioner in the above appeal is due to be served and filed today. However, this is to respectfully request a 30-day extension to serve and file this Brief of Petitioner.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload and is for good cause.

Sincerely,

Kaelon E. May
Assistant Attorney General

cc: Robert M. Dudek, Chief Appellate Defender

The Supreme Court of South Carolina

Bradley J. Ishman,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable Alexander S. Macaulay
Anderson County
Trial Court Case No. 2008-CP-04-00104

ORDER

The request for an extension until October 19, 2011 to serve and file the Brief of Petitioner and additional appendices is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

September 20, 2011

cc: Assistant Attorney General Kaelon E. May
Appellate Defender Kathrine H. Hudgins



ALAN WILSON
ATTORNEY GENERAL

September 19, 2011

RECEIVED

SEP 19 2011

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

C

RE: Bradley Ishman v. State of South Carolina
2008-CP-04-00104

Dear Mr. Shearouse:

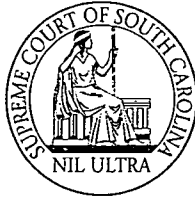
The Brief of Petitioner in the above appeal is due to be served and filed today. However, this is to respectfully request a 30-day extension to serve and file this Brief of Petitioner.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload and is for good cause.

Sincerely,

Kaelon E. May
Assistant Attorney General

cc: Robert M. Dudek, Chief Appellate Defender



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

August 18, 2011

Assistant Attorney General Kaelon E. May
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: Ishman, Bradley J. v. The STATE

Dear Counsel:

Enclosed is the Order granting your Petition for Writ of Certiorari in the above entitled matter.

It will be necessary for you to furnish this office with an additional thirteen (13) copies of the appendix within thirty (30) days from the date of this letter.

Brief of Petitioner should be served and filed on or before September 19, 2011. The brief is not properly filed until we have proof of service.

Brief of Respondent should be served and filed within thirty (30) days after petitioner's brief is filed. We must have proof of service. Any reply brief should be served and filed within ten (10) days after filing of respondent's brief.

Very truly yours,

Daniel E. Shearouse
DS

CLERK

DES/jj

cc: Chief Appellate Defender Robert M. Dudek for M. Celia Robinson

The Supreme Court of South Carolina

Bradley J. Ishman,

Respondent,

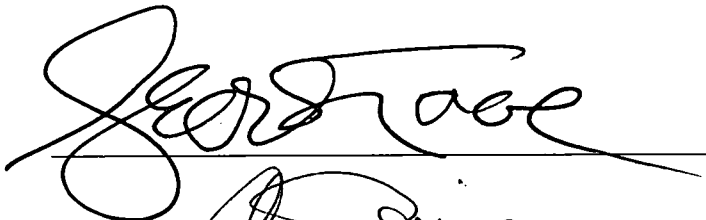
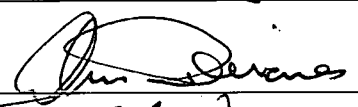
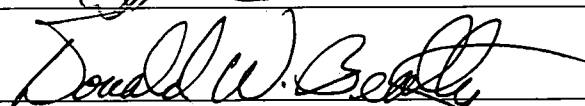
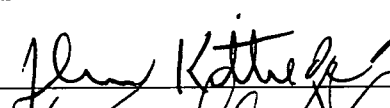
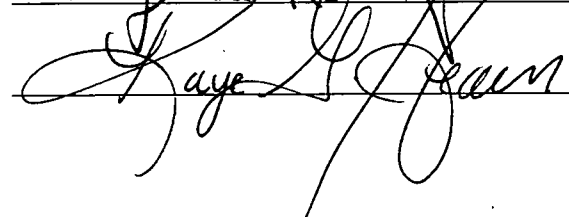
v.

State of South Carolina,

Petitioner.

ORDER

This matter is before the Court on a petition for a writ of certiorari. The petition for a writ of certiorari is granted. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.

 C. J.
 J.
 J.
 J.
 J.

Columbia, South Carolina

August 18, 2011



HENRY McMASTER
ATTORNEY GENERAL

RECEIVED

APR 28 2010

S.C. SUPREME COURT

April 28, 2010

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: Bradley Ishman v. State of South Carolina
Case #2008-CP-04-00104

Dear Mr. Shearouse:

I will be representing the State regarding this matter. Please note me as counsel of record for the State and forward all future correspondence regarding this case directly to me.

Sincerely,

A. West Lee
Assistant Attorney General

AWL:las

cc: M. Celia Robinson, Esquire; SC Office of Appellate Defense

The Supreme Court of South Carolina

Bradley J. Ishman, Respondent,

v.

State of South Carolina, Petitioner.

The Honorable Alexander S. Macaulay
Anderson County
Trial Court Case No. 2008-CP-04-00104

ORDER

For good cause shown, the request for an extension until May 24, 2010 to serve and file the Petition for Writ of Certiorari and Appendix in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 26, 2010

cc: Assistant Attorney General A. West Lee
Appellate Defender M. Celia Robinson

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

RECEIVED

APR 23 2010

S.C. SUPREME COURT

BRADLEY ISHMAN,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER

(3)

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE RETURN TO PETITION FOR WRIT OF CERTIORARI

Counsel for Bradley Ishman petitions the Court for a seven day extension in which to file the return to petition for writ of certiorari in this case. In support of this petition, counsel shows:

1. The return to petition for writ of certiorari is due to be filed with the Court today. The Court has granted counsel three previous extensions.
2. Counsel for Mr. Ishman respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time.
3. Counsel filed the reply to petition for writ of certiorari in John T. Robinson v. State and the initial brief of respondent and designation of matter in State v. Jimmy Skelton on March 22, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Frederick Jeter on March 24, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Gerald Fripp on March 26, 2010. Counsel filed the petitions for writ of certiorari and

accompanying appendices in Billy Johnson v. State, Luis Avila v. State, and Gregory Woods v. State along with the Initial Brief of Appellant in Richard Hemphill v. State on March 31, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Marion Abner on April 6, 2010. The petitions for writ of certiorari and accompanying appendices were filed in Quantis Pinckney v. State and James Dozier v. State on April 7, 2010. Counsel filed the initial brief of appellant and designation of matte in State v. Donovan Murray on April 15, 2010. The petition for rehearing for State v. Joe Campbell was filed on April 16, 2010. Counsel filed the petition for rehearing in State v. Johnell Porter on April 20, 2010. Counsel filed the brief of petitioner in Marlon Smith v. State on April 21, 2010.

4. Counsel has not had time to complete the return to petition for writ of certiorari in this case. As a result, counsel respectfully asks this Court for a seven day extension in which to file the return to petition for writ of certiorari. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

5. As indicated by signature below, Gregory P. Jones, of the South Carolina Attorney General's Office, does not oppose this request.

6. Counsel believes that extraordinary circumstances warrant this extension request made pursuant to the Supreme Court's recent order of March 18, 2009, concerning Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings.

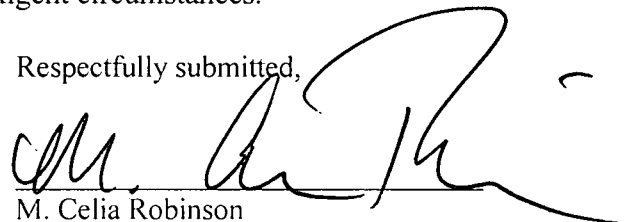
The Office of Appellate Defense agrees that extensions should be kept to a minimum for several reasons, not least of which the need for finality is felt by the victims, the defendants and their families. But regrettably, we only have 8 attorneys to handle approximately 1,000 appeals per year. The Spangenberg Report on Appellate Defense (February 2008) concluded, among other things, that Appellate Defense had too few attorneys handling too many cases.

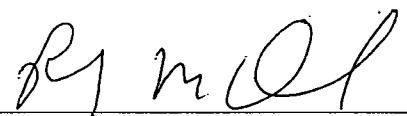
Chief Counsel of Appellate Defense has brought the Supreme Court's order on extensions to the attention of the Commission on Indigent Defense and recommended that the office be permitted

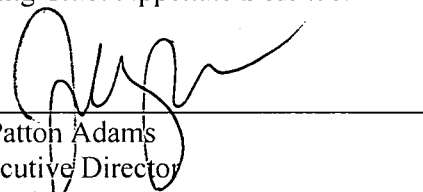
to fill the vacant attorney position and to explore the possibility of ceasing to handle certain PCR cases until the Division is adequately funded and fully staffed. The Commission has taken these recommendations under advisement. In the meantime, Chief Counsel has advised staff that we must bring Appellate Defense into compliance with the Court's order with the limited resources at hand.

Counsel respectfully requests a seven day extension, in which to file the return to petition for writ of certiorari in this case based upon the above exigent circumstances.

Respectfully submitted,


M. Celia Robinson
Appellate Defender


Robert M. Dudek
Acting Chief Appellate Defender


T. Patton Adams
Executive Director
J. Hugh Ryan, III
General Counsel

April 23, 2010
I do not oppose:


~~Jennifer Kinzeler~~ A. WEST LEE

The Supreme Court of South Carolina

Bradley J. Ishman,

Respondent,

v.

State of South Carolina,

Petitioner.

The Honorable Alexander S. Macaulay
Anderson County
Trial Court Case No. 2008-CP-04-00104

ORDER

For good cause shown, the request for an extension until April 23, 2010 to serve and file the Return to the Petition for Writ of Certiorari is granted.

Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

March 25, 2010

cc: Assistant Attorney General Gregory P. Jones, Jr.
Appellate Defender M. Celia Robinson

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

BRADLEY ISHMAN,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

ORIGINAL

RECEIVED

MAR 24 2010

S.C. SUPREME COURT

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE RETURN TO PETITION FOR WRIT OF CERTIORARI

Counsel for Bradley Ishman petitions the Court for a thirty extension in which to file the return to petition for writ of certiorari and accompanying appendix in this case. In support of this petition, counsel shows:

1. The return to petition for writ of certiorari and accompanying appendix are due to be filed with the Court today. The Court has granted counsel one previous extension.
2. Counsel for Mr. Ishman respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time.
3. Counsel filed the initial brief of appellant and designation of matter in State v. Norwood Jordan on February 24, 2010. Counsel filed a motion to reconstruct the hearing in John Tinsley v. State on Friday, February 26, 2010. Counsel filed the initial brief of appellant and designation of

(2)

matter in State v. Joseph Sizemore on March 1, 2010. Counsel had an oral argument in the Court of Appeals on March 2, 2010 In the Interest of Richard D., a minor under the age of seventeen and an oral argument on March 3, 2010 in State v. Joe Campbell. Counsel filed the initial brief of appellant and designation of matter in State v. Michael Morris on March 5, 2010. Counsel filed the initial brief of appellant and designation of matter in State v. Edward Harlin on March 8, 2010. The petition for writ of certiorari and accompanying appendix in Robert Thompson v. State was filed on March 10, 2010. Counsel filed the petition for writ of certiorari and accompanying appendix for State v. Nearin Blackwell-Selim on March 11, 2010. Counsel filed the petition for writ of certiorari and accompanying appendix in State v. Nearin Blackwell-Selim on March 12, 2010. Counsel filed the petitions for writ of certiorari and accompanying appendices in Stephon Hill v. State and Dallas Laney v. State on March 15, 2010. The initial brief of appellant and designation of matter In the Interest of Zakei H., a minor under the age of seventeen was filed on March 17, 2010. Counsel filed the petitions for writ of certiorari and accompanying appendices in Adam Winningham v. State and Lisa Ramirez v. State and the brief of petitioner in Cookie Medlock v. State on March 19, 2010. Counsel filed the reply to petition for writ of certiorari in John T. Robinson v. State and the initial brief of respondent and designation of matter in State v. Jimmy Skelton on March 22, 2010. Counsel will file the initial brief of appellant and designation of matter in State v. Frederick Jeter on March 24, 2010

4. Counsel has not had time to complete the return to petition for writ of certiorari in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the return to petition for writ of certiorari. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

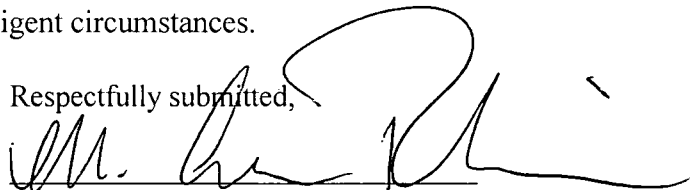
5. Counsel believes that extraordinary circumstances warrant this extension request made pursuant to the Supreme Court's recent order of March 18, 2009, concerning Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings.

The Office of Appellate Defense agrees that extensions should be kept to a minimum for several reasons, not least of which the need for finality is felt by the victims, the defendants and their families. But regrettably, we only have 8 attorneys to handle approximately 1,000 appeals per year. The Spangenberg Report on Appellate Defense (February 2008) concluded, among other things, that Appellate Defense had too few attorneys handling too many cases.

Chief Counsel of Appellate Defense has brought the Supreme Court's order on extensions to the attention of the Commission on Indigent Defense and recommended that the office be permitted to fill the vacant attorney position and to explore the possibility of ceasing to handle certain PCR cases until the Division is adequately funded and fully staffed. The Commission has taken these recommendations under advisement. In the meantime, Chief Counsel has advised staff that we must bring Appellate Defense into compliance with the Court's order with the limited resources at hand.

Counsel respectfully requests a thirty day extension, in which to file the return to petition for writ of certiorari in this case based upon the above exigent circumstances.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

M. Celia Robinson
Appellate Defender

March 24, 2010

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

BRADLEY ISHMAN,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

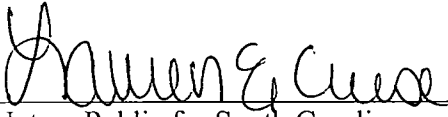
PETITIONER

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the petition for extension of time in which to file the petition for writ of certiorari and accompanying appendix in the above referenced case has been served upon A. West Lee, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 24th day of March, 2010.


M. Celia Robinson
Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 24th day of March, 2010.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 23, 2014.

The Supreme Court of South Carolina

Bradley J. Ishman, Respondent,

v.

State of South Carolina, Petitioner.

The Honorable Alexander S. Macaulay
Anderson County
Trial Court Case No. 2008-CP-04-00104

ORDER

The request for an extension until March 24, 2010 to serve and file the Return to the Petition for Writ of Certiorari is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Brenda J. Shealy
Clerk

Chief Deputy
Columbia, South Carolina

February 22, 2010

cc: Assistant Attorney General Gregory P. Jones, Jr.
Appellate Defender M. Celia Robinson



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

February 22, 2010

RECEIVED

FEB 22 2010

S.C. SUPREME COURT


The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: Bradley J. Ishman v. The State

Dear Mr. Shearouse:

The Return to Petition for Writ of Certiorari is due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting a thirty day extension in which to serve and file the petition.

By copy of this letter, I am informing A. West Lee, Esquire, of the Attorney General's Office, of my request.

Sincerely,

M. Celia Robinson
Appellate Defender

MCR/lec

cc: ~~A. West Lee~~, Esquire





HENRY MCMASTER
ATTORNEY GENERAL

RECEIVED

JAN - 8 2010

S.C. SUPREME COURT

January 8, 2010

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

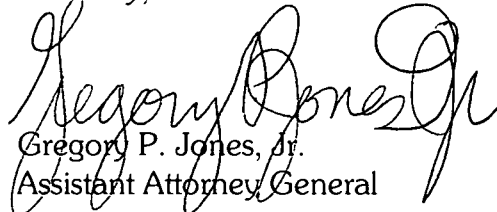
RE: Bradley Ishman v. State of South Carolina
Case #2008-CP-04-00104

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the Petition for Writ of Certiorari with the Appendix.

If you have any questions concerning this matter, please contact me.

Sincerely,



Gregory P. Jones, Jr.
Assistant Attorney General

GPJjr/las

Enclosure: noted

cc: M. Celia Robinson, Esquire; Office of Appellate Defense

The Supreme Court of South Carolina

Bradley J. Ishman, Respondent,

v.

State of South Carolina, Petitioner.

The Honorable Alexander S. Macaulay
Anderson County
Trial Court Case No. 2008-CP-04-00104

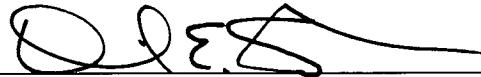
ORDER

The request for an extension until January 13, 2010 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

December 16, 2009

cc: Assistant Attorney General Gregory P. Jones, Jr.
Appellate Defender M. Celia Robinson



HENRY McMASTER
ATTORNEY GENERAL

December 14, 2009

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

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DEC 14 2009

S.C. SUPREME COURT

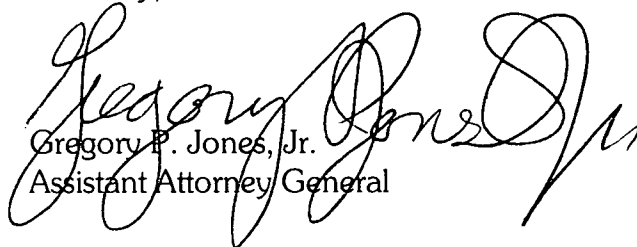
RE: Bradley Ishman v. State of South Carolina
Case #2008-CP-04-00104

Dear Mr. Shearouse:

The Petition for Writ of Certiorari in the above appeal is due to be served and filed on today, December 14, 2009. However, this is to respectfully request a 30-day extension in which to serve and file this Return.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload.

Sincerely,



Gregory P. Jones, Jr.
Assistant Attorney General

GPJjr:las

cc: M. Celia Robinson, Esquire; SC Office of Appellate Defense



HENRY MCMASTER
ATTORNEY GENERAL

October 20, 2009

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OCT 20 2009

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

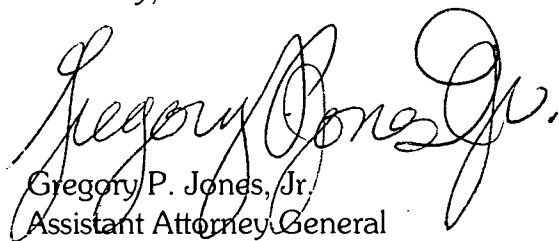
RE: Bradley Ishman v. State of South Carolina
Case #2008-CP-04-00104

Dear Mr. Shearouse:

Please be advised that the PCR transcript has been received in this Office on October 15, 2009. We understand that the Petition for Writ of Certiorari will be due on Monday, December 14, 2009. If this date is incorrect, please advise.

If this Office can be of further assistance, please call.

Sincerely,


Gregory P. Jones, Jr.
Assistant Attorney General

/las



HENRY McMASTER
ATTORNEY GENERAL

September 21, 2009

RECEIVED

SEP 21 2009

S.C. SUPREME COURT

Renee H. Tollison
Post Office Box 4321
Anderson, South Carolina 29622

Re: Bradley Ishman v. State of South Carolina
Case #2008-CP-04-00104

Dear Ms. Tollison:

Please prepare a transcript of the PCR proceedings of the above named individual taken on October 22, 2008 before the Honorable Alexander Macaulay for the term of the Court of Common Pleas for Anderson County. If you have already typed it once for Appellate Defense, let me know before you send me a copy.

If the conviction and sentencing were on different dates but you were not the reporter for both, let me know immediately so that I can contact the other reporter.

Please note that the amended Rule 227(e) (3), SCACR, now requires as detailed an index for PCR hearings as for trial transcripts filled in the Supreme Court. The index should include all exhibits. If exhibits were not introduced, then please note that no exhibits were submitted at the hearing.

If this transcript will exceed \$500.00 in cost, please inform me in writing before you complete this transcript. If you will prepare this transcript and forward it to me along with your statement, I will arrange for payment. Please note that all statements are to be signed.

Sincerely,

Lisa A. Suber
Legal Assistant

/las

cc: SC Court Administration



HENRY McMASTER
ATTORNEY GENERAL

September 21, 2009

RECEIVED

SEP 21 2009

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

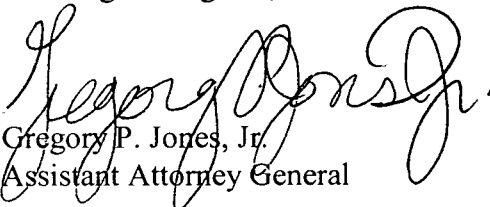
Re: **Bradley Ishman v. State of South Carolina**
2008-CP-04-0104

Dear Mr. Shearouse:

Enclosed is for filing is a notice of appeal in the above case. Also enclosed are the following:

1. Proof of service of the notice of appeal on the respondent.
2. A copy of the order which is to be challenged on appeal.
3. A copy of the letter to the court reporter requesting the PCR transcript.

With highest regards,


Gregory P. Jones, Jr.
Assistant Attorney General

Enclosures

cc: John P. Griffith, Esquire
The Honorable Alexander S. Macaulay, Clerk of Court of Anderson County
Appellate Defense
Trisha Allen, Victims Services

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

The Honorable Alexander S. Macaulay

Case No. 2008-CP-04-0104

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SEP 21 2009

S.C. SUPREME COURT

Bradley Ishman,

Respondent,

vs.

State of South Carolina,

Petitioner.

NOTICE OF APPEAL

The State of South Carolina hereby appeals from the Order of the Honorable Alexander S. Macaulay, dated September 9, 2009, granting post-conviction relief to the Respondent. The State received notice of the entry of the order on September 17, 2009, in the matter of Bradley Ishman vs. State of South Carolina, Case No. 2008-CP-04-0104.

Respectfully submitted,

HENRY D. MCMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

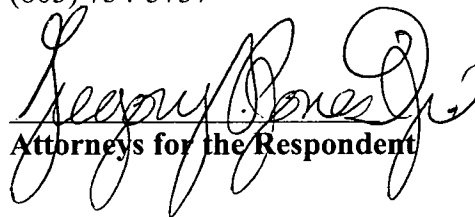
SALLEY W. ELLIOTT
Assistant Chief Deputy Attorney General

[Signatures continued on next page]

GREGORY P. JONES, JR.
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

By:


Attorneys for the Respondent

Columbia, South Carolina
September 21, 2009

Other counsel of record:

John P. Griffith, Esquire

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Anderson County

Honorable Alexander S. Macaulay, Judge

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SEP 21 2009

S.C. SUPREME COURT

Bradley W. Ishman

Respondent,

vs.

State of South Carolina,

Appellant.

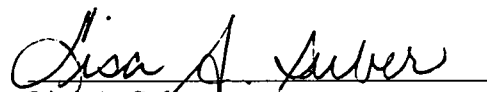
PROOF OF SERVICE

PERSONALLY appeared before me, Lisa A. Suber, who being duly sworn, deposes and says:

That there is a regular communication by mail throughout the State of South Carolina, and that this is a proper circumstance for service by mail; and,

That the foregoing NOTICE OF APPEAL was served on the following person on September 21, 2009 by depositing one copy of each in the U.S. Mail, postage prepaid, addressed as follows:

John P. Griffith, Esquire
100 North Main Street
Anderson, South Carolina 29622

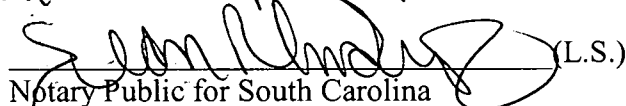


Lisa A. Suber
Legal Assistant

DATED this 21ST day of September, 2009.

SWORN to before me this

21ST day of September, 2009



Notary Public for South Carolina (L.S.)

My Commission Expires: My Commission Expires
January 30, 2013

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON 2008-CP-04-00104

Bradley J. Ishman # 319764, COMMON PLEAS AND GENERAL SESSIONS

Applicant,)

v.)

ORDER GRANTING POST-CONVICTION RELIEF

State of South Carolina,)

Respondent.)

This matter was heard before the court on October 22, 2008 on the Applicant's application for Post-Conviction Relief (PCR) from his probation revocation and sentence. The Applicant was represented by his appointed PCR attorney, John P. Griffith, and the State was represented by Assistant Attorney General Gregory P. Jones and Assistant Attorney General Salley Elliott.

I. FACTS/ PROCEDURAL HISTORY

The Applicant was originally convicted of pointing and presenting a firearm (indictment 06-GS-04-3028) at his girlfriend, Kenon Giovanni. The Applicant pled guilty on September 20, 2006 and was sentenced to 5 years suspended to 3 years probation, including special conditions to stay away from the victim and to pay various assessments (public defender, etc.). The Applicant did not appeal the conviction or sentence.

Subsequently, the Applicant was served with a Probation Arrest Warrant on December 13, 2006 for various alleged violations of probation, including more serious allegations of possession of a gun and his arrest on a pending CDV charge. The Applicant was incarcerated from his arrest on the Probation Arrest Warrant on December 13, 2006 until the Probation Revocation Hearing. The Applicant's Probation Revocation Hearing was held on January 19,

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2007 before Judge J. Cordell Maddox, Jr. The Applicant was represented by trial counsel, attorney Andrew Potter of the Public Defender's office. (PCR Tr. p.10-11). Mr. Potter met briefly with the Applicant for the first time in the courthouse holding cell just prior to the Probation Revocation Hearing. (PCR Tr. p.17, lines 20-24).

At the Probation Revocation Hearing, the trial court announced that the Applicant was alleged to have entered a place where alcohol was sold, possessing a firearm, failing to work, and had a pending CDV charge. (Prob. Tr. p.3, lines 6-10). Mr. Potter responded to the court that the Applicant was charged with CDV second and that the Applicant agreed with the other violations alleged. Mr. Potter stated that the Applicant admitted that he missed a report date of December 4th, but called and made the rescheduled appointment. Further, Mr. Potter stated that the Applicant denied the possession of firearm and had a witness that could address that allegation. (Prob. Tr. p.3, lines 11-23). The Probation Agent, Ms. Metcalf, informed the court that she had an affidavit from the victim stating that the Applicant showed her a firearm via webcam. In addition, Ms. Metcalf had the statement the victim gave law enforcement from the CDV incident. Mr. Potter indicated that he had not had a chance to review the affidavit or see a copy of it and moved for a continuance so he could obtain the Applicant's witness and review the victim's affidavit. The court did not grant the motion. (Prob. Tr. p.4, lines 16-19).

Ms. Metcalf informed the court that the witness Mr. Potter referred to was the Applicant's sister who had contacted her office and could not verify if a gun was in the residence, but could verify that the picture was taken in her residence. (Prob. Tr. p.4, lines 7-24). Ms. Metcalf also told the court that she had some alleged instant messages between the Applicant and victim which did not come out and say that the Applicant was in possession of a firearm, but that used the screen name Kenan Parker, which she claimed was the Applicant based

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on statements made about seeing a probation officer. Mr. Potter again responded that he had not had the opportunity to review that paperwork either. (Prob. Tr. p.4, ln. 25, p.5, lines 1-13).

The trial judge was concerned with the allegations of CDV and kidnapping. Ms. Metcalf clarified that the incident report from the Sheriff's Office listed CDV high and aggravated and kidnapping, but the actual charge at the time of the hearing was CDV second as he was not charged with kidnapping. She indicated that she had a copy of the incident report. Mr. Potter stated that the gun situation was the real issue and the Applicant's sister would testify that she searched the house and did not find a gun. Mr. Potter then stated that he had not had a chance to review the affidavit to see whether or not there is a need for any other additional witnesses. The trial judge then granted Mr. Potter a brief recess to allow him the opportunity to review the materials Ms. Metcalf identified.

After a thirteen (13) minute recess, the hearing resumed. Mr. Potter informed the court that he reviewed the affidavit, photograph, instant message paperwork, and the email from the sister confirming that the picture is of the kids' playroom and that there are no guns in the house. Further, he told the trial court that the Applicant told him that the instant messages were not transmitted by him, but were fabricated by the victim. In addition, Mr. Potter informed the trial court that the Applicant told him that the photograph of the weapon was fabricated by the victim by using the cut and paste function on a computer. The trial court immediately responded that "this is one of those volatile situations. I'm going to revoke and terminate ... Revoke in full and terminate." (Prob. Tr. p.7-8).

There were no witnesses called and no one testified at the Probation Revocation Hearing. In addition, the probation agent was not put under oath. The trial court never addressed the Applicant and he was never permitted to speak during the hearing. The trial court sentenced the

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Applicant to full revocation of 5 years with credit for time already served. The Applicant refused to sign the Order.

After the Probation Revocation Hearing, Applicant's appointed attorney did not file a motion to reconsider and did not file an appeal. (PCR Tr. p.17, lines 1-14). The Applicant filed an untimely pro se motion to reconsider and a petition for rehearing on June 6, 2007, which were never ruled on as they had no effect as a matter of law.

The Applicant filed his Application for Post-Conviction Relief (PCR) on January 8, 2008. The Applicant, through his appointed PCR counsel, also filed an amendment to his Application on October 7, 2008. The Applicant essentially alleged the following grounds: (1) that the Applicant was denied due process because the trial court failed to grant his request for a continuance and for the trial court's failure to allow the Applicant to present evidence in defense of the alleged violation, in mitigation of his sentence, and to speak or address the trial court concerning the allegations and sentence; and (2) that the Applicant was denied effective assistance of counsel by his attorney in the Probation Revocation hearing prejudicing the Applicant because of the attorney's: failure to present the Applicant's defense or evidence including the Applicant's testimony concerning the alleged violations; failure to timely meet with Applicant and prepare his defense; failure to properly investigate the Applicant's defenses to the allegations; failure to present the Applicant's evidence in mitigation for his sentence including the Applicant's testimony concerning the alleged violations; failing to file a timely Motion to Reconsider on the Applicant's behalf; failure to advise Applicant of his right to file a Motion for Reconsideration so that he could present his evidence and testimony in defense of the allegations; failure to appeal the court's finding that Applicant was in violation and sentence; and failure to advise the Applicant of his right to appeal his violation and sentence.

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The State timely filed its Return with a transcript of the January 19, 2007 Probation Revocation Hearing which was made a part of the record. The State's Return denied that the Applicant should receive post-conviction relief, but requested an evidentiary hearing on the issue of ineffective assistance of counsel. Further, at the hearing, the State took the position that Applicant's due process and other allegations were issues for direct appeal rather than post-conviction relief.

II. ARGUMENT/ FINDINGS OF FACT

The Applicant has the burden of establishing his entitlement to post-conviction relief by a preponderance of the evidence. Rule 71.1(e), SCRPC and Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The court finds that the Applicant has met his burden of proof as discussed below.

The trial court has discretion to revoke probation. State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006); S.C. Code Ann. § 24-21-460 (2007). When deciding whether to revoke probation, "[t]he trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation." Allen, 370 S.C. at 94, 634 S.E.2d at 655. "Probation is a matter of grace; revocation is the means to enforce the conditions of probation." Hamilton, 333 S.C. at 648, 511 S.E.2d at 97; see State v. White, 218 S.C. 130, 136, 61 S.E.2d 754, 756 (1950) ("While probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice."). "An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of

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permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious.” Allen 370 at 94, 634 S.E.2d at 655 (citing Fontaine v. Peitz, 291 S.C. 536, 539, 354 S.E.2d 565, 566 (1987)); S.E.C. v. TheStreet.Com, 273 F.3d 222, 229 n. 6 (2d Cir.2001).

The State failed to present sufficient evidence to establish that the Applicant violated the conditions of his probation. The “authority to review such a decision is confined to correcting errors of law unless the lack of a legal or evidentiary basis indicates the circuit judge’s decision was arbitrary and capricious.” State v. Hamilton, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1999).

In State v. Allen, the South Carolina Supreme Court held that a probationer has a constitutionally protected liberty interest and cannot be denied due process. Id. at 96-97. The Allen court cited the United States Supreme Court’s decision in Morrissey v. Brewer, 408 U.S. 471, 480-90 (1972), which held that the “minimum requirements of due process in parole revocation proceedings include ‘(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a ‘neutral and detached’ hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.’” In Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973), the United States Supreme Court expanded upon Morrissey, holding that “a probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the conditions specified in Morrissey.” Id. at 782. The South Carolina Supreme Court acknowledged these requirements in State v. Riddle, 277 S.C. 110, 282 S.E.2d 863 (1981), which

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reversed a probation revocation and remanded for a new hearing consistent with the guidelines set forth in Morrissey and Gagnon.

More recently, in State v. Dangerfield, 376 S.C. 176, 656 S.E.2d 352 (2008), the South Carolina Supreme Court acknowledged the guidelines set forth in Morrissey and Gagnon and held that a Defendant must be afforded notice and an evidentiary hearing before an imposition of a suspended sentence. This rationale also applies to imposing suspended sentences in probation revocation hearings for alleged probation violations. Id. at 180, 656 S.E.2d at 354. The procedural component of the state and federal due process clauses require the person whose property or liberty interests are affected to have received adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 3. See State v. Hill, 368 S.C. 649, 656, 630 S.E.2d 274, 278 (2006). Accordingly, this court finds that alleged violations of due process are proper for PCR applications and can support the granting of post-conviction relief.

III. CONCLUSIONS OF LAW

Upon review of the record of the Probation Revocation Hearing, this court finds that there was a lack of evidence presented by the State to impose the suspended sentence. Although the Applicant was provided a hearing, he was not afforded the considerations addressed by the South Carolina Supreme Court in Dangerfield. The State did not disclose evidence against the Applicant until the Probation Revocation Hearing. Although a short recess was granted in order for Mr. Potter to review the evidence against the Applicant, this was not an adequate amount of time to obtain witnesses to testify in order to rebut the evidence against the probationer. (Prob. Tr. p.4, lines 13-19). In addition, the Applicant never had the opportunity to present witnesses

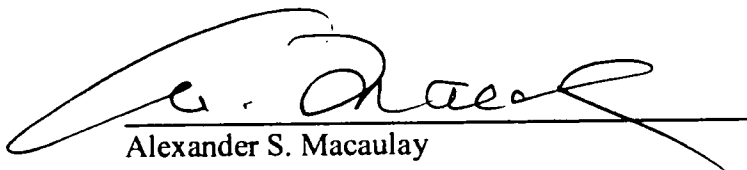
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and documentary evidence or the opportunity to confront and cross-examine adverse witnesses. The probation agent was not sworn and gave no testimony under oath. The probation agent showed various documents to the court and to Mr. Potter, but no exhibits were marked into evidence or appear in the record. Moreover, in the PCR Hearing, the probation agent testified that the probation file had been purged and the alleged evidence referred to before the trial court had been purged and destroyed. (PCR Tr. p.97-98). Mr. Potter explained to the trial court that the probationer denied the violations and could produce witnesses and needed a continuance, which was not granted. Finally, the Applicant never received a written statement of the factfinder providing evidence to support the revocation and the record does not contain any conclusion or provide an evidentiary basis for the revocation or sentence.

ORDER

The Applicant has met his burden of establishing his entitlement to post-conviction relief by a preponderance of the evidence. Accordingly, Applicant's application for post-conviction relief is hereby granted. The Applicant's probation revocation and sentence hereby is vacated and the case is remanded for a new hearing consistent with the requirements of State v. Allen regarding the alleged probation violations.

AND IT IS SO ORDERED this 9th day of September, 2009.



Alexander S. Macaulay
Resident Judge
Tenth Judicial Circuit

Amelia, South Carolina
September 9, 2009

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