

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Horry County  
Larry B. Hyman, Circuit Court Judge

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**RECEIVED**  
SEP 06 2016  
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA,

Respondent,

v.

LUZINSKI ALLEN COTTRELL,

Appellant

Appellate Case No. 2015-000731

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**MOTION FOR FINAL EXTENSION OF TIME TO FILE  
INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER**

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Respondent, the State, moves this Court for an additional fourteen (14) day extension of time in which to file the Initial Brief of Respondent and Designation of Matter up to and including September 20, 2016. This is Respondent's sixth and final request for an extension of time in which to file the brief. Appellant's counsel Keir Weyble has indicated in an email that he has no objection to my request. In support of the request, undersigned counsel would respectfully show the Court:

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1. Counsel for Respondents have prioritized the preparation of the Initial Brief of Respondent in this matter. This is a primary assignment of Assistant Attorney General Mabry who has worked through the recent holiday seeking to complete that matter. At the present time, the draft Initial Brief of Respondent is 80 pages and is still in need of further drafting on two issues. Counsel further will seek review by the 15<sup>th</sup> Circuit Solicitors

prior to the filing of the final version. In addition, counsel Mabry was investigating the availability of an *in camera ex parte* hearing between Judge Hyman and prior trial counsel Kimbrough and Axelrod which would have been pertinent to issue one. Both undersigned counsel recognize this priority.

2. Undersigned counsel for Respondent completed the following work within the past thirty (30) days:

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- a. Kareem Wiley v. Warden - Federal Habeas Corpus (FHC) – objections to Report and Recommendation – August 5, 2016 – Mabry.
  - b. Jerry B. Inman v. State – DP PCR – State’s Proposed Order Granting State Motion for Summary Judgment – August 8, 2016 - Mabry
  - c. Freddie Owens v. Warden - Death penalty - FHC – Response to Motion for Discovery – August 8, 2016
  - d. Freddie Owens v. Warden - Death penalty - FHC – Response in Opposition to Motion for Discovery – August 8, 2016 - Zelenka
  - e. Andrea Person v. Warden - FHC - Response to Motion for Hearing – August 11, 2016 - Zelenka.
  - f. Billy S. Tucker v. Warden - FHC – State’s Objection to Magistrate Report – August 11, 2016 - Mabry
  - g. Raymond McCarter v. Warden - FHC – Reply to Objections – August 11 – Zelenka
  - h. Leroy Brown v. Warden - FHC – Reply to Objections – Mabry – Aug. 12,

2016

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- i. **Antonio Miller v. State of South Carolina** – US Supreme Court – Petition for Writ of Certiorari and Appendix – August 16, 2016 – Zelenka and Mabry
  - j. Jerry Inman v State – DPPCR – travel to Greenville and witness interview.
  - k. Freddie Owens v. State – DP PCR Return - August 19, 2016 – Mabry.
  - l. Freddie Owens v Warden - DP FHC - Response to Motion to Stay – August 12, 2016 – Mabry.
  - m. Michael L. Elmore v. Warden – FHC - Return and Motion for Summary Judgement – August 22, 2016 - Mabry
  - n. Stephen C. Bryant v. State – State DP PCR – motion hearing – Sumter (Cooper) – August 23, 2016 – Zelenka
  - o. Billy Shane Tucker v. Warden - FHC - Response to objections to Report of Magistrate Judge – August 25, 2016 – Mabry (110 pages).
  - p. Clarence Miller v. Warden - FHC – Reply to Response in Opposition to Motion for Summary Judgment – Mabry – August 25, 2016 (51 pages).
  - q. State v Aaron Young – Initial Brief of Respondent - August 26, 2016 – Zelenka with Margaret Boykin.
  - r. State v. Kareem Harry – Direct Appeal on Certiorari – Brief of Respondent – August 29, 2016 – Mabry.
  - s. Jerry Inman v. State – State DP PCR – witness and records review – travel – Greenville – August 29, 2016

t. Jerry Inman v. State – DP PCR – Depositions in Greenville – Zelenka and Mabry – August 30, 2016

u. Stephen C. Bryant v. State – DP PCR (2) Motion Hearing - Dillon – Judge Seals – September 1, 2016 - Zelenka

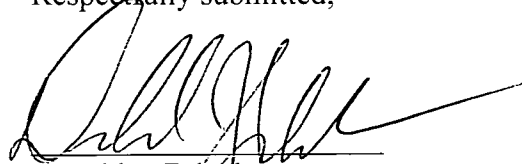
3. Due to his heavy caseload, undersigned counsel for Respondent has not been able to complete the initial brief in this appeal. Below-signed counsel has Anthony Mabry assisting with him in this matter and drafts of some of the issues have been completed. This is done to attempt to insure no further extensions.

4. This is the sixth and final request for an extension of time in which to file a response. Counsel is cognizant of this fact and will continue to work diligently to complete the brief.

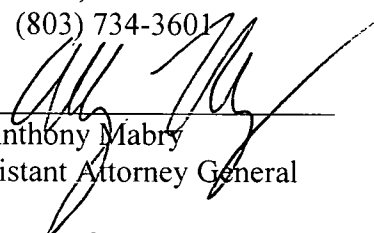
5. Respondent has consulted with opposing counsel and Mr. Weyble by email who advised undersigned counsel he has no objection to this request by email this date.

THEREFORE, undersigned counsel for Respondent respectfully requests an additional extension of fourteen (14) days to complete the initial brief of respondent and designation of matter.

Respectfully submitted,

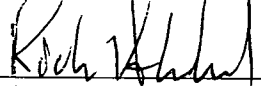
  
Donald J. Zelenka  
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\_\_\_\_\_  
J. Anthony Mabry  
Assistant Attorney General

Attorneys for Respondent

I concur that extraordinary circumstances have been shown

  
\_\_\_\_\_  
Rick Hubbard  
Acting Chief Deputy Attorney General

September 6, 2016

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appellant

Appellate Case No. 2015-000731

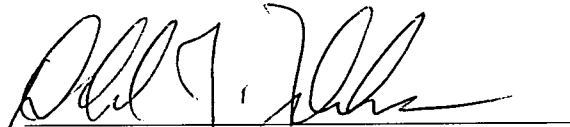
**CERTIFICATE OF SERVICE**

I, **Donald J. Zelenka**, hereby certify that 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 U.S. Mail, postage-prepaid and addressed as follows:

KEIR M. WEYBLE  
Cornell Law School  
Myron Taylor Hall  
Ithaca, NY 14853

ROBERT M. DUDEK  
Chief Appellate Defender  
South Carolina Office of  
Appellate Defense  
P.O. Box 11589  
Columbia, SC 292 11

This 6<sup>th</sup> day of September, 2016.

  
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ATTORNEY FOR RESPONDENT