

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas  
J. Mark Hayes, II, Circuit Court Judge

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Appellate Case No. 2016-001690  
Case No. 2014-CP-32-2893

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**RECEIVED**

OCT 20 2016

S.C. SUPREME COURT

Randall Houston Nordan.....Respondent,

v.

State of South Carolina.....Petitioner.

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**RETURN IN OPPOSITION TO PETITIONER'S  
SECOND REQUEST FOR EXTENSION**

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In this post-conviction relief appeal, Respondent Randall Houston Nordan prevailed below by order dated July 19, 2016 and filed July 22, 2016 granting Mr. Nordan's petition. On August 16, 2016, the State filed a notice of appeal.

By letter dated September 15, 2016, the State requested a 30-day extension of time to serve and file a petition for writ of certiorari and appendix indicating those filings were "due to be served and filed on today's date." Ltr. Asst. Atty. Gen. Schmeckpeper (**Exhibit A**). The State represented the extension was not intended to cause delay, but "is necessitated by a heavy workload." Id.

By Order dated September 16, 2016, the Court granted the State's request and extended the deadline until October 17, 2016. See Order (Exhibit B). The Court also warned that "any further extension request must be based on a showing of good cause." Id.

On October 17, 2016, the undersigned received a courtesy copy letter from the Attorney General to the Clerk requesting a *second* 30-day extension necessitated “by a heavy workload.” Ltr. Asst. Atty. Gen. Schmeckpeper (**Exhibit C**). No additional facts, representations, or legal argument was offered in support of this request. Once again, the State sought this extension the same day the State’s deadline to make a timely filing was to run.

The States requested extension should be denied. More than seven years ago, a unanimous Court entered an Order regarding Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings (hereinafter, “Extension Order”, attached as **Exhibit D**). The Extension Order authorizes one 30-day extension without a showing of good cause. However, to obtain a second extension, the applicant must show good cause. *Id.* at ¶ 2. The same year the Court entered its Extension Order, it construed what constituted “good cause” under Rule 55 of the South Carolina Rules of Civil Procedure, and explained:

This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide *an explanation* for the default *and give reasons* why vacation of the default entry would serve the interests of justice. *Once a party has put forth a satisfactory explanation* for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.

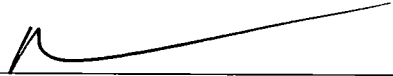
See Sundown Operating Co. v. Intedgen Indus., Inc., 383 S.C. 601, 607–08, 681 S.E.2d 885, 888 (2009) (emphasis added). In other words, the good-cause claimant has an affirmative burden that enables the reviewing court to weigh the claimant’s need for relief against other considerations, including the prejudice suffered to the opposing party if relief is granted. *Cf.* Extension Order, ¶ 2 (“The facts supporting good cause *shall* be set forth in the motion.” (emphasis added)).

The State’s request here fails to make any showing beyond the perfunctory claim of a heavy workload, thus there is nothing weighing in favor of the relief sought. Alternatively, the factors this Court looked to in Sundown Operating Company weigh against the State because (1) this is

the second time it waited until the eleventh hour to request an extension, (2) it has not identified any meritorious issue on appeal, and (3) it should not be permitted to cloud the finality and correctness of the PCR court's detailed and well-reasoned opinion and order by indefinitely extending the time for appellate review.

This Court has warned that counsel is "expected to minimize extension requests[.]" Extension Order, ¶ 5. No doubt the Court issued the Extension Order to remedy a procedural backlog that was interfering with the administration of justice and that it intended some consequence to parties that violate the order. Here, Mr. Nordan respectfully objects. Those consequences should attach here, the State's second extension request should be denied, and this appeal should be dismissed as untimely.

Respectfully submitted,



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Christopher P. Kenney (SC Bar No. 100147)  
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October 20, 2016  
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT  
RANDALL HOUSTON NORDAN



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SEP 19 2016

Richard A. Harpootlian, P.A.  
Calendared

ALAN WILSON  
ATTORNEY GENERAL

September 15, 2016

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

**Re: Randall H. Nordan v. State of South Carolina**  
**Appellate Case No. 2016-001690**  
**Lower Court Case No. 2014-CP-32-2893**

Dear Mr. Shearouse:

The Petition for Writ of Certiorari and Appendix in the above appeal is due to be served and filed on today's date. However, this is to respectfully request a 30-day extension to serve and file this Petition.

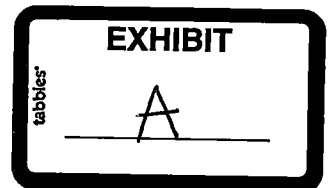
This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload.

Sincerely,

Patrick Schmeckpeper  
Assistant Attorney General  
SC Bar No. 102100

PS/dr

cc: Richard A Hartpootlian, Esquire



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SEP 19 2016

The Supreme Court of South Carolina

Richard A. Harpootlian, Esq.  
Clerk

Randall Houston Nordan, Respondent,

v.

State of South Carolina, Petitioner.

Appellate Case No. 2016-001690

ORDER

The request for an extension to serve and file the petition for writ of certiorari and appendix is granted and extended until October 17, 2016. Pursuant to the order of the Supreme Court of South Carolina dated March 18, 2009 ([www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01](http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01)), any further extension request must be based on a showing of good cause.

FOR THE COURT

BY

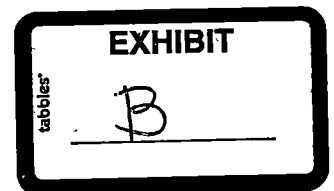


CLERK

Columbia, South Carolina  
September 16, 2016

cc:

Patrick Lowell Schmeckpeper, Esquire  
Richard A. Harpootlian, Esquire





RECEIVED

OCT 19 2016

Richard A. Harpootlian, P.A.  
Calendared

ALAN WILSON  
ATTORNEY GENERAL

October 17, 2016

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

**Re: Randall H. Nordan v. State of South Carolina**  
**Appellate Case No. 2016-001690**  
**Lower Court Case No. 2014-CP-32-2893**

Dear Mr. Shearouse:

The Petition for Writ of Certiorari and Appendix in the above appeal is due to be served and filed on today's date. However, this is to respectfully request a second 30-day extension to serve and file this Petition.

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

Sincerely,

Patrick Schmeckpeper  
Assistant Attorney General  
SC Bar No. 102100

PS/dr

cc: Richard A. Harpootlian, Esquire

EXHIBIT

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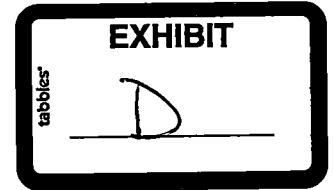
# The Supreme Court of South Carolina

RE: Extension Requests in Criminal Direct Appeals  
and Post-Conviction Relief Certiorari  
Proceedings

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ORDER

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This Court finds that it is appropriate to establish a uniform policy for processing extension requests by counsel in criminal direct appeals and post-conviction relief (PCR) certiorari proceedings. Accordingly, the following procedures shall apply when an extension is requested in these cases at both this Court and the South Carolina Court of Appeals in both capital and non-capital cases.

- (1) One extension of up to thirty (30) days each may be granted for any stage of the appellate proceeding without a showing of good cause.
- (2) A second extension request may be granted upon a showing of good cause. The facts supporting good cause shall be set forth in the motion. The signature of the attorney on the motion shall be a certification that the attorney believes that the extension is warranted and that there is good cause to seek the extension.
- (3) A third extension may be granted upon a showing of good cause. The facts supporting the good cause shall be set forth in the motion. If filed by the Division of Appellate Defense or the Office of the Attorney General, the motion shall be signed by the attorney involved and his or her immediate supervisor. If filed by a private lawyer, the motion shall be signed by the attorney involved and, if lawyer is not a sole practitioner, by another member of the firm. The signatures on the motion shall be a certification by these attorneys that they believe that the extension is warranted and that there is good cause to seek the extension.
- (4) A fourth or subsequent extension may be granted upon a showing of extraordinary circumstances. The motion must contain sufficient facts to show that there are extraordinary circumstances that warrant the extension, and must state what actions are being taken to insure that no further extension will be required. If filed by the Division of Appellate Defense, the motion shall be signed by the attorney involved, and the Executive Director of the Office of Indigent Defense or his or her chief deputy. If filed by the Office of the Attorney General, the motion shall be signed by the attorney involved, and the Attorney General or his or her chief deputy. If filed by a private lawyer, the motion shall be signed by the attorney involved and, if lawyer is not a sole practitioner, by the senior partner or the next most senior partner in the firm. The signatures on the motion shall be a certification by these attorneys that they believe that the extension is warranted and that extraordinary circumstances are present.
- (5) Counsel are expected to minimize extension requests, and multiple extensions should generally be sought only for a stage of the appellate proceeding which involves research or writing by the attorney, such as the preparation of a brief or the preparation of the petition for a writ of certiorari, return or reply in a PCR case.
- (6) Nothing in this order shall be construed as preventing the Supreme Court or the Court of Appeals from further restricting extensions in an individual case when warranted, including cases which may be expedited.

s/John H. Waller, Jr. J.

s/Costa M. Pleicones J.

s/Donald W. Beatty J.

s/John W. Kittredge J.

Columbia, South Carolina  
March 18, 2009

**THE STATE OF SOUTH CAROLINA**  
**In the Supreme Court**

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas  
J. Mark Hayes, II, Circuit Court Judge

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**S.C. SUPREME COURT**

Appellate Case No. 2016-001690  
Case No. 2014-CP-32-2893

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Randall Houston Nordan.....Respondent,

v.

State of South Carolina.....Petitioner.

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**CERTIFICATE OF SERVICE**

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I, Holli Miller, paralegal to the attorney for the Petitioner, Richard A. Harpootlian, P.A., with offices at 1410 Laurel Street, Post Office Box 1090, Columbia, South Carolina 29202, certify that on October 20, 2016 served by having the same deposited in the U.S. Mail, the following document to the below mentioned person:

**Document:** Return in Opposition to Petitioner's Second Request for Extension

**Served:** Patrick Schmeckpeper  
Staff Attorney - PCR Division  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia SC 29211

  
\_\_\_\_\_  
Holli Miller