

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2016-000612

RECEIVED
MAR 31 2017
SC Court of Appeals

THE STATE,

Respondent,

vs.

BENJAMIN CERVANTES HERNANDEZ,

Appellant.

**MOTION FOR THIRD EXTENSION OF TIME WITHIN WHICH
TO SERVE AND FILE INITIAL BRIEF OF RESPONDENT
AND DESIGNATION OF MATTER**

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

The Initial Brief of Respondent and Designation of Matter are due to be served and filed on March 31, 2017.

II.

Pursuant to RE: Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings: Order of the South Carolina Supreme Court dated March 18, 2009, the State moves for a **third** extension in the above-referenced criminal appeal and asks for an additional thirty days to complete the brief in this case. In the past few weeks, the undersigned has participated in oral argument at the Supreme Court in State v. Alphonso Chaves

Thompson and State v. Stepheno Jemain Alston; has participated in oral argument at the Court of Appeals in State v. Tyrone D. Ellison; has submitted a Petition for Rehearing to the Supreme Court in State v. Bash and State v. Thompson; has submitted a Return to Petition for Writ of Certiorari in the Supreme Court in State v. Allen and State v. Furquan; and has submitted an Initial Brief of Respondent to the Court of Appeals in State v. Millidge, State v. Campos, Williams v. State, In the Interest of Malik S., a Juvenile Under the Age of Seventeen, State v. Massey, and State v. Bowers.

III.

This extension request is not intended for purposes of delay, but rather to ensure that the Brief is properly researched and prepared. The Brief in the above case has required significant research because the case involves an important issue in regard to jury instructions on lesser-included offenses. The undersigned is currently working on the Brief in this case and hopes to have it completed in a timely manner. I would therefore request an extension of time within which to serve and file the Brief.

WHEREFORE, Respondent prays that the Court extend the deadline for the service and filing of the Initial Brief of Respondent and Designation of Matter in this case for thirty days from the date such relief is granted; hold the matter in abeyance pending a ruling on Respondent's motion; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

By: 
Mark R. Farthing

By: 
J. Benjamin Aplin

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

March 31, 2017

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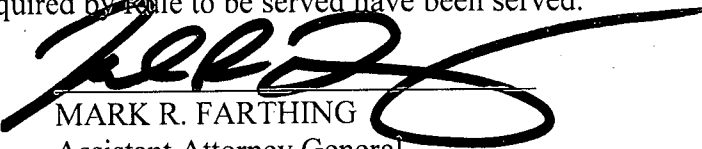
Appellant.

PROOF OF SERVICE

I, Mark R. Farthing, certify that I have served the within Motion for Third Extension of Time Within Which to Serve and File Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 31st day of March, 2017.



MARK R. FARTHING
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

March 31, 2017

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MAR 31 2017

SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. Benjamin Cervantes Hernandez – Appellate Case No. 2016-000612

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Motion for Third Extension of Time Within Which to Serve and File Initial Brief of Respondent and Designation of Matter, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Susan B. Hackett, Esquire
Victim Services