

Roderick Deon Irby 263567
RCI - 58-36
PO Box 203A
Ridgeland, SC 29936
February 10, 2016

Honorable Daniel E Shearouse
Clerk of Court
Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

Re: Irby v State, Appellate Case No.: 2015-000824

Dear Mr. Shearouse:

Enclosed are my Motion For Extension Of Time and
my Petitioner's Affidavit In Support Of Extension Of
Time (with all exhibits and attachments), going to the
writ of certiorari referenced above.

Sincerely, Roderick Irby

Roderick Deon Irby
Petitioner in pro per

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Greenville County
Eugene L. Griffith, Jr., Circuit Court Judge

Roderick Deon Erby, Petitioner,
State of South Carolina, Respondent
Appellate Case No. 2015-000824

MOTION FOR EXTENSION OF TIME

The petitioner in pro se moves the Court under South Carolina Rule of Civil Procedure 6(b) for a ninety (90)-day extension of time in which to file a pro se brief in this writ of certiorari to the Supreme Court of South Carolina. The petitioner is entitled to more time in which to delineate his own issues other than that appearing in South Carolina Commission on Indigent Defense Deputy Chief Appellate Defender Wanda H. Carter, ESA's "Johnson" petition for writ of certiorari because of several relevant factors of good cause, plus a viable defense of several aspects of the ineffectiveness of trial counsel revolving around the use of the petitioner's past criminal history. Good cause exists also for the late submission Motion for Extension of Time as the original forty-five (45) day deadline for the submission of the pro se brief has already elapsed.

A ninety (90) day extension of the time to submit the petitioner's pro se brief is specifically requested to research more about the trial court's prejudicial use of his criminal history and the ineffectiveness and unpreparedness of the defense attorney with this matter; severe limitations on accessing the prison law library and/or the West-law "intra-net" computer in the prison law library; restriction on the amount of white typing paper to write legal papers; the necessity of having to hand-write multiple copies of legal documents because he cannot photocopy hand-generated law papers

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Irby v State, App 65 ND.: 2015-000824

Under current South Carolina Department of Corrections policy; the Petitioner's unfamiliarity with legal-research techniques and the need to seek assistance with research and writing legal papers from another inmate; the prison dormitory's being locked down a few times since early December, 2015, sometimes for several weeks per lock-down; and a recent health issue with the Petitioner's legal-research assistant in which the other inmate was in the hospital for eight (8) days and had had two (2) emergency surgeries and the gradual recovery from the hospitalization and surgeries.

The Petitioner relies on virtually the same examples of good cause for the late submission of this motion for Extension of Time. The ineffective assistance of trial counsel regarding the trial court's use of the Petitioner's criminal history is a viable meritorious defense to present to the Supreme Court of South Carolina in this writ of certiorari.

The Supreme Court of South Carolina wrote that South Carolina Code (1952 § 10-609 - now South Carolina Rule of Civil Procedure 6 - should be liberally construed, in that there "is no hard and fast rule to guide the Court in the exercise of its discretion in such cases; therefore, each case must be considered in the light of its own attendant circumstances" in McBee v One Chevrolet Sedan, bearing Florida License No. 16-1574 Year 1958, 235 S.C. 101, 10A SE2d 713 (1959), an automobile accident case, then citing Bishop v Jacobs, 108 S.C. 49, 93 SE 243 (1917).

SCDC policy forbidding photocopying hand-written law papers; the prison dormitory being locked down a few times recently, sometimes for two (2) or three (3) weeks; the recent illness of the Petitioner's

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legal-assistance inmate associate, and severe time restrictions with using the prison law library and/or the computer in the law library are relevant examples of good cause to warrant allowing the Petitioner's late submission of this motion and for the Supreme of South Carolina's granting the Petitioner's a ninety (90) day extension in which to submit his pro se brief after the submission of a "Johnson" petition for writ of certiorari, until May 3, 2016. None of the parties to this writ of certiorari, including the Court will be prejudiced by this time lengthening. Therefore, the Petitioner requires more time in which to exercise his due process to be heard and his right to grieve government action to allege the ineffectiveness of the trial lawyer and/or the trial court's unjust reliance on the Petitioner's past criminal history.

Respectfully submitted,
By Roderick Irby
Roderick Dean Irby 263567

February 10, 2016

RCI - SB - 36
PO Box 2039
Ridgeland, SC 29936

Petitioner in pro se

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
Certiorari to Greenville County
Enclave C. Griffith, Jr., Circuit Court

S.C. SUPREME COURT

Roderick Dean Irby, Petitioner,
State of South Carolina, Respondent
Appellate Case No. 2015-000824

PETITIONER'S AFFIDAVIT IN SUPPORT OF
EXTENSION OF TIME

PERSONALLY APPEARED BEFORE ME, Roderick Dean Irby, who first being duly sworn, deposes and avers the following:

1. I am the pro se petitioner in the writ of certiorari captioned above.
2. The Supreme Court of South Carolina has jurisdiction to hear my pro se issues under Johnson v State, 2015 SC 310, 364 SE2d 201 (1988) because of the submission of a "Johnson" petition for writ of certiorari by South Carolina Commission on Indigent Defense Deputy Chief Appellate Defender Wanda H. Carter, ESQ, on or about November 30, 2015.
3. I am competent to memorialize topics in this sworn statement under South Carolina Rule of Evidence 601 as I would be competent to testify about them at an evidentiary hearing and/or a bench trial because I have direct, first-hand knowledge of the events that I record, I can adequately communicate about these subjects and their chronology, I remember the events as I write them, and I am aware of my obligation to tell the truth under oath.
4. I understand that an affidavit is inadmissible hearsay under South Carolina law, but becomes admissible upon a proper foundation of testimony.
5. I pray for a ninety (90) day extension of time in which to file my pro se brief.
6. I actually received Ms. Carter's November 30,

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February 10, 2016
Iby v State, App CS. No. : 2015-000824 p 2

2015 "Johnson" Petition For Writ Of Certiorari from the mailroom of the Ridgeland Correctional Institution on December 18, 2015.

7. Under the Houston v Lack rule (487 US 266, 108 S Ct 2374, 101 L Ed 2d 245 (1988)), my forty-five (45) -day pro se brief was originally due on February 1, 2016.

8. A ninety (90) day extension would move the deadline to May 3, 2016.

9. I am indigent.

10. I am incarcerated.

11. I do not have legal training.

12. Because of my incarceration, my access to the prison law library and/or the computer in the law library is severely limited.

13. Because I am incarcerated, I do not have a regular source of income, regular mail service or regular telephone service.

14. I understand the technical difference between pro se - or, "for self" - representation and in pro per - or, "in the proper person" representation.

15. My request for a time extension is late because of my unfamiliarity with the prison law library, the computer in the law library, applicable court rules, writing law papers, and techniques of legal research.

16. I send in this request for an extension of time to file my pro se brief late and after the expiration of the customary forty-five (45) days on several grounds of good cause and/or for excusable neglect.

17. The prison dormitory has been locked down a few times since early December 2015, sometimes for two (2) or three (3) weeks per lock-down, delaying going to the law library, going to the mailroom for white typing paper and going to the mailroom to mail out legal documents.

18. My incarceration and indigently limit my ability to get white typing paper to twenty (20) sheets two (2) times a week.

19. Under current South Carolina Department of Corrections policy, I cannot photocopy hand-written law

PETITIONER'S AFFIDAVIT IN SUPPORT OF EXTENSION OF TIME
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papers, forcing me to hand-copy multiple copies of each motion, affidavit, cover letter, and other paper, delaying the actual submission of law documents.

20. Because I have sought help researching the issues to present in my pro se brief, organizing material gathered from the law library and organizing and writing actual papers submitted to the State Supreme Court recent medical issues of my legal-research assistant become "good cause" for my late submission of this request for an extension of time and my sought ninety (90) day time lengthening.

21. The trial court's prejudicial reliance on my criminal history and/or ineffective assistance of counsel with this topic are viable meritorious defenses for the extension of the time to send in my pro se brief.

22. A ninety (90) - day extension of time preserves my due process rights and right to grieve government action, it will not prejudice any parties to this action, and it will not affect the future scheduling in this writ of certiorari.

FURTHER THE AFFIANT SAYETH NOT

15) Roderick Irby
Roderick Dean Irby

Sworn to and subscribed
before me this 17
day of February, 2016.

Virginia Rolensen (L.L.S.)
Notary Public for South Carolina

my commission expires: May 20, 2021

PETITIONER'S AFFIDAVIT IN SUPPORT OF EXTENSION OF TIME

I. G. v. State, App. CS. NO.: 2015-000824 February 10, 2016

EXHIBIT

November 30, 2015 cover letter from Deputy Chief Appellate
Defender Wanda H. Carter, Esq., with Johnson petition



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

November 30, 2015

Mr. Rodrick Deon Irby #263567
Ridgeland Correctional Institution
PO Box 2039
Ridgeland, SC 29936

Re: Your appeal

Dear Mr. Irby:

Enclosed please find a copy of the Johnson petition for writ of certiorari and a copy of the appendix in your case, which I have filed with the South Carolina Supreme Court. The Court will write to you in the future eliciting any **written memorandum** you may want to submit for the Court's consideration of your case. That memorandum should be sent to the South Carolina Supreme Court, and **not to me**. The petition to be relieved is a standard part of the Johnson procedure, it does not mean that I do not wish to represent you.

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

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/smf

Enclosures

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
Engene E. Griffin, Jr., Circuit Court Judge S.C. SUPREME COURT

Roderick Dean Irby, Petitioner,
State of South Carolina, Respondent
Appellate Case No.: 2015-000824

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 10, 2016, a Motion for Extension of Time and a Petitioner's Affidavit in Support of Extension of Time (with all attachments and exhibits) were served on the Supreme Court of South Carolina by mailing these documents in the United States mail, proper postage prepaid, addressed as follows:

Honorable Daniel E Shearouse
Clerk of Court
Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

Respectfully submitted,
15/ Roderick IRBY
Roderick Dean Irby 263567

RCE - SB - 36
PO BOX 203A
Ridgeland, SC 29936

petitioner in pro per

Sworn to and subscribed
before me this 17
day of February, 2016

Virginia Robinson (L.S.)
Notary Public for South Carolina
my commission expires: May 20, 2021

20056
RDL-SB-30
PO Box 2039
Ridgeland, SC 29934



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Honorable Daniel E. Smealonse
Clerk of Court
Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

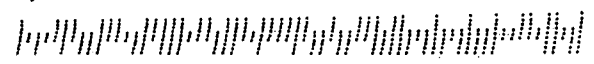
RIDGELAND CORRECTIONAL
INSTITUTION

FEB 17 2016

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THE DEPARTMENT OF CORRECTIONS HAS NEITHER
CENSORED NOR INSPECTED THIS ITEM. THEREFORE
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.
RIDGELAND CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS