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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Lee S. Alford, Circuit Court Judge
Appellate Case Tracking No. 2012-213281

The State,

Appellant,

vs.

Colin Duane Fitzgerald,

Respondent.

**MOTION OUT OF TIME FOR SECOND EXTENSION WITHIN WHICH
TO SERVE AND FILE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER**

Appellant, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

The Initial Brief of Appellant and Designation of Matter are due to be served and filed on January 7, 2013. Due to illness, the undersigned was not able to have the extension requested on the due date and submits this request out of time. The undersigned does not believe Respondent will be prejudiced by any delay.

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 Appellant moves for a second extension in the above referenced appeal. Due to the holidays and work required in other cases pending before

this Court and the South Carolina Supreme Court, I am unable to complete this Brief on time. The undersigned has completed initial briefs in State v. Barton, State v. Dumas, State v. D. Rogers, State v. Henkel, State v. Horry, State v. Carter, State v. Rhoad, State v. B. Rogers, State v. Collington, State v. Tilmon, State v. Rod. Carter, State v. Franklin, State v. Palmer, State v. Manning, State v. Franklin, State v. Bolden, and State v. Wade. The undersigned has completed a Petition for Writ of Certiorari in State v. Hawes, State v. Miller, and State v. Kinloch, as well as a Return to the Petition for Writ of Certiorari in State v. Epting, State v. Cameron, State v. Leggette, and State v. Harrison. The undersigned completed a Brief of Petitioner in the Supreme Court in State v. Watkins. Further, the undersigned has participated in oral argument at the Court of Appeals in State v. Pradubsri, State v. Bonner, State v. Donahue, State v. Samuel, and today in State v. Barton, and in the Supreme Court in State v. Kromah, State v. Sanders, State v. Harrison, and State v. Baker. The undersigned is preparing for an oral argument Thursday in State v. Policao and one later in January in the Supreme Court in State v. Gamble.

III.

This extension request is not intended for purposes of delay, but rather to ensure the Brief is properly researched and prepared. I would, therefore, request a second extension of time within which to serve and file the Initial Brief of Appellant and Designation of Matter.

WHEREFORE, Appellant prays that the Court hold this matter in abeyance until ruling on this motion, and extend the deadline for the service and filing of the Initial Brief

of Appellant and Designation of Matter in this case for thirty (30) days from the date such relief is granted; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General



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ATTORNEYS FOR APPELLANT

January 8, 2013

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The State,

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the Motion Out of Time For Second Extension Of Time Within Which To Serve And File Initial Brief Of Appellant and Designation Of Matter on Respondent by depositing a copy of same in the United States mail, postage prepaid, addressed to:

J. Tyler Burns, Esquire
1012 Market Street Suite 205
Fort Mill, South Carolina 29708

I further certify that all parties required by Rule to be served have been served.

This 8th day of January, 2013.

Ellen R. DuBois

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