

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2017-001974

THE STATE,

vs.

HOLMES ANDREW SIMPSON-DAVIS,

Appellant.

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

The undersigned counsel would respectfully request a thirty (30) day extension in which to file the Initial Brief of Respondent in the above-referenced case. Counsel for Appellant has graciously consented to the request via telephone. In support of this motion, counsel would respectfully show the Court the following:

Respondent's Initial Brief is due today, November 26, 2018 as per this Court's Order dated October 30, 2018 granting Respondent's third extension request. The undersigned attorney for the Respondent has had a number of state and federal matters to attend since October 30, 2018. Specifically,

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Respondent
SC Court of Appeals

1. Counsel for Respondent has been out of the office on medical leave and is not working full days due to a health condition;

2. Counsel filed the Reply to Petitioner's Response to Respondent's Motion for Summary Judgment in the matter of Robert Lee, Jr. #348833 v. Warden of Perry Correctional Institution, C/A No. 8:18-cv-1921-HMH-JDA, on October 30, 2018;

3. Counsel filed the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Elbert Wallace, #264322 v. Warden Randall Williams, C/A No. 0:18-cv-1837-DCN-PJG, (Federal Habeas Corpus / Murder, Burglary 1st Degree) on November 2, 2018;

4. Counsel prepared and sent for approval the proposed Order of Dismissal of Respondent in the matter of Frankie Lee McGee v. State of South Carolina, Case No. 2015-CP-40-024 (Murder & Burglary 1st Degree) on November 6, 2018 which was signed by Judge Burch and filed in the Richland County Clerk of Court's Office;

5. Counsel prepared and sent for approval the proposed Order of Dismissal of Respondent in the matter of Thomas E. Dubose v. State of South Carolina, Case No. 2016-CP-40-1062 on November 6, 2018;

6. Counsel filed the Reply to Petitioner's Response to Respondent's Motion for Summary Judgment and Petitioner's Motion for Summary Judgment in the matter of Joshua Brandon Phillips, #335243 v. Warden of Turbeville Correctional Institution, C/A No. 9:18-2066-RMH-BM, on November 9, 2018;

7. Counsel filed the Response to Petitioner's Motion for Summary Judgment in the matter of Joshua Brandon Phillips, #335243 v. Warden of Turbeville Correctional Institution, C/A No. 9:18-2066-RMH-BM, on November 9, 2018;

8. Counsel is currently preparing the proposed Order of Dismissal in Andre T. Boone v. State, 2013-CP-40-6702 (PCR/Murder)[Richland County] for the Honorable Paul Burch, Circuit Court Judge;

9. Counsel is currently preparing the Return and Memorandum of Law in William Butts v. Warden, C/A No. 9:18-1968-DCC-BM (Federal Habeas Corpus / 3 Counts of Armed Robbery and 3 counts of Possession of a Weapon During a Violent Crime)[currently 53 pages];

10. Owens v. Stirling, 0:16-cv-02512-TLW (Federal Habeas Corpus / Death Penalty Case) review of Judge Wooten's Order Denying Petitioner's Motion to Alter or Amend on November 1, 2018;

11. Mahdi v. Stirling, 8:16-cv-03911-TMC (Federal Habeas Corpus / Death Penalty Case) assisted with drafting of Respondent's Response to Petitioner's Motion to Alter or Amend Judge Cain's Order filed November 5, 2018 and review of Petitioner's Reply to Respondent's Response;

12. State v. Ardon P. Cato II. (Direct Appeal in this Court) Review of Petition for Rehearing and Draft of Return to Petition for Rehearing as directed by this Court, due Friday;

Finally,

1. Counsel has also done a substantial amount of researching the issues related to this matter and has completed part of the Brief of Respondent;
2. Counsel traveled to Spartanburg County Courthouse on Wednesday, November 20, 2018 and reviewed exhibits necessary for preparation of the Brief of Respondent in this matter;

3. Another attorney in the Attorney General's Office has been assigned to assist Respondent's attorney in this matter to expedite the completion of the Brief of Respondent in this matter;

However, due to counsel's medical condition, counsel's involvement in these and other matters, and the Attorney General's Office was closed November 22 & 23, 2018, counsel is unable to timely complete the Initial Brief of Respondent.

WHEREFORE, extraordinary circumstances having been shown, counsel respectfully requests a thirty (30) day extension of time to serve and file the Initial Brief of Respondent and Designation of Matter. This request is made in good faith, and not for the purposes of delay.

Respectfully Submitted,

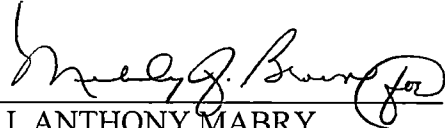
ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

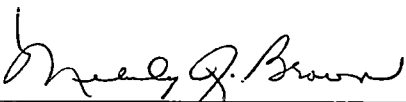
J. ANTHONY MABRY
Senior Assistant Attorney General
No. 11973

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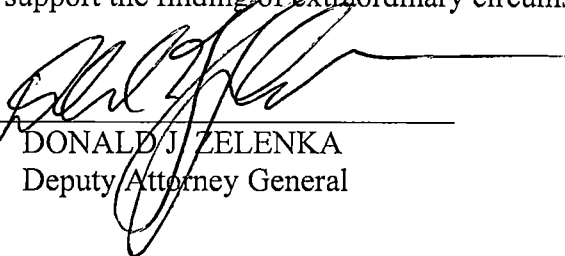
By: 
J. ANTHONY MABRY
ATTORNEYS FOR RESPONDENT

November 26, 2018.

I support the finding of extraordinary circumstances having been shown.

By: 
MELODY J. BROWN,
Senior Assistant Deputy Attorney General

I also support the finding of extraordinary circumstances having been shown.

By: 
DONALD J. ZELENKA
Deputy Attorney General

STATE OF SOUTH CAROLINA
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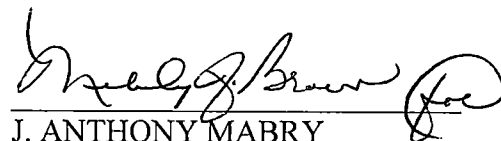
Appellant.

PROOF OF SERVICE

I, J. Anthony Mabry, counsel for the Respondent, certify that I have served two (2) copies of the motion for a fourth extension to file Initial Brief of Respondent and Designation of Matter via U.S. mail to Appellant's attorney of record, Susan B. Hackett Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201.

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

This 26th day of November 2018.



J. ANTHONY MABRY
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305



ALAN WILSON
ATTORNEY GENERAL

November 26, 2018

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

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SC Court of Appeals

Re: The State v. Holmes Andrew Simpson-Davis
Appellate Case No: 2017-001974

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the *Motion for Fourth Extension of Time to File Initial Brief of Respondent and Designation of Matter* along with proof of service in the above-referenced case.

Sincerely,

Angela Bennett
Administrative Coordinator for J. Anthony Mabry
Senior Assistant Attorney General
S.C. Bar No: 11973

JAM/ab
Enclosures

cc: Susan B. Hackett, Esquire