

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Darlington County
G. Thomas Cooper, Circuit Court Judge

Appellate Case No. 2016-002364

RECEIVED
JAN 30 2019
SC Court of Appeals

LARRY JAMES TYLER,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**MOTION OUT OF TIME FOR EXTENSION TO FILE
RETURN TO PETITION FOR WRIT OF CERTIORARI**

Respondent, the State, moves this Court accept out of time a single request for thirty (30) days from the date of this filing in which to file to Return to Petition for Writ of Certiorari, up to and including Friday, March 1, 2019. This would constitute Respondent's only request for an extension of time, and due to the lateness of the request, would constitute Respondent's only request for additional time. In support of the request, undersigned counsel would respectfully show the Court:

1. Counsel for Petitioner originally filed a Johnson Petition on May 16, 2017.
2. By Order filed September 5, 2018, the Court denied the motion to withdraw and ordered re-petitioning on a single issue.
3. The Petition for Writ of Certiorari was filed October 31, 2018.
 - a. Review of the copy in the undersigned's possession does not indicate the date

on which Respondent received it, nor who received it on Respondent's behalf, inconsistent with standard practices.

b. Respondent's records and caseload management were not updated to reflect receipt of the Petition.

4. The Return to Petition for Writ of Certiorari was due to be filed with the Court on Wednesday, October 31, 2018. Respondent filed no such Return, nor request for additional time.

a. Because Respondent's records and caseload management were not updated to reflect receipt of the Petition, the deadline to prepare and submit a Return was never calendared by the undersigned or any other person in Respondent's employ.

5. Counsel inherited the subject case from prior counsel J. Rutledge Johnson, Esq., who appeared on behalf of the State for the PCR evidentiary hearing and subsequently departed from the office.

6. The Court of Appeals inquired as to the status of the filing by phone call on January 30, 2019, bringing the matter to the undersigned's attention.

7. The undersigned extends its sincerest regret and apology for the undue delay and failure in maintaining its calendar of due dates. The matter will be explored to determine how the deadline was not properly noted and calendared by the undersigned and the assistant thereto with supervisory attorneys within the Office of the Attorney General.

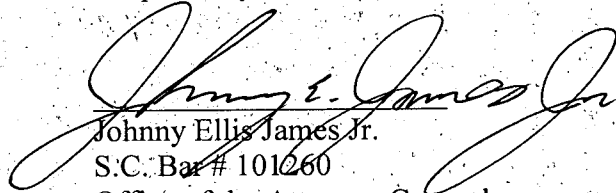
8. Counsel is unable to complete the return to the petition for writ of certiorari due to an extremely heavy workload, incurred in part due to recent heavy turnover within the Office of the Attorney General.

a. An inventory of recent labors can be provided upon request of the Court, but due to the lateness of the hour, the undersigned respectfully omits as much at this time in order to ensure the filing is submitted before the Court's closure today.

9. Counsel for the Petitioner consents to this request as shown by the attached e-mail.

This extension request is not intended for purposes of delay, but rather to ensure that the Return is properly researched and prepared. THEREFORE, undersigned counsel for Respondent respectfully requests this Court relax the rules to permit filing of this motion and thereby grant a **single, only, and FINAL thirty (30) day extension until Friday, March 1, 2019**, or other such time the Court deems appropriate, in which to complete and file the Return to Petition for Writ of Certiorari in this case based upon the above circumstances.

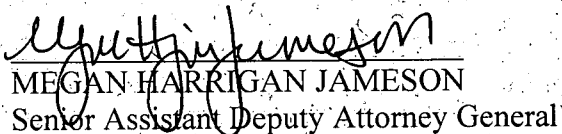
Respectfully submitted,



Johnny Ellis James Jr.
S.C. Bar # 101260
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737
Attorney for Respondent

In compliance with:

In Re: Extensions in Criminal and Post-Conviction Relief Cases, (S.C. Sup. Ct. order dated March 18, 2009) (Davis Adv. Sh. No. 13 at 1).



MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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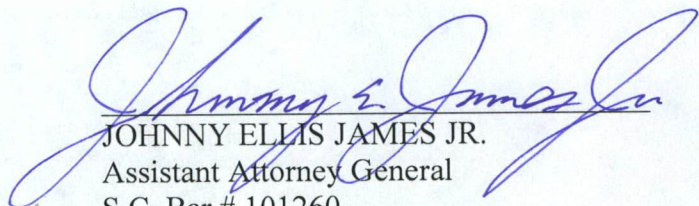
CERTIFICATE OF SERVICE

I, Johnny Ellis James Jr., hereby certify that I have served the Motion Out of Time for Extension to File Return to Petition for Writ of Certiorari, on Petitioner by hand delivery to:

Victor R. Seeger
South Carolina Commission on Indigent Defense
P.O. Box 11589
Columbia, South Carolina 29211-1589

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

This 30th day of January, 2019



JOHNNY ELLIS JAMES JR.
Assistant Attorney General
S.C. Bar # 101260
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Columbia, South Carolina 29211
(803) 734-3737

ATTORNEY FOR RESPONDENT

Johnny James

From: Seeger, Victor <vseeger@sccid.sc.gov>
Sent: Wednesday, January 30, 2019, 4:34 PM
To: Johnny James; Sumaydeng-Bryan, Claire
Subject: RE: [External] Emailing: TYLER, Larry - Motion for Extension out of Time (01883031xD2C78).DOCX

Hello Mr. James,

I consent to your request to file the Return to Petition of Certiorari out of time.

Regards,

Victor R Seeger
Appellate Defender
South Carolina Commission on Indigent Defense
Appellate Division
1330 Lady St. P.O. Box 11589
Columbia, SC 29211
(803) 734-0817
Fax (803) 734-1397

From: Johnny James <JJJames@scag.gov>
Sent: Wednesday, January 30, 2019 4:27 PM
To: Seeger, Victor <vseeger@sccid.sc.gov>
Subject: [External] Emailing: TYLER, Larry - Motion for Extension out of Time (01883031xD2C78).DOCX

Please reply by e-mail with your consent if you can so consent to the attached motion.



Johnny Ellis James Jr.
Assistant Attorney General
Post-Conviction Relief Section
4th, 7th, and 15th Judicial Circuits

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