

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Horry County
The Honorable Steven H. John, Circuit Court Judge

Appellate Case No. 2017-002553

THE STATE,

Respondent,

vs.

TOMMY LEE BENTON,

Appellant.

**MOTION FOR THIRD 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. In support of this motion, counsel would respectfully show the Court the following:

1. Respondent's Initial Brief is due today, February 1, 2019, upon this Court's grant of Respondent's second request for an extension filed on January 2, 2019.
2. The undersigned attorney for Respondent has had a number of state and federal matters to attend since January 2, 2019, several of those matters being in capital case litigation. Specifically, Respondent notes: Counsel prepared and submitted a Motion to Lift Stay, and a reply in to the opposition to lift the stay in Stephen Corey Bryant v. Sterling, C/A No. 9:16-1423-DCN-BM, a capital federal habeas action; prepared and submitted a Memorandum in Support of Unsealing Ex Parte Funding Matters in Mikal D. Mahdi v. Stirling, C/A No. 8:16-3911-TMC-

BM, another capital case in federal habeas; prepared and filed a status report in another capital habeas action, Bayan Aleksey v. Stirling, C/A No. 5:14-cv-03016-JMC-KDW; prepared for and attended a motion hearing on the State's motion to dismiss in a capital state successive PCR action, and also is working on drafting a proposed order granting the motion to dismiss which is due on Monday, February 4, 2019, Bobby Wayne Stone v. State, C/A No. 2018-CP-43-1025; received and review the report of the Magistrate in another capital case in federal habeas, Steven Bixby v. Stirling, C/A No. 4:17-cv-00954-BHH; received and review an opinion in another capital case in federal habeas, Williams v. Stirling, No. 18-2, 2019 WL 332975 (4th Cir. Jan. 28, 2019); is currently working on a response in opposition to a Rule 59 motion due to be filed today in a capital state successive PCR action, Stephen Corey Bryant v. State, C/A No. 2016-CP-43-828; and, has been working on a proposed order of dismissal in another capital state PCR action, Jerry Buck Inman v. State, C/A No.: 2012-CP-39-918, which was originally due on January 22, 2019, and has been extended to March 11, 2019; and, has reviewed discovery matters in another capital state PCR action, Ricky Lee Blackwell, v. State, C/A No. 2018-CP-42-00928. Counsel also had to travel to Richmond, Virginia on January 28, 2019 to appear before the United States Fourth Circuit Court of Appeals on January 29, 2019 for a hearing in Broderick William Seay, Jr. v. Sheriff Al Cannon, a non-capital federal habeas action, C/A No. 18-7242. Additionally, counsel has pending the Initial Brief of Respondent in the matter of State v. Tommy Lee Benton, Appellate Case No. 2017-002553; and has been making some progress on that briefing, in addition to counsel's supervisory duties for the unit's seven (7) other attorneys, which includes consultation and editing of various other pleadings and briefs filed within the last month. Counsel has also been working on the brief in this matter, and has substantially

completed the brief. With a few minor adjustments, the brief will be ready for filing. Thus, counsel is only requesting a limited amount of time to properly complete and submit the brief.

3. Counsel is also currently working on the Initial Brief of Respondent in the matter of State v. Kenneth Strother Collins, Appellate Case No. 2017-000082 and the brief is substantially completed; This is in addition to counsel's supervisory duties for the unit's seven (7) other attorneys, which includes consultation and editing of various other pleadings and briefs filed within the last month.

4. This limited request is made in good faith, and not for the purposes of delay.

5. Respondent was unable to reach Mr. R. Walker Humphrey, II, Esquire but has consulted with Chief Appellate Defender Robert M. Dudek on behalf of Mr. Humphrey, who has graciously consented to this request.

WHEREFORE, in light of the foregoing, counsel for Respondent respectfully requests a thirty (30) day extension of time to serve and file the Initial Brief of Respondent and Designation of Matter.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

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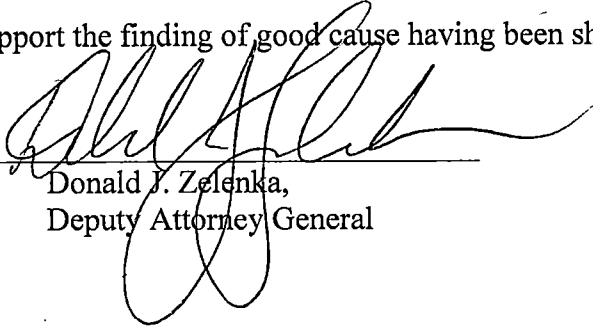
By: 

February 1, 2019.
Columbia, South Carolina.

MELODY J. BROWN
ATTORNEYS FOR RESPONDENT

I support the finding of good cause having been shown.

By:

A handwritten signature in black ink, appearing to read 'Donald J. Zelenka', written over a horizontal line.

Donald J. Zelenka,
Deputy Attorney General

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PROOF OF SERVICE

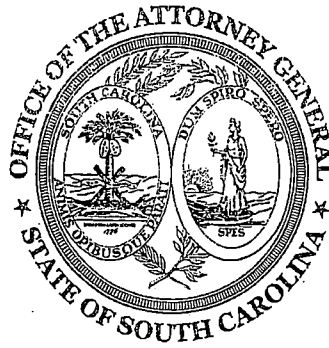
I, Angela Bennett, an employee of the Respondent, certify that I have served two (2) copies of the within motion for a third extension to file Initial Brief of Respondent and Designation of Matter via U.S. mail to his attorney of record, R. Walker Humphrey, II, Esquire, 133 River Landing Drive, Suite 200, Charleston, South Carolina 29492 and Robert M. Dudek, Esquire, SCCID/Division of Appellate Defense, 1330 Lady Street, Suite #401, Columbia, South Carolina 29201-3332.

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

This 1st day of February, 2019.



Angela Bennett
Legal Assistant to Melody J. Brown,
Senior Assistant Deputy Attorney General
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RECEIVED

FEB 04 2019

SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

February 1, 2019

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

Re: *The State v. Tommy Lee Benton*
Appeal from Horry County
Appellate Case No. 2017-002553

Dear Ms. Kitchings:

Enclosed for filing in your office is the original and six (6) copies of Respondent's Motion for Third Extension of Time to File Initial Brief of Respondent and Designation of Matter along with the Certificate of Service in the above-referenced case

Thank you for your assistance in this matter.

Sincerely,

Angela Bennett
Legal Assistant to Melody J. Brown
Senior Assistant Deputy Attorney General

MJB/ab
Enclosures

cc: R. Walker Humphrey, II, Esquire
Robert M. Dudek, Esquire
Victim Advocacy Division