

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2017-002447

THE STATE,

vs.

MITCHELL MONROE WEATHERALL,

Respondent,

RECEIVED
FEB 06 2019
SC Court of Appeals

Appellant.

**MOTION FOR FIFTH 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 e-mail yesterday, February 5, 2019. In support of this motion, counsel for Respondent would respectfully show the Court the following:

Respondent's Initial Brief is due to be filed on Wednesday, February 6, 2019 as per this Court's Order dated January 10, 2019 granting Respondent's Fourth extension request. The undersigned attorney for the Respondent has completed some of the Brief of Respondent but has had a number of other state and federal matters to attend to since January 2, 2019, and the undersigned attorney for Respondent has also had personal and family medical issues to attend to. Specifically,

1. Counsel for Respondent has been out of the office on medical leave in the past 30 days. Counsel has not worked some full days in the last 30 days due to a medical condition. Counsel was also out of the office on family medical leave due to two (2) minor medical surgeries of Respondent's attorney's wife and son;

2. Counsel completed and filed the Initial Brief of Respondent in the matter of State v. Holmes Andrew Simpson-Davis, Appellate Case No. 2017-001974, a Spartanburg County murder appeal matter now pending in the South Carolina Court of Appeals **on January 2, 2019**;

3. Counsel prepared and filed the Return to Petition for Writ of Certiorari in Henry Antonio Burgess v. State of South Carolina, Appellate Case No. 2018-000740, a Lexington County post-conviction relief appeal matter now pending in the South Carolina Supreme Court. The Return to Petition for Writ of Certiorari was filed **on Monday, February 4, 2019**;

4. Counsel prepared and filed the Final Brief of Respondent in the matter of State v. Holmes Andrew Simpson-Davis, Appellate Case No. 2017-001974, a Spartanburg County murder appeal now pending in this Court **on January 30, 2019**;

4. Counsel is also preparing a proposed Order of Dismissal for the Honorable Paul Burch, Circuit Court Judge in Andre T. Boone v. State of South Carolina, 2013-CP-40-6702, a Richland County post-conviction relief matter in which the defendant was convicted of murder, and raising numerous issues, and that proposed Order is almost complete;

5. Counsel is preparing the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Matthew T. Hinton, #345044 vs. Randall Williams, C/A No. 5:18-cv-2617-BHH-KDW (Federal Habeas Corpus);

6. Counsel is preparing the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Gregory Thomas Pencille, #312332 vs. Aaron Joyner,

C/A No. 1:18-cv-2904-RMG-SVH (Federal Habeas Corpus). That petitioner is raising eight (8) grounds in his federal habeas petition and his grounds are lengthy, and the Return is near completion;

7. Counsel is preparing the Return and Memorandum of Law in Support of Motion for Summary Judgment in Maurice Abrams v. Warden, Lee Correctional Institution, C/A No. 8:18-3009-MGL-JDA (Murder/Federal Habeas Return) which is also near completion;

8. Counsel is also currently preparing the Initial Brief of Respondent and Designation of Matter in this matter;

9. Counsel has also requested information from the prosecuting Solicitor's Office regarding one (1) of Appellant's grounds in his brief [Ground one] and has not received that information as of the date of the filing of this extension request;

10. Counsel has also been involved in working on other cases/matters in the Attorney General's Office than those listed above.

Due to counsel's medical condition, and counsel's involvement in these and other matters, counsel has been unable to timely complete the Initial Brief of Respondent in this matter.

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,

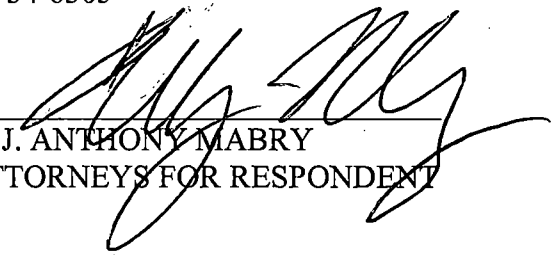
ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

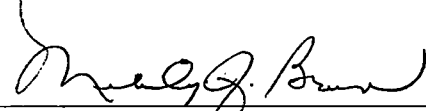
J. ANTHONY MABRY
Senior Assistant Attorney General
No. 11973

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Columbia, South Carolina 29211
(803) 734-6305

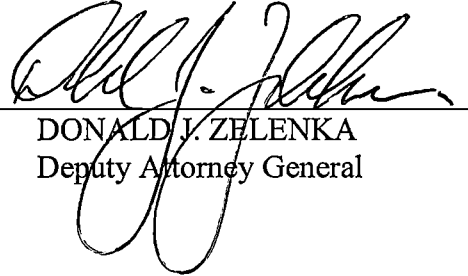
By: 
J. ANTHONY MABRY
ATTORNEYS FOR RESPONDENT

February 6, 2019.

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. ZELENSKA
Deputy Attorney General

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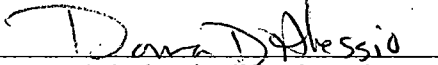
Appellant.

PROOF OF SERVICE

I, Donna D'Alessio, Legal Assistant to J. Anthony Mabry, counsel for the Respondent, certify that I have served two (2) copies of the motion for a fifth extension to file Initial Brief of Respondent and Designation of Matter via U.S. mail to Appellant's attorney of record, J. Falkner Wilkes, Esq., 114 Whitsett Street, Greenville, South Carolina 29601.

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

This 6th day of February 2019.


Donna D'Alessio, Legal Assistant to
J. ANTHONY MABRY
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305



ALAN WILSON
ATTORNEY GENERAL

February 6, 2019

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SC Court of Appeals

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

Re: The State v. Mitchell Monroe Weatherall
Appeal from Horry County
Appellate Case No: 2017-002447

Dear Mr. Kitchings:

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

Sincerely,

J. Anthony Mabry
Senior Assistant Attorney General

JAM:dmd
Enclosures

cc: J. Falkner Wilkes, Esq. (w/two copies of encls.)