

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY

Steven H. John, Circuit Court Judge

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Appellate Case No. 2017-002553

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**RECEIVED**  
MAR 06 2019  
SC Court of Appeals

The State, .....Respondent,

v.

Tommy Lee Benton, .....Appellant.

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**APPELLANT’S RESPONSE TO RESPONDENT’S MOTION FOR FOURTH  
EXTENSION OF TIME**

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Appellant Tommy Lee Benton respectfully provides this response to Respondent The State’s Motion for Fourth Extension of Time to File Initial Brief of Respondent and Designation of Matter:

1. In requesting its third extension of time, Respondent explained to this Court on February 1, 2019, that “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.” (Mot. for 3d Ext. of Time at ¶ 2.)

2. Without objection from Appellant, Respondent received this third thirty-day extension in order to complete these “few minor adjustments.” Respondent now seeks another thirty days to complete the same.

3. A fourth extension of time requires a showing of “extraordinary circumstances.” Sup. Ct. Order No. 2009-03-18-01. “The motion must contain sufficient facts to show that there are extraordinary circumstances that warrant the extension, and must state what actions are being taken to insure that no further extension will be required.” *Id.* All attorneys required to sign the motion must certify that extraordinary circumstances exist. *Id.* Respondent’s motion fails to satisfy the high burden imposed by the Supreme Court.

4. First, Respondent never references or acknowledges the extraordinary circumstances standard.

5. Second, the proffered justification for this fourth extension is that “[t]he undersigned attorney has had a number of state and federal matters to attend since February 1, 2019, several of those matters being in capital case litigation.” (Mot. for 4th Ext. of Time at ¶ 1.) Respondent’s counsel also cites “supervisory duties for the unit’s seven (7) other attorneys, which includes consultation and editing of various other pleadings and briefs filing within the last month.” *Id.* This is the same justification Respondent advanced for its first three extensions, nearly verbatim in its second and third requests. (*See* Mot. for 1st Ext. of Time at 1; Mot. for 2d Ext. of Time at 1-2; Mot for 3d Ext. of Time at ¶¶ 2-3.) Respondent does not explain how counsel’s ordinary workload now has become an extraordinary circumstance warranting a fourth extension of time in this case.

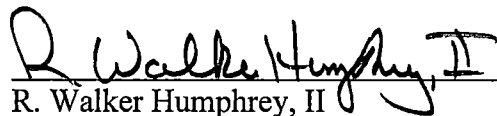
6. Third, Respondent does not explain what actions are being taken to ensure that no further extension will be required.

7. Fourth, the only signed certification of counsel is that “good cause” exists, not exceptional circumstances.

8. Counsel for Appellant is cognizant of the demands imposed upon Respondent's counsel and for that reason consented to each previous request for an extension of time. But respectfully, extraordinary circumstances do not exist for a fourth thirty-day extension. This is particularly true in light of Respondent's representation over one month ago that "[w]ith a few minor adjustments, the brief will be ready for filing" and only "a limited amount of time to properly complete and submit the brief" is needed. (Mot. for 3d Ext. of Time at ¶ 2.)

Counsel for Appellant Tommy Lee Benton therefore respectfully requests that this Court deny Respondent's motion for a thirty-day extension and take such other action as this Court deems just and proper.

Respectfully submitted,

  
R. Walker Humphrey, II *by TCB w/ Express Permission*  
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Charleston, South Carolina  
March 6, 2019

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**Proof of Service**

This is to certify that I, a paralegal with the law firm Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of the **Appellant's Response to Respondent's Motion for Fourth Extension of Time** by depositing the same in the U.S. Mail to the following:

Robert M. Dudek  
Chief Appellate Defender  
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Donald J. Zelenka  
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Laura Lee Andrews

Columbia, South Carolina  
This 6th day of March 2019

**WILLOUGHBY & HOEFER, P.A.**  
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March 6, 2019

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings  
Clerk of Court, Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

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

Dear Ms. Kitchings:

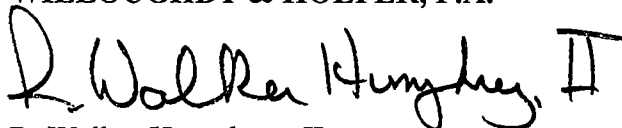
Enclosed for filing please find the original and seven (7) copies of the **Appellant's Response to Respondent's Motion for Fourth Extension of Time** in the above-referenced matter. I would appreciate your acknowledging receipt of this document by file-stamping the extra copy and returning it to me via the courier.

By copy of this letter, I am serving counsel of record and enclose a Proof of Service to that effect. If you have any questions or if you need any additional information, please do not hesitate to contact me.

With kindest regards, I am

Sincerely yours,

WILLOUGHBY & HOEFER, P.A.

  
R. Walker Humphrey, II

By TCC  
with Express Permission

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings

March 6, 2019

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Enclosures

cc: Robert M. Dudek, Esquire  
Donald J. Zelenka, Esquire  
Melody J. Brown, Esquire