

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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

THE STATE,

Respondent,

v.

NICHOLAS JACOB McIVER,

Appellant **RECEIVED**

Appellate Case No. 2018-000824

JUN 24 2019

SC Court of Appeals

**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. Opposing counsel has graciously consented to the request. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

Respondent's Initial Brief is due today, June 24, 2019 as per this Court's Order dated June 3, 2019 granting Respondent's third extension request. The undersigned attorney for the Respondent has completed part of the Initial Brief of Respondent but has had a number of state and federal matters to attend since May 24, 2019. Specifically,

1. Counsel for Respondent has been out of the office on medical leave and is on a reduced work schedule due to a continuous and on-going health condition;
2. Counsel was out of the office **the entire week of June 10-14, 2019** for week long medical tests and screenings at Duke University Medical Center, Durham, North Carolina for a

heart and kidney transplant. Counsel received word June 20, 2019 that he has been approved for transplant and placed on the transplant waiting list. Counsel was also out of the office on **Thursday, June 20, 2019** for an appointment in Charlotte, N.C. at the Carolinas Medical Center (CMC) for treatment of an infection due to the same or related on-going health condition.

3. Counsel filed Respondent's Reply and Amended Reply to the Response to Motion for Summary Judgment [ECF #24] in the matter of Matthew T. Hinton, #345044 vs. Randall Williams, C/A No. 5:18-cv-2617-BHH-KDW (Federal Habeas Corpus) on **May 28, 2019**;

4. Counsel prepared a proposed Order of Dismissal in the matter of Brian Allen Clarke vs. State of South Carolina, 2012-CP-32-1530, a Lexington County post-conviction relief matter on **May 28, 2019** which was forwarded to Judge Derham Cole;

5. Counsel filed the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Jerry L. Scantling, #259057 vs. Warden of Lieber Correctional Institution, C/A No. 6:19-cv-506-TMC-KFM (Federal Habeas Corpus) on **May 29, 2019**;

6. Counsel filed the Respondent's Motion to Stay Time for Filing the Return and Memorandum of Law in the matter of Kinjta Kadeem Sadler, #353966 vs. Charles Williams, Warden, C/A No. 9:19-0113-TMC-JDA (Federal Habeas Corpus) on **May 31, 2019** due to a simultaneous action in the S.C. Supreme Court by Petitioner;

7. Counsel filed the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Joel Antwan Robinson, #351879 vs. Warden, Perry Correctional Institution, C/A No. 4:19-928-RMG-TER (Federal Habeas Corpus) on **June 12, 2019**.

8. Counsel drafted and completed Respondent's Response to Petitioner's Objections to the Report and Recommendation of the United States Magistrate in Pencille v. Joyner, C/A No. 1:18-2904-RMG-SVH (Federal Habeas Corpus) on **June 7, 2019** but the Response was not filed because the District Court denied or overruled the objections before the due date of the Response;

9. Counsel is in the process of preparing a Return and Memorandum of Law in London Wooden v. Warden, Perry Correctional Institution, C/A No. 4:19-cv-00927-RMG-TER (Federal Habeas Corpus) and **it is near completion**;

10. Counsel is also **in the process** of preparing the Initial Brief of Respondent in State v. Ricky Short (Murder/Direct Appeal) to be filed in this Court, and:

11. Counsel has been involved in working on other matters in state and federal court as well.

However, due to counsel's medical condition and treatment, and counsel's involvement in these and other matters, counsel is unable to timely complete the Initial Brief of Respondent and Designation of Matter in this matter.

Additionally, an additional attorney has been assigned to assist Respondent's attorney on this matter to ensure the timely completion of this brief.

Also, Respondent has requested exhibits from the Solicitor's Office who prosecuted this case and has not received those exhibits at the time of the filing of this motion. These exhibits relate to two (2) of the issues raised by Appellant in his brief, which raises a total of five (5) issues on appeal. Respondent has been informed by the Solicitor's Office those items have been placed in the mail to Respondent.

WHEREFORE, for extraordinary circumstances 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.

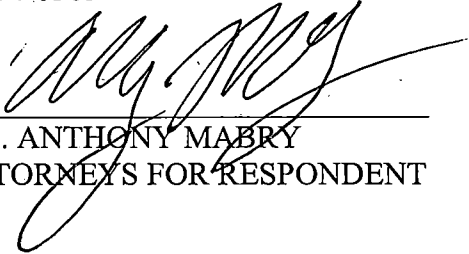
Respectfully Submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

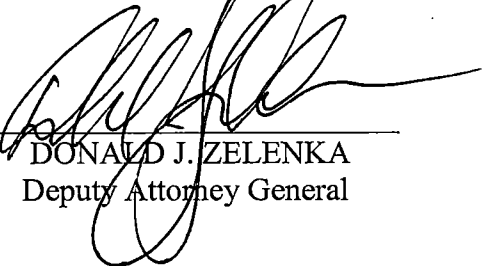
MELODY J. BROWN  
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY  
Senior Assistant Attorney General  
No. 11973  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

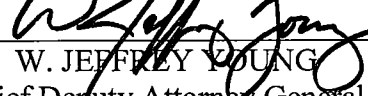
By:   
\_\_\_\_\_  
J. ANTHONY MABRY  
ATTORNEYS FOR RESPONDENT

June 24, 2019.

I support the finding of extraordinary circumstances shown.

By:   
\_\_\_\_\_  
DONALD J. ZELENKA  
Deputy Attorney General

I too support the finding of extraordinary circumstances.

By:   
\_\_\_\_\_  
W. JEFFREY YOUNG  
Chief Deputy Attorney General

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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

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THE STATE,

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**RECEIVED**  
Appellant.

Appellate Case No. 2018-000824

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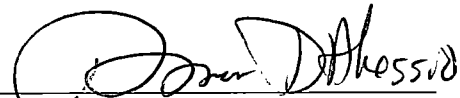
**PROOF OF SERVICE**

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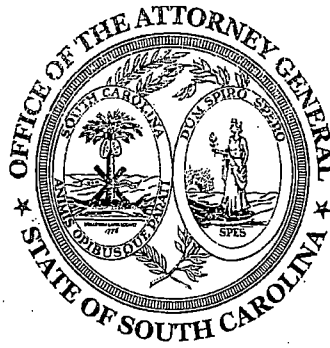
I, Donna D'Alessio, an employee of the Respondent and legal assistant to J. Anthony Mabry, of counsel for the Respondent, certify that I have served two (2) copies of the motion for a fourth extension to file Initial Brief of Respondent and Designation of Matter via U.S. mail to Appellant's attorneys of record, William G. Yarborough, III, Esq., 522 North Church Street, Greenville, South Carolina 29601, and to Lauren C. Hobbis, Esq., c/o William G. Yarborough, II, Attorney at Law, LLC, 522 North Church Street, Greenville, South Carolina 29601.

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

This 24<sup>th</sup> day of June, 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

June 24, 2019

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

Re: *The State v. Nicholas McIver*  
Appeal from Horry County  
Appellate Case No. 2018-000824.

Dear Ms. Kitchings:

Enclosed for filing are the original and six (6) copies of the Respondent's Fourth Motion for Extension of Time to File Initial Brief of Respondent, together with Proof of Service, in the above-referenced matter. Counsel for Appellant has graciously consented to this extension request.

Thank you for your assistance in this matter.

Sincerely,

J. Anthony Mabry  
Senior Assistant Attorney General

JAM:dmd  
Enclosures

cc: William G. Yarborough, III, Esq. (w/two copies of encls.)  
Lauren C. Hobbis, Esq. (w/two copies of encls.)

**RECEIVED**

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