



ALAN WILSON
ATTORNEY GENERAL

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SEP 09 2019

S.C. SUPREME COURT

September 9, 2019

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Hector J. Vazquez, #363120 v. State of South Carolina
Appellate Case No. 2018-001912
Lower Court Case No. 2015-CP-26-7980

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Motion for Fourth Extension to File Motion to Remand and Reconstruct PCR Hearing** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Jacob A. Isenberg
Assistant Attorney General
S.C. Bar No. 103830

JAI/ec
Enclosures

cc: Victor R. Seeger, Esquire

STATE OF SOUTH CAROLINA
In The Supreme Court

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CERTIORARI TO HORRY COUNTY
Court of Common Pleas

SEP 09 2019

The Honorable Brooks P. Goldsmith, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2018-001912

Hector J. Vazquez,

Petitioner,

v.

State of South Carolina,

Respondent.

**MOTION FOR FOURTH EXTENSION TO FILE RETURN TO PETITION FOR WRIT
OF CERTIORARI AND
MOTION TO REMAND AND RECONSTRUCT PCR HEARING DUE TO THE
DESIGNATION OF THE PCR JUDGE ON THE HEARING TRANSCRIPT**

Respondent, the State, moves this Court to stay the filing the time to file a Return to the Petition to resolve the designation on the transcript of the hearing judge. **The request is to remand the matter to reconstruct because the PCR Order was signed by Judge Brooks Goldsmith, but the PCR transcript prepared by the Court Reporter inadvertently designated Judge John C. Hayes, III. The court reporter has confirmed that this was a clerical error on her part by the attached affidavit. This is important because the sole argument raised in the Petition concerns this misdesignation as an assertion that the actual hearing judge did not sign the order before the court. Respondent has advised opposing counsel that it has no objection to the Petitioner withdrawing and having a new petition filed**

or the presentation of a Johnson Petition if necessary. However, at the time of this filing there has not been an agreement from opposing counsel. This is Respondent's fourth request for an extension of time in which to file the return. In support of the request, undersigned counsel would respectfully show the Court:

1. The Return to Petition for Writ of Certiorari is due to be filed with the Court today. The Court has granted counsel three previous extensions.
2. This is the fourth request for an extension of time in which to file a response.
3. On August 8, 2019, Respondent alerted Petitioner that a potential scrivener's error resulted in Judge Brooks P Goldsmith not reflected as presiding over the evidentiary hearing.
4. Respondent provided multiple sources of documentation to support the fact that Judge Brooks P. Goldsmith presided over this evidentiary hearing.
5. Petitioner requested additional time to consider whether correcting this scrivener's error would merit a withdrawal of the Petition. Respondent agreed to consent to a withdrawal of the Petition without prejudice.
6. That same day, Respondent provided the same source of documentation in an email to the court reporter, Natalie Dahl ("Dahl"). Respondent further requested Dahl correct the scrivener's error.
7. On August 13, 2019, Petitioner requested Respondent get an affidavit from Dahl attesting to the fact that Judge Goldsmith presided over this evidentiary hearing.
8. On August 17, 2019, Dahl sent Respondent documentation that her records showed listing Judge Goldsmith as presiding before submitting the transcript.

Respondent sent this information to Petitioner.

9. On August 19, 2019, Petitioner reaffirmed a request for the above-mentioned affidavit.

10. On August 22, 2019, Dahl agreed to submit an affidavit at Respondent's request.

11. On August 27, 2019, Dahl submitted an affidavit to Respondent.

12. On August 30, 2019, Respondent received the affidavit from Dahl. The affidavit from Dahl is attached to this motion. That same day, Respondent submitted it to Petitioner.

13. On September 3, 2019, Petitioner acknowledged receipt of the affidavit from Respondent. Thereafter, Petitioner request additional time to review before deciding whether it was appropriate to withdrawal the Petition without prejudice.

14. On September 9, 2019, Respondent requested a final decision from Petitioner in accordance with this deadline.

15. Petitioner notified Respondent the affidavit was not sufficient to merit a withdrawal of the Petition without prejudice.

16. Respondent then drafted this extension request to ensure appropriate time to respond to this Petition on the merits.

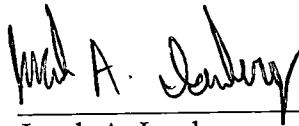
17. Moreover, Respondent moves to stay these proceedings based upon the transcript issue. Respondent further moves to remand and reconstruct the evidentiary hearing to determine whether Judge Brooks Goldsmith presided as consistent with the written order.

This extension request is not intended for purposes of delay, but rather to ensure that the Return is

properly researched and prepared. The undersigned therefore requests an extension of time within which to serve and file the Return. THEREFORE, undersigned counsel for Respondent respectfully requests a **fourth extension until the designation in this transcript is resolved** based upon the above exigent circumstances. Counsel for Petitioner has consented to an extension request of thirty days.

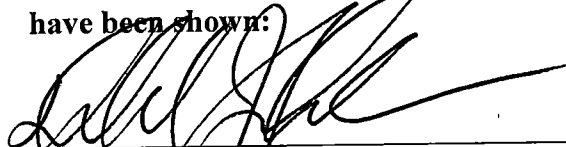
Moreover, Respondent's intention to stay these proceedings is not intended for the purposes of delay, but rather to ensure the issue over who presided is properly resolved. The undersigned believes, in good faith, the circumstances are sufficient to mandate a remand followed by a reconstruction hearing on the issue. Counsel for Petitioner has consented to Respondent's motion to stay, remand, and reconstruct the hearing based upon the above exigent circumstances.

Respectfully submitted,

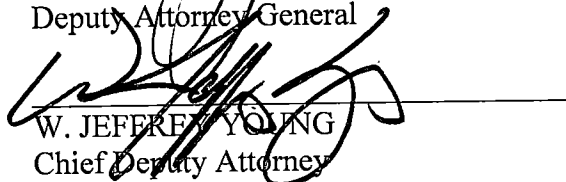


Jacob A. Isenberg
Assistant Attorney General
S.C. Bar # 103830
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-4276
Attorney for Respondent

We concur that extraordinary circumstances have been shown:

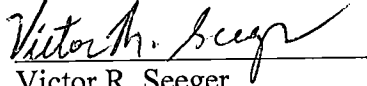


DONALD J. ZELENKA
Deputy Attorney General



W. JEFFREY YOUNG
Chief Deputy Attorney

I consent:


Victor R. Seeger
Attorney for Petitioner

This 9th day of September, 2019.

STATE OF SOUTH CAROLINA
In The Supreme Court

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CERTIORARI TO HORRY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Brooks P. Goldsmith, Circuit Court Judge

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Hector J. Vazquez,

Petitioner,

v.

State of South Carolina,

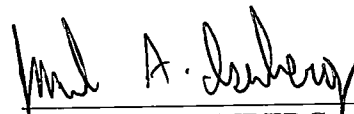
Respondent.

I, Jacob Isenberg, hereby certify that I have served the Motion for Fourth Extension to File the Return to Petition for Writ of Certiorari, on Petitioner by depositing a copy of same in the U.S. mail, addressed to:

**Victor R. Seeger, Appellate Defender
South Carolina Commission on Indigent Defense
PO BOX 11589
Columbia, South Carolina 29211-1589**

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

This 9th of September, 2019.



JACOB A. ISENBERG
Assistant Attorney General
S.C. Bar # 103830
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)

Hector J. CasesVazquez,
S.C.D.C. No. 361120,

) Case No.: 2015-CP-26-07980
)

RECEIVED

Applicant,

)

SEP 09 2019

v.

)

AFFIDAVIT OF
NATALIE DAHL

S.C. SUPREME COURT

State of South Carolina,

)

Respondent.


)

PERSONALLY APPEARED BEFORE ME, Natalie Dahl, the undersigned, who being
duly sworn deposes and states:

1. I am certified by the National Court Reporter's Association with a designation of Registered Professional Reporter (RPR).
2. I have been a court reporter for twenty three years. In that time, I have routinely compiled transcripts for legal proceedings.
3. My standard practice is to record the presiding judge in stenographic and real time fashion during legal proceedings.
4. Additionally, my standard practice is to formalize a transcript after each legal proceeding has concluded.
5. Furthermore, my standard practice is to label the recorded presiding judge on each transcript's coversheet.
6. Finally, my standard practice is to submit a formalized transcript after completion.
7. I was the assigned court reporter for this post-conviction relief hearing in the Fifteenth Circuit, before the Honorable Brooks Goldsmith, on November 15, 2016.

8. In this particular case, I submitted the transcript on January 21, 2018.
9. On August 8, 2019, I received noticed of a potential scrivener's error from the South Carolina Attorney General's Office.
10. Thereafter, I reviewed all relevant documents and recordings relating to this legal proceeding which revealed Judge Brooks Goldsmith presided over this hearing.
11. To the best of my knowledge, I recorded Judge Brooks Goldsmith as presiding over this hearing
12. To the best of my knowledge, I placed Judge Brooks Goldsmith name on the cover page while formalizing this transcript.
13. To the best of my knowledge, I did not alter the cover page of this transcript, to reflect another presiding judge, before submission.
14. According to my records, the last saved transcript reflected Judge Brooks Goldsmith as presiding over this hearing.
15. Therefore, I believe the current cover page, provided to me, contains a scrivener's error. Specifically, I believe the cover page incorrectly reflects Judge John C. Hayes, III, presided over this hearing.
16. As a result, I am willing and able to correct this error.

By:



Natalie Dahl

Circuit Court Reporter

E-mail: ndahl@sccourts.org

Columbia, South Carolina

Aug 26, 2019

SWORN TO and subscribed before me

This 26 day of August, 2019

Nataliya Tsytsarova
Notary Public for South Carolina

My Commission Expires: 09-19-2027

