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May 26 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lexington County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

Respondent,

v.

NICHOLAS BENJAMIN CHHITH-BERRY,

Appellant.

Appellate Case No. 2019-000352

**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 extraordinary or good cause circumstances:

Respondent's Initial Brief is due today, Tuesday, May 26, 2020. Opposing counsel has graciously consented to this extension request. The undersigned attorney has had a number of state and federal matters to attend since April 23, 2020. 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. Counsel has been approved for transplant and placed on the transplant waiting list at Duke University Medical

Center, Durham, North Carolina for a heart and kidney transplant; counsel has had various medical issues related to said on-going health condition including ocular migraine headaches; and counsel was also asked to leave the office on **March 12, 2020**, counsel is working remotely from home due to safety concerns regarding his immune system and the current situation regarding the Coronavirus.

2. Counsel for Respondent prepared and filed the Final Brief of Respondent in State v. William T. Gule, Jr., Appellate Case No. 2018-001848, (Murder) in this Court today, **May 26, 2020**;

3. Counsel for Respondent prepared and filed the Reply to the Response to the Motion for Summary Judgment in Timothy Dingle v. Warden of Lieber Correctional Institution, C/A No. 9:19-2426-HMH-BM (Murder X2 and Arson 1st X2) today, **May 26 2020**, in United States District Court;

4. Counsel for Respondent prepared and filed the Final Brief of Respondent in State v. Nicolas J. McIver, Appellate Case Number: 2018-824 (Murder) on **May 16, 2020** in this Court;

5. Counsel filed Respondent's Reply to Petitioner's Response to Motion for Summary Judgment [ECF #21] in the matter of Bobby Alexander Gilbert vs. Brian Kendall, C/A No. 2:19-3356-MGL-MGB (Murder & Armed Robbery) on **May 12, 2020** in United States District Court;

6. Counsel also filed the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Richard F.V. Bowman, III vs. Warden James, Warden Kershaw C.I., C/A No. 9:20-666-TMC-BM (Aiding and Abetting Homicide by Child Abuse) on **May 7, 2020** in United States District Court;

7. Counsel filed Respondent's Reply to Petitioner's Response to Motion for Summary Judgment [ECF #30], in the matter of Harold Ayton vs. Warden Charles Williams, C/A No. 9:19-3234-DCN-BM on **May 4, 2020** in United States District Court;

8. Counsel filed Respondent's Reply to Response in Opposition to Motion for Summary Judgment [ECF #40], in the matter of Dennis Rodger Davis, Jr. vs. Bryan Sterling; Tonya James; Jeannine Price, C/A No. 0:19-2720-TLW-PJG on **May 7, 2020** in United States District Court;

9. Counsel also filed the Respondent's Sixth Status Report in the matter of Kinjta Kadeem Sadler, #353966 vs. Charles Williams, Warden, C/A No. 8:19-0113-TMC-JDA on **May 15, 2020** in United States District Court;

10. Counsel for Respondent prepared the Initial Brief of Respondent and Designation of Matter in the matter of The State vs. William T. Gule, Jr., Appellate Case No. 2018-001848, on **April 24, 2020** in this Court;

11. Counsel prepared and filed the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Timothy Donald Dingle vs. Warden of Lieber Correctional Institution, C/A No. 9:19-2426-HMH-BM (Murder X2 and Arson 1st X2)[20 grounds] on **April 23, 2020** in United States District Court;

12. Counsel is preparing and near completion of the Initial Brief of Respondent in State v. Rajshun Foster, Appellate Case Number 2019-1571 (Murder), which will be filed in this Court; and

13. Counsel has been involved in working **on other matters in state and federal court** as well. However, due to counsel's medical condition, treatment, and preventative safety measures, and the other matters counsel has been working on and/or filed in this Court and

United States District Court, counsel was unable to timely complete the Initial Brief of Respondent and Designation of Matter in this matter. Opposing counsel has graciously consented to this extension request.

Respondent will make this brief, and the brief in State v. Adriel Nicholas Garnett,¹ a priority in the next 30 days.

WHEREFORE, for good cause 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

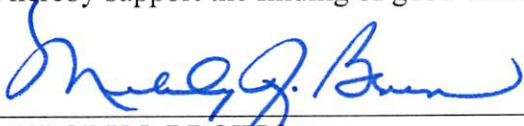
J. ANTHONY MABRY
Senior Assistant Attorney General
No. 11973

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(803) 734-6305

By: s/J. Anthony Mabry
J. ANTHONY MABRY
ATTORNEYS FOR RESPONDENT

¹ The brief in State v. Adriel Nicholas Garnett is on a 3rd extension and Respondent is requesting a 4th extension for that brief today as well for the same reasons.

I hereby support the finding of good cause.



MELODY J. BROWN,
Senior Assistant Deputy Attorney General

May 26, 2020.

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Appellant.

Appellate Case No. 2019-000352

PROOF OF SERVICE

I, **Donna D'Alessio**, an employee of the Respondent and legal assistant to J. Anthony Mabry, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Third Extension of Time to File Initial Brief of Respondent and Designation of Matter has been forwarded to appellant's counsel, Susan B. Hackett, Esq., via email today, May 26, 2020 to shackett@sccid.sc.gov, and to her assistant kkasperski@sccid.sc.gov and by depositing one copy of the same in the United States mail, postage prepaid, and addressed to his attorney of record: Susan B. Hackett, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, South Carolina 29201.

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

This 26th day of May, 2020.



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

Donna D'Alessio

From: Donna D'Alessio
Sent: Tuesday, May 26, 2020 11:30 AM
To: shackett@sccid.sc.gov
Cc: Kasperski, Katriel (kkasperski@sccid.sc.gov)
Subject: Chhith-Berry, Nicholas Benjamin - Appellate Case No. 2019-000352 - Motion for Third Extension of time to file Initial Brief of Respondent
Attachments: Chhith-Berry, Nicholas Benjamin - Appellate Case No. 2019-000352 - 5-26-2020 (02285563xD2C78).pdf

Dear Ms. Hackett:

Attached is a scanned copy of the Respondent's Motion for Third Extension of Time to File Initial Brief of Respondent and Designation of Matter regarding the above matter. A paper copy is being mailed to you this afternoon. The Respondent's Motion for Third Extension of Time to File Initial Brief of Respondent and Designation of Matter are being submitted to the South Carolina Court of Appeals through e-filing, along with a copy of this email.

Hope you are well, and thank you.

Donna D'Alessio, Legal Assistant
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