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Jun 22 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Lexington County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HEIRBERONE HEAVA FOSTER,

APPELLANT

APPELLATE CASE NO. 2019-000892

MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

Counsel for Heirberone Heava Foster respectfully requests a **final thirty-day extension from June 25, 2020 until July 27, 2020**, in which to file the Initial Brief of Appellant and Designation of Matter in this case. **Counsel will file the Initial Brief of Appellant and Designation of Matter before the deadline if possible.** This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. In support of this request, counsel shows:

1. The initial brief of appellant and designation of matter are due to be filed with the Court Thursday, June 25, 2020.

2. Counsel for Heirberone Heava Foster respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time, **including difficulties managing an office and a full, heavy caseload during the coronavirus.** Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.

3. Counsel filed the brief of appellant and designation of matter in the murder case of The State v. Brian David Walls with this Court on Thursday, June 18, 2020. Counsel also is working on the brief, and he expects to file the initial brief of appellant and designation of matter in the murder case of The State v. Malette Denise Kimbrough with this Court on or before Tuesday, June 23, 2020. Counsel is also lead counsel on the death penalty cases of State v. Timothy Jones, Jr., out of Lexington County, and The State v. Jerome Jenkins, Jr., out of Horry County. Counsel had a WebEx oral argument before this Court on June 3, 2020 in The State v. John Ernest Perry. Counsel filed the brief of appellant and designation of matter in the case of The State v. Gabriel Joyner with this Court on May 29, 2020. Counsel had a WebEx oral argument before this Court on May 27, 2020 in The State v. James Caleb Williams. Counsel had a WebEx oral argument before this Court on May 5, 2020 in The State v. Howard James Woods, Jr. Counsel filed a petition for writ of certiorari to this Court and accompanying appendix in The State v. Edward Primo Bonilla, with the Supreme Court on May 4, 2020. Counsel filed the petition for rehearing in the case of The State v. Justin Jamal Warner with this Court on April 22, 2020. **Counsel has extensive administrative duties as the Chief Appellate Defender, including Appellate Project oversight duties and management of the work from home personnel during this coronavirus pandemic. Counsel also has to discuss the cases of four inexperienced Appellate Defenders with them in advance, and read all of their filings in advance. Counsel**

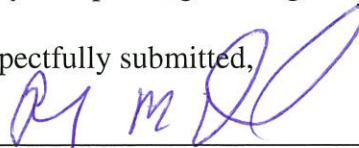
regrets the necessity of this extension request, but it is absolutely necessary under the circumstances.

4. Counsel makes this request in good faith and not for purpose of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become more manageable in the near future, and less extensions will need to be requested.

5. Opposing counsel, the Attorney General's Office, has graciously consented to this extension request by way of the extended thirty-day general consent granted by Deputy Attorney General Donald J. Zelenka for all Appellate Defense extensions through June 30, 2020. That extended, emailed general consent was dated May 20, 2020.

WHEREFORE, the undersigned counsel would respectfully request a **final thirty-day extension from June 25, 2020 until July 27, 2020**, in which to file the initial brief of appellant and designation of matter in this case based upon the above exigent circumstances. Counsel requests that time limits for filing the brief be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

Attorney for Appellant



J. Hugh Ryan, III
Executive Director/
Hervery B. O. Young
Deputy Director and General Counsel/
W. Lawrence Brown
Deputy General Counsel and Training
Director

This 22nd day of June, 2020

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Appeal from Lexington County

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THE STATE,

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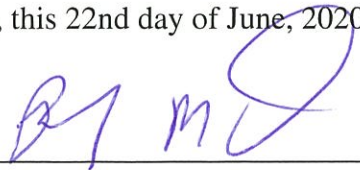
HEIRBERONE HEAVA FOSTER,

APPELLANT

APPELLATE CASE NO. 2019-000892

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the motion for an extension of time, in which to file initial brief of appellant and designation of matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 22nd day of June, 2020.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.