

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Jun 25 2020

SC Court of Appeals

Appeal from Spartanburg County
The Honorable J. Mark Hayes, II, Circuit Court Judge

THE STATE,

Respondent,

v.

ADRIEL NICHOLAS GARNETT,

Appellant.

Appellate Case No. 2019-000722

**MOTION FOR FIFTH 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, Tommy A. Thomas, Esq. has been notified via email regarding this request. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

Respondent's Initial Brief is due Thursday, June 25, 2020. The undersigned attorney has completed a portion of the Initial Brief but had a number of other state and federal matters to attend since May 22, 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 doctors' appointments, blood draws, ocular migraine headaches, stomach issues with an LVAD implant; and counsel was also asked to leave the office on **March 12, 2020 due to COVID 19**. Counsel is working remotely from home due to safety concerns regarding his immune system and the current situation regarding the Coronavirus.

2. Counsel prepared and filed the Initial Brief of Respondent in the matter of The State vs. Rajshun Bernard Foster, Appellate Case No. 2019-001571, a Cherokee County murder appeal matter now pending **in this Court, filed on June 19, 2020**;

3. Counsel is currently preparing the Reply to Petitioner's Response to Motion for Summary Judgment in Alfonzo Staton v. Warden (Murder, Kidnapping, Conspiracy)[Federal Habeas Corpus] that is due on **Monday, June 29, 2020** in United States District Court. The Petitioner is raising an actual innocence claim, in his 26 page Response to the State's summary judgment motion, to overcome procedural defaults, that has required undersigned counsel to review the entire transcript of Petitioner and his co-defendants' trial from 1997 and brief the U.S. District Court on the evidence of Petitioner's guilt and respond to Petitioner's claims in his Response. This has required a significant amount of time and work by counsel. Petitioner was tried with 5 co-defendants in Marlboro County for the murder of Darlene Patterson, whose duct-taped body was found floating in a creek on Burnt Factor Road on Thanksgiving Day 1994.¹

¹ This federal habeas petitioner, Alfonzo Staton, was tried jointly with Leroy Staton, Ricky Stuckey, Robert Graham, Martin McIntosh, and Jeffrey Walls. Ringo Pearson was also a co-defendant. The trial transcript exceeds 1,000 pages.

4. 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 on **May 26, 2020**;

5. 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), also on **May 26 2020** in United States District Court for the District of South Carolina;

6. Counsel filed the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Kentrell Treville Liburd v. Warden Charles Williams, Jr., C/A No. 0:20-1746-SAL-PJG on **June 2, 2020** in the United States District Court for the District of South Carolina on June 2, 2020;

7. 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 Correctional Institution, C/A No. 9:20-666-TMC-BM on **June 10, 2020**;

8. Counsel filed the Respondent's Objection to the Report and Recommendation [ECF #23] in the matter of Bobby Alexander Gilbert v. Brian Kendall, C/A No. 2:19-3356-MGL-MGB on **June 11, 2020**;

9. 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. Chiddith-Berry,² a priority in the next 30 days.

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

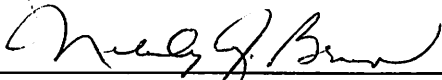
MELODY J. BROWN
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
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No. 11973

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Columbia, South Carolina 29211
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By: s/J. Anthony Mabry
J. ANTHONY MABRY
ATTORNEYS FOR RESPONDENT

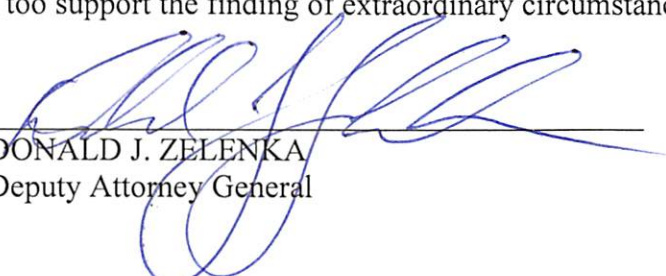
I hereby support the finding of extraordinary circumstances.



MELODY J. BROWN
Senior Assistant Deputy Attorney General

² The brief in State v. Chhith-Berry is on a 3rd extension and Respondent is requesting a 4th extension for that brief today as well for the same reasons.

I too support the finding of extraordinary circumstances.



DONALD J. ZELENKA
Deputy Attorney General

June 25, 2020.

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Appellate Case No. 2019-000722

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 Fifth Extension of Time to File Initial Brief of Respondent and Designation of Matter has been forwarded to appellant's counsel, Tommy A. Thomas, Esq., via email today, June 24, 2020 to thomaslaw@me.com, and by depositing one copy of the same in the United States mail, postage prepaid, and addressed to his attorney of record: Tommy A. Thomas, Esq., P.O. Box 88, Irmo, South Carolina 29063.

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

This 25th day of June, 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

Angela Bennett

RECEIVED

Jun 25 2020

From: Angela Bennett
Sent: Thursday, June 25, 2020 11:38 AM
To: 'thomaslaw@me.com'
Cc: Donna D'Alessio; Anthony Mabry
Subject: The State v. Adriel Garnett
Attachments: Garnett, Adriel-2019-000722-Motion for Fifth Extension of Time to File Initial Brief of Respondent and Designation of Matter-June (02311347xD2C78).PDF

Follow Up Flag: Worldox

SC Court of Appeals

Mr. Thomas, please find attached the Motion for Fifth Extension of Time to File Initial Brief of Respondent and Designation of Matter in the Adriel Garnett appeal. The motion will be filed with the Court of Appeals on today's date.

Thank you,

*Angela Brown
Administrative Coordinator
Criminal Division*

*Office of the Attorney General
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