

STATE OF SOUTH CAROLINA
In the Court of Appeals

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Jul 08 2020

SC Court of Appeals

Appeal from Horry County
The Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JOHNATHAN LAMAR HILLARY,

APPELLANT.

Appellate Case No. 2019-001048

**MOTION FOR SECOND 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. As of June 23, 2020 Appellate Defense has consented to extension requests through July 31, 2020. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

Respondent's Initial Brief is due today, July 8, 2020. The undersigned attorney has had a number of state and federal matters to attend since June 8, 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 on **June 19, 2020**;

3. Counsel prepared the Reply to Petitioner's Response to Motion for Summary Judgment in Alfonzo Staton v. Warden (Murder, Kidnapping, Conspiracy)[Federal Habeas Corpus] on **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

4. Counsel also filed the Respondent's Reply to Response in Opposition to Motion for Summary Judgment [ECF #27] in the matter of Richard F.V. Bowman, III vs. Warden James, Warden Kershaw Correctional Institution, C/A No. 9:20-666-TMC-BM, a Federal Habeas matter

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.

now pending in the United States District Court for the District of South Carolina on **June 10, 2020**;

5. 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, another Federal Habeas matter on **June 11, 2020**;

6. Counsel 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 on **June 19, 2020**;

7. Counsel filed the Respondent's Response to Motion to Amend the Federal Habeas Petition [ECF #54] in the matter of Dennis Roger Davis, Jr. vs. Tonya James, C/A No. 0:19-2720-TLW-PJG on **July 7, 2020**; and

8. 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.

Respondent will make this brief, and the briefs in State v. Chiddith-Berry,² and State vs. Adriel Nicholas Garnett³ priority in the next 30 days.

² The brief in State v. Chhith-Berry is on a 4th extension and currently due to be filed on July 27, 2020. Respondent requested a 4th extension for this brief for the same reasons.

³ The brief in State vs. Adriel Nicholas Garnett, is on a 5th extension of time and currently due to be filed on July 27, 2020. Respondent requested a 5th extension for this brief for the same reasons.

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

July 8, 2020.

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APPELLANT.

Appellate Case No. 2019-001048

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 2nd Extension of Time to File Initial Brief of Respondent and Designation of Matter has been forwarded to appellant's counsel, David Alexander, Esq., via email today, July 8, 2020 to dalexander@sccid.sc.gov and to lmattthews@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: David Alexander, 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 8th day of July, 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: Wednesday, July 08, 2020 3:50 PM
To: dalexander@sccid.sc.gov
Cc: lmatthews@sccid.sc.gov
Subject: Hillary, Johnathan Lamar - Appellate Case No. 2019-001048 - 2nd Motion for extension of time to file IBOR
Attachments: Hillary, Johnathan Lamar - Appellate Case No. 2019-001048 - Motion for 2nd ext of time to file IBOR (02321538xD2C78).pdf

Dear Mr. Alexander:

Attached is a scanned copy of the Respondent's Motion for Second 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 Second Extension of Time to file Initial Brief of Respondent is 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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