

STATE OF SOUTH CAROLINA
In the Supreme Court

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Jul 13 2020

Appeal from Spartanburg County
The Honorable Paul M. Burch, Circuit Court Judge

S.C. SUPREME COURT

MARION ALEXANDER LINDSEY,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2019-001271

**MOTION FOR FIFTH EXTENSION OF TIME TO FILE
RETURN TO PETITION FOR WRIT OF CERTIORARI**

The return in the above-captioned matter is currently due to be filed today, July 13, 2020. Counsel for Respondent, State of South Carolina, would respectfully request a final 15 day extension in which to file the return. Opposing counsel are all attorneys with the Division of Appellate Defense and have provided standing consent for extensions through July 31, 2020, in consideration of limitations resulting from the Coronavirus health emergency. (See Email of Don Zelenka re: extension request consents, dated June 23, 2020). In support of this motion, counsel would respectfully show the Court:

The undersigned has been involved in a number of state and federal matters, including but not limited to the following documents filed in the last 30 days: aided in drafting and edited a response in opposition to a Rule 59 motion filed on June 15, 2020, in a capital federal habeas action (*Marion Bowman*); prepared and filed on June 17, 2020, a response in opposition to a Rule 59 motion in another capital federal habeas action (*Steven Bixby*); aided in the drafting and

edited brief of appellant filed on June 18, 2020, in a capital federal habeas action appeal pending in the Fourth Circuit (*James Nathaniel Bryant*); prepared and filed on June 25, 2020, a petition for rehearing in the Court of Appeals in a murder direct appeal (*Christian Himes*); prepared for and attending by video on June 26, 2020, a status conference in another capital case in post-conviction relief (*Mitchell Sims*); consulting with opposing counsel for status report filed July 6, 2020, in the South Carolina Court of Appeals in a pending murder direct appeal remanded for reconstruction hearing (*James Ginther*); prepared and submitted for filing on July 6, 2020, a response in opposition to Rule 59 motion in non-capital PCR (*Kevin Mercer*); and negotiated an extension for investigation and briefing in a pending capital federal habeas action in light of COVID delays, with a hearing on same scheduled for tomorrow, July 14, 2020 (*Steven Stanko*). Additionally, counsel completed significant research and continued drafting of the return in this action.

Undersigned counsel shares responsibility for the return with Assistant Attorney General Michael Douglas Ross. Mr. Ross has similarly had various state and federal matters that include, but are not limited to, the following work within the past 30 days: completed and filed the Return to Petition for Writ of Certiorari for a pending non-capital appeal in this Court on July 1, 2020 (*State v. Kelvin Jones*); completed and filed a response in opposition to motion for discovery in a non-capital federal habeas action (*Antonio Jacobs*); and is currently completed a return and memorandum of law in support of motion for summary judgment in a non-capital federal habeas action (*Tito F. Harris*). Additionally, counsel continues to work on completing review of the record, and the preparation of the return in this action.

Due to counsel's involvement in these and other matters, counsel have been unable to timely complete the return. However, Respondent has presently a draft of the return that

currently exceeds 80 page. Cognizant of the limitations imposed on Petitioner to limit the petition to 75 pages (Order of January 14, 2020), counsel for Respondent is working diligent to trim the document. However, counsel does anticipate request to exceed the page limit set by Rule 243 (g), SCACR (return to petition should be total of no more than 25 pages).

This request is made in good faith, and not for the purposes of simple delay. Due to the number of extension request, counsel is requesting a limited 15 day extension and is currently prioritizing the matter so that the return may be completed and filed within the time request.

WHEREFORE, based on the foregoing, counsel for Respondent respectfully request a 15 day extension to and including July 28, 2002, to serve and file the return.

Respectfully Submitted,

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ATTORNEYS FOR RESPONDENT

July 13, 2020

I have reviewed and approve this request:

 s/Donald J. Zelenka .
DONALD J. ZELENKA
Deputy Attorney General