

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Lexington County

William P. Keesley, Circuit Court Judge

RECEIVED

Jul 27 2020

SC Court of Appeals

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 July 27, 2020 until August 26, 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, and two of these extension requests from this Court today should be the final COVID-19 extraordinary extensions.** 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 Monday, July 27, 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 is filing the initial brief of appellant and designation of matter in the case of The State v. Jason Carlton Booth with this Court today, July 27, 2020. Counsel filed the Brief of Respondent in the case of The State v. Joseph Bowers with the Supreme Court on Wednesday, July 22, 2020. Counsel filed the petition for writ of certiorari to this Court and accompanying appendix in the case of The State v. Justin Jamal Warner with the Supreme Court on Monday, July 20, 2020. Counsel, as lead counsel, filed the seven-issue initial brief of appellant and designation of matter in the death penalty case of The State v. Jerome Jenkins, Jr. with the Supreme Court on Monday, July 13, 2020 with co-counsel Kathrine Hudgins and Adam Ruffin. Counsel is lead counsel, and is presently also working on the death penalty case of State v. Timothy Jones Jr, where the transcripts are 7,422 pages long. Counsel filed the petition for rehearing in the case of The State v. Arsenio D. Colclough with this Court on June 25, 2020. Counsel filed the petition for writ of certiorari to this Court and accompanying appendix in The State v. Timiya Rashad Massey with the Supreme Court on June 24, 2020. Counsel filed the initial brief of appellant and designation of matter in the case of The State v. Malette Denise Kimbrough with this Court on June 23, 2020. Counsel filed the brief of appellant and designation of matter in the case of The State v. Brian David Walls with this Court on June 18, 2020. 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

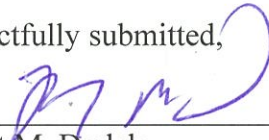
before this Court on May 27, 2020 in The State v. James Caleb Williams. **Counsel has extensive administrative duties as the Chief Appellate Defender, including management of the work from home personnel during this coronavirus pandemic, and the Appellate Practice Project with this Court. Counsel also has to discuss the cases and legal issue with four less experienced Appellate Defenders 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 July 31, 2020. That extended, emailed general consent was dated June 23, 2020.

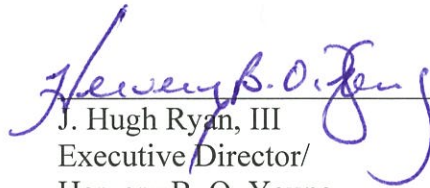
WHEREFORE, the undersigned counsel would respectfully request a **final thirty-day extension from July 27, 2020 until August 26, 2020**, in which to file the initial brief of appellant and designation of matter in this case based upon the above exigent circumstances. **Counsel will file the Initial Brief of Appellant and Designation of Matter before the deadline if possible, and this extension request from this Court today should be the final COVID-19 extraordinary extension.** 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/
Hervey B. O. Young
Deputy Director and General Counsel/
W. Lawrence Brown
Deputy General Counsel and Training
Director

This 27th day of July, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

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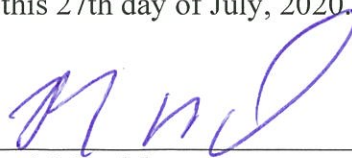
HEIRBERONE HEAVA FOSTER,

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 27th day of July, 2020.



Robert M. Dudek
Chief Appellate Defender