

RECEIVED

Sep 08 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA  
In the 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 FOURTH 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 August 31, 2020, Appellate Defense has consented to extension requests through September 30, 2020. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

Respondent's Initial Brief is due today, September 8, 2020. The undersigned attorney has had a number of state and federal matters to attend since August 7, 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 filed Additional Documents to the State Court Record– in the matter of Dennis Rodger Davis, Jr. vs. Tonya James, C/A No. 0:19-2720-TLW-PJG on **September 4, 2020**;

3. Counsel prepared and filed the Initial Brief of Respondent in the matter of State vs. Nicholas B. Chhith-Berry, Appellate Case No. 2019-000352, a Lexington County murder appeal matter now pending in this Court, on **August 26, 2020**;

4. Counsel is also preparing a Reply to 2<sup>nd</sup> Response in Opposition to Motion for Summary Judgment in the matter of Dennis Rodger Davis, Jr. vs. Tonya James, C/A No. 0:19-2720-TLW-PJG which is **to be filed tomorrow September 9, 2020**. Counsel is also preparing for a telephone status conference in this matter with Judge Gossett which is scheduled for **September 9, 2020**;

5. Counsel has also been actively working on the Initial Brief of Respondent in this matter. Counsel recently requested and obtained from the Solicitor evidence in the matter [audiotaped statement of the appellant] which must be reviewed to complete the Initial Brief of Respondent;

6. Counsel has assisted in drafting the Petition for Writ of Certiorari in Jerry Buck Inman v. State (Capital PCR) to be filed in the South Carolina Supreme Court [State's appeal];

7. Counsel was involved in or assisted in getting an Order of Transport, and the Supplemental Record on Appeal filed in State v. Nicolas McIver, (Murder direct appeal) pending in this Court;

8. Counsel has been involved in working **on other matters in state and federal court** as well, including reviewing orders and opinions from this Court and the federal courts in cases involving Respondent's attorney. 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; and

9. Respondent will make completion of this Initial Brief of Respondent 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

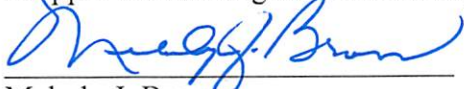
J. ANTHONY MABRY  
Senior Assistant Attorney General  
No. 11973

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

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

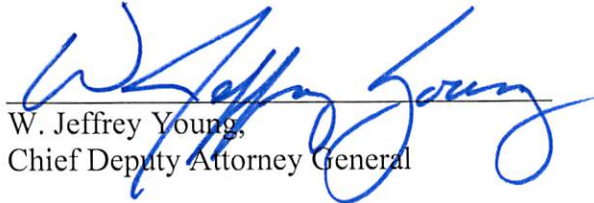
September 8, 2020.

I support the finding of extraordinary circumstances.



Melody J. Brown,  
Senior Assistant Deputy Attorney General

I also support the finding of extraordinary circumstances.



W. Jeffrey Young,  
Chief Deputy Attorney General

**RECEIVED**

**Sep 08 2020**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the 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

---

**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 4<sup>th</sup> 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, September 8, 2020 to [dalexander@sccid.sc.gov](mailto:dalexander@sccid.sc.gov) and to [lmattthews@sccid.sc.gov](mailto: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 8<sup>th</sup> day of September, 2020.



Donna D'Alessio, Legal Assistant to  
J. Anthony Mabry,  
Senior Assistant Attorney General

**Donna D'Alessio**

---

**From:** Donna D'Alessio  
**Sent:** Tuesday, September 8, 2020 2:25 PM  
**To:** 'dalexander@sccid.sc.gov'  
**Cc:** 'lmatthews@sccid.sc.gov'  
**Subject:** Hillary, Johnathan Lamar - Appellate Case No. 2019-001048 - Motion for Fourth Ext of time to file IBOR - 9-8-2020  
**Attachments:** Hillary, Johnathan L. - Appellate Case No. 2019-001048- Motion for Fourth Ext of time to file to file IBOR (02373443xD2C78).pdf

Dear Mr. Alexander:

Attached is a scanned copy of the Respondent's Fourth Motion for Extension of Time to file Initial Brief of Respondent regarding the above matter. A paper copy is being mailed to you this afternoon. The Fourth Extension of Time, and Certificate of Service are 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  
Capital Litigation  
Office of the Attorney General  
State of South Carolina  
Post Office Box 11549  
Columbia, South Carolina 29211-1549  
[DDAlessio@scag.gov](mailto:DDAlessio@scag.gov)  
(803) 734-6305  
(803) 734-4035 – Fax  
(803) 734-1494 – Direct Line

**RECEIVED**

**Sep 08 2020**

**SC Court of Appeals**