

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

APPEAL FROM LEXINGTON COUNTY  
In the Court of General Sessions

**RECEIVED**

**Sep 28 2020**

The Honorable Frank Addy, Jr., Circuit Court Judge **SC Court of Appeals**

Appellate Case No. 2019-001865

Terry Renee McClure ..... Appellant

v.

State of South Carolina ..... Respondent

**APPELLANT'S MOTION TO STAY APPEAL PENDING AN OPPORTUNITY TO  
MEET WITH COUNSEL OR, IN THE ALTERNATIVE, FOR A FOURTH AND FINAL  
EXTENSION**

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*Attorneys for Appellant*

Appellant, pursuant to Rule 240, SCACR, respectfully moves for an Order Staying his Appeal pending an opportunity to meet and confer with counsel or, in the alternative, a fourth and final extension of the deadline for filing his initial brief and designation of matter to November 3, 2020.

**Motion to Stay Appeal Pending an Opportunity to Meet with Counsel**

Appellant respectfully moves for an Order Staying his Appeal so that he may have an opportunity to meet and confer with counsel prior to the progression of his appeal.

Pursuant to the Sixth Amendment of the United States Constitution, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the [a]ssistance of [c]ounsel for his defen[s]e." "[L]awyers in criminal courts are necessities, not luxuries[.]" *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963), because "[t]he right of an accused person to be adequately represented by counsel is fundamental." *State v. Perry*, 278 S.C. 490, 492, 299 S.E.2d 324, 325 (1983). "The special value of the right to the assistance of counsel explains why '[i]t has long been recognized that the right to counsel *is the right to the effective assistance of counsel.*'" *U.S. v. Cronin*, 466 U.S. 648, 654 (1984) (emphasis added) (quoting *McMann v. Richardson*, 379 U.S. 759, 771 n. 14 (1970)). Accordingly, "the Sixth Amendment right to counsel . . . is so fundamental that *there should never occur any interference with it for any length of time*, however brief, absent some compelling reason." *U.S. v. Allen*, 542 F.2d 630, 633 (4th Cir. 1976) (emphasis added). Without an opportunity to meet and confer with counsel pursuant to the Sixth Amendment, a criminal defendant's ability to prepare an effective appeal is diminished. *Cf. Avery v. Alabama*, 308 U.S. 444, 446 (1940) ("[T]he denial of opportunity for appointed counsel to confer, to consult with the accused and to prepare his defense, could convert the appointment of counsel into a sham and

nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel.).

Due to the Department of Corrections' emergency procedures associated with COVID-19, Appellant has been unable to meet with appellate counsel to prepare his appeal. In fact, between counsel's filing of a notice of appearance on September 10, 2020, and the filing of this motion, Appellant has not had a single opportunity to simply meet with his counsel in person. Rather, Appellant has been forced to communicate with appellate counsel by mail or during limited, sporadic opportunities to speak via telephone. Consequently, counsel's ability to communicate with and provide information and advice to Appellant has been significantly curtailed, as is Appellant's ability to seek legal advice and communicate with counsel regarding his appeal. The inability to adequately confer with appellate counsel during the appellate process has a detrimental effect on Appellant's ability to effectively challenge his conviction and negatively effects the preparation of his appeal, thus depriving Appellant of the effective assistance of counsel. Therefore, Appellant respectfully requests that this court stay his appeal until he has had an opportunity to meet and confer with appellate counsel.

**Motion for a Fourth and Final Extension of the filing date for Appellant's initial brief and designation of matter until November 3, 2020**

Appellant alternatively moves for a fourth and final extension of the filing date for his initial brief and designation of matter until November 3, 2020. As indicated above, Appellant's counsel did not file notice of appearance until September 10, 2020. Appellant's initial brief and designation of matter are currently due to be filed on October 5, 2020.<sup>1</sup> Thus, Appellant's counsel was afforded 25 days to prepare Appellant's initial brief and designation of matter, 5 days less than

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<sup>1</sup> This deadline was based on the Appellate Defender's third request for an extension of time.

the time period provided by Rules 208(a)(1) and 209(a), SCACR. Appellant respectfully requests an extension to provide his appellate counsel with sufficient time to effectively draft an initial brief, and to gather all exhibits necessary to produce a designation of matter and effectively challenge his conviction on appeal.

Furthermore, as previously discussed, the COVID-19 crisis has placed considerable strain on Appellant's ability to communicate and confer with appellate counsel. Appellant's inability to effectively communicate with counsel has delayed the preparation of his appeal by making it harder for counsel to obtain Appellant's permission to make appropriate filings and properly discuss which issues Appellant seeks to challenge on appeal. Moreover, the transcript in this case exceeds 900 pages, and there are numerous exhibits, making the record extensive. Additionally, neither the Solicitor's office nor defense trial counsel has access to one of the redacted exhibits, a video, at the time of this filing. That redacted exhibit in the trial court's vault must be reviewed prior to the filing of Appellant's initial brief and designation of matter. Therefore, Appellant respectfully requests a fourth and final extension to alleviate some of the burden placed on his appellate process by the COVID-19 crisis and counsel's recent entry of appearance.

Appellant would also inform this Court that his counsel has communicated with counsel for Respondent and has determined that Respondent does not agree to an order granting a stay of appeal, but consents to the grant of an extension.

Respectfully submitted:



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**PROOF OF SERVICE**

I certify that on September 28, 2020, I served Appellant's Motion to Stay Appeal Pending an Opportunity to Meet with Counsel or, in the alternative, for a Fourth and Final Extension on Respondent by emailing it to Respondent's attorney of Record, Melody J. Brown, at mbrown@scag.gov.



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