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Oct 08 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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

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THE STATE,

RESPONDENT,

v.

JOHNATHAN LAMAR HILLARY,

APPELLANT.

Appellate Case No. 2019-001048

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**MOTION FOR FIFTH EXTENSION OF TIME TO FILE  
INITIAL BRIEF OF RESPONDENT AND  
DESIGNATION OF MATTER**

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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 September 28, 2020, Appellate Defense has consented to extension requests through October 31, 2020. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

Respondent's Initial Brief is due today, October 8, 2020. The undersigned attorney has completed a substantial portion of the Initial Brief, but has had a number of state and federal matters to attend to since September 8, 2020 as well as personal medical issues. 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 the Respondent's Reply to the 2<sup>nd</sup> Response to Motion for Summary Judgment in the matter of Dennis Rodger Davis, Jr. vs. Tonya James, C/A No. 0:19-2720-TLW-PJG, a federal habeas matter pending in the United States District Court for the District of South Carolina on **September 9, 2020; Respondent also had a telephone status conference with Judge Gossett and opposing counsel in this case;**

3. Counsel filed a Response to Petitioner's Objections to the Report and Recommendation of the United States Magistrate Judge in the matter of Kentrell Treville Liburd vs. Warden Charles Williams, Jr., C/A No. 0:20-1746-SAL-PJG, another federal habeas matter on **September 11, 2020;**

4. Counsel also filed the Respondent's Eighth Status Report in the matter of Kinjta Kadeem Sadler, #353966 vs. Charles Williams, Warden, C/A No. 8:19-0113-TMC-JDA on **September 21, 2020;**

5. Counsel filed the Final Brief of Respondent in the matter of State vs. Adriel Nicholas Garnett, Appellate Case No. 2019-000722, a Spartanburg County murder appeal matter now pending in the South Carolina Court of Appeals on **September 29, 2020**;

6. Counsel has been drafting and is near completion of the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Eric Samuel v. Charles Williams, C/A No. 1:20-2601-TMC-SVH which has a complicated procedural history including 6 prior PCR actions; a Maxton Order, and now 2 federal habeas actions; the petitioner is serving life without parole (LWOP) under South Carolina's 2 strikes/3 strikes recidivist statute;

7. Counsel drafted and completed the Return and Memorandum of Law in Support of Summary Judgment in Kendell Suddeth v. Warden (C/A No. 6:20-1892-TMC-KFM) Federal Habeas Corpus on September 29, 2020 (58 pages);

8. Counsel attended the S.C. Solicitor's Annual Conference virtually from September 20-23, 2020 to obtain C.L.E. hours to maintain his S.C. Bar license;

9. Because of the issues raised in Appellant's brief in this case as well as the particular facts of this case, Respondent previously requested copies of certain trial exhibits, from the Solicitor's Office that prosecuted the case, but has not received all of those exhibits yet; Respondent has been informed by that Solicitor's Office that those copies are being prepared for Respondent at this time;

10. Counsel has been involved in working **on other matters in state and federal court**. 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 the United States District Court, and the fact that Respondent has not received copies of all the exhibits requested, even though Respondent's counsel made this brief a priority in the last 30

days, counsel was unable to timely complete the Initial Brief of Respondent and Designation of Matter in this matter; and

11. 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

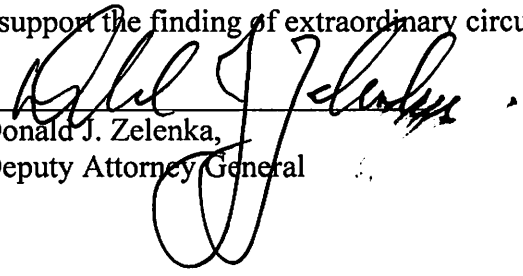
MELODY J. BROWN  
Senior Assistant Deputy Attorney General

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

October 8, 2020.

I support the finding of extraordinary circumstances.

  
Donald J. Zelenka,  
Deputy Attorney General

I also support the finding of extraordinary circumstances.

A handwritten signature in blue ink, appearing to read "W. Jeffrey Young", is written over a horizontal line. The signature is fluid and cursive.

W. Jeffrey Young,  
Chief Deputy Attorney General

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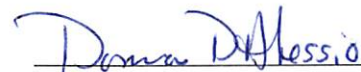
Appellate Case No. 2019-001048

\_\_\_\_\_  
**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 5<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, October 8, 2020 to [dalexander@sccid.sc.gov](mailto:dalexander@sccid.sc.gov) and to [lmattthews@sccid.sc.gov](mailto:lmattthews@sccid.sc.gov).

I further certify that all parties required by Rule to be served have been served.

This 8<sup>th</sup> day of October, 2020.

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

## Donna D'Alessio

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**From:** Donna D'Alessio  
**Sent:** Thursday, October 8, 2020 1:43 PM  
**To:** 'dalexander@sccid.sc.gov'; 'lmatthews@sccid.sc.gov'  
**Subject:** Hillary, Johnathan L. - Appellate Case No. 2019-001048  
**Attachments:** Hillary Johnathan L. - Appellate Case No. 2019-001048 - Motion for Fifth Extension of Time to File Initial Brief of Respondent (02398018xD2C78).pdf

Dear Mr. Alexander:

Attached is a scanned copy of the Respondent's Fifth Motion for Extension of time to file the Initial Brief of Respondent regarding the above matter. The Motion for Fifth Extension of Time to File Initial Brief and supporting documents 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  
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State of South Carolina  
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