



ALAN WILSON  
ATTORNEY GENERAL

May 9, 2012

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MAY - 9 2012

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

S.C. Supreme Court

Re: Third Extension Request, Reply to Return to Petition for  
Writ of Certiorari  
*Kevin Mercer v. State of South Carolina*  
Appeal from Lexington County, Capital Post-Conviction Relief Case

Dear Mr. Shearouse:

Please find enclosed the original and six (6) copies of Respondent-Petitioner's Motion for Extension of Time to File Reply to Return to Petition for Writ of Certiorari with Proof of Service.

I am informing opposing counsel of my request by copy of this letter.

Sincerely,

Alphonso Simon, Jr.  
Assistant Attorney General

AS:dmd

Enclosures

cc: Emily Paavola, Esq. (w/two copies of encls.)

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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MAY - 9 2012

Appeal From Lexington County      S.C. Supreme Court  
The Honorable James R. Barber, III, Circuit Court Judge

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KEVIN J. MERCER,

Petitioner/Respondent,

vs.

STATE OF SOUTH CAROLINA,

Respondent/Petitioner.

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

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The undersigned counsel for the State of South Carolina requests a third extension of ten (10) days within which to complete, serve and file the Reply to Return to Petition for Writ of Certiorari in the above-referenced appeal. The Reply is currently due to be served and filed today, May 9, 2012. This request is made in good faith and not for the purpose of delay.

The Court's March 18, 2009 Order *re: Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings* provides, in pertinent part, that:

(2) A third extension may be granted upon a showing of good cause. The facts supporting the good cause shall be set forth in the motion. If filed by the Division of Appellate Defense or the Office of the Attorney General,

the motion shall be signed by the attorney involved and his or her immediate supervisor. If filed by a private lawyer, the motion shall be signed by the attorney involved and, if lawyer is not a sole practitioner, by another member of the firm. The signatures on the motion shall be a certification by these attorneys that they believe that the extension is warranted and that there is good cause to seek the extension.

In compliance with that Order and in support of this motion, counsel would respectfully show the Court the following:

The undersigned attorney for the Respondent has had a number of state and federal matters to attend to since May 1, 2012. Specifically, counsel filed the Final Brief of Respondent in the matter of State v. Dadrin Jerome Johnson, a Spartanburg County direct appeal murder case pending before the South Carolina Court of Appeals. Counsel also filed a Motion for Summary Judgment and Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Charles Gilbert, Jr., #254456 vs. Warden, Cartledge, C/A No. 2:12-663-MBS-BHH, a federal habeas matters pending before the United States District Court for the District of South Carolina.

Counsel also spent a significant amount of time handling discovery related matters in Norman Starnes v. State, a Lexington County capital post-conviction relief action. This included spending a day in Spartanburg at the Seventh Circuit Solicitor's Office reviewing their copies of available transcripts, motions and files regarding State v. Ernest Riddle, a former capital case that has become an issue in the Starnes PCR. Counsel has also spent a substantial amount of time researching and investigating the factual background to issues raised in Louis Winkler v. State, a capital post-

conviction relief action pending in Horry County that is currently set to be heard in mid-June.

Counsel also completed review of the transcript and research in preparation of the Initial Brief of Respondent in the Charleston County direct appeal murder case of State v. Jeffrey Herrmann which is now due on May 21, 2012.

Counsel has spent a substantial amount of time reviewing the Return and has drafted significant portions of the Reply. I understand the desire of the Court and petitioner/respondent's counsel for a speedy resolution of this case; however, due to Petitioner-Respondent's Return being forty-two (42) pages in length and with Petitioner-Respondent's inclusion of several alleged additional sustaining grounds, this extension is essential to allow me to complete the Reply to Return to Petition for Writ of Certiorari with reasonable effectiveness.

Due to these and counsel's involvement in other matters pending in state and federal court and counsel's bout with a pneumonia over the past week, counsel was unable to timely complete his research and properly prepare the Reply to Return to Petition for Writ of Certiorari in this case. This request is made in good faith, and not for the purposes of delay.

I am serving petitioner's counsel two (2) copies of this Motion via regular mail today. The ten (10) day extension requested will make the Reply to Return to Petition for Writ of Certiorari due on Monday, May 21, 2012 [May 19, 2012 is a Saturday].

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Assistant Deputy Attorney General

ALPHONSO SIMON, JR.  
Assistant Attorney General

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BY: 

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ALPHONSO SIMON, JR.  
Assistant Attorney General

  
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DONALD J. ZELENKA,  
Assistant Deputy Attorney General

I support the finding of good cause.

ATTORNEYS FOR RESPONDENT/PETITIONER

May 9, 2012.

**THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

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**Appeal From Lexington County  
The Honorable James R. Barber, III, Circuit Court Judge**

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**KEVIN J. MERCER,**

**Petitioner/Respondent,**

**vs.**

**STATE OF SOUTH CAROLINA,**

**Respondent/Petitioner.**

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that on the 9<sup>th</sup> day of May, 2012, a copy of the Respondent/Petitioner's Motion for Extension of Time to File Reply to Return to Petition for Writ of Certiorari was served on counsel for the Petitioner/Respondent by depositing two (2) copies of the same in the United States mail, postage prepaid, and addressed as follows:

Emily Paavola, Esq.  
Death Penalty Resource & Defense Ctr.  
900 Elmwood Avenue, Ste. #101  
Columbia, SC 29201

  
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ALPHONSO SIMON, JR.  
Assistant Attorney General