

STATE OF SOUTH CAROLINA
In the Court of Appeals

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Dec 09 2020

SC 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 SEVENTH EXTENSION OF TIME TO FILE
INITIAL BRIEF OF RESPONDENT AND
DESIGNATION OF MATTER**

Undersigned counsel for Respondent would respectfully request a short, seventh (7th) extension of ten (10) days in which to file the Initial Brief of Respondent. As of November 25, 2020, Appellate Defense has kindly consented to extension requests through December 31, 2020. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

1. On November 9, 2020, the undersigned advised the Court that she had taken responsibility for completing the brief as Mr. Mabry is currently on medical leave. Counsel was waiting on access to the recording of Mr. Hillary's interview in Atlanta which is part of his first issue in this appeal. Counsel was not able to obtain a copy of that recording until November 30th.

2. However, this extension is requested primarily due to undersigned counsel's required work on capital cases over the past few weeks including: preparing and filing a brief in opposition in the Supreme Court of United States (*Brad Sigmon*); completing and filing a brief with the Fourth Circuit Court of Appeals (*Mikal Mahdi*); aiding in the completion and filing of another brief with the Fourth Circuit (*Sammie Stokes*); and, preparing and filing litigation documents in connection with an execution date previously set for December 4, 2020, which was stayed by state supreme court order issued on November 30, 2020 (*Richard Bernard Moore*). The pending execution date commanded immediate attention to that case.

3. Even so, counsel has been reviewing the necessary matters for this appeal, and has begun drafting the response to the remaining issue, along with making minor adjustments to prior draft by previous counsel. Counsel believes the brief may be completed within the next few days, however, out of an abundance of caution, is requesting ten (10) days. Counsel will file sooner if possible.

WHEREFORE, based on these extraordinary circumstances, undersigned counsel respectfully requests a ten (10) 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
S.C. Bar No. 14244

J. ANTHONY MABRY
Senior Assistant Attorney General

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

s/Melody J. Brown

By: _____
MELODY J. BROWN
ATTORNEYS FOR RESPONDENT

December 9, 2020

I support the finding of extraordinary circumstances.

s/ Donald J. Zelenka
Donald J. Zelenka
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 Melody B. Brown, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the 7th 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, December 9, 2020 to dalexander@sccid.sc.gov and to lmattthews@sccid.sc.gov.

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

This 9th day of December, 2020.



Donna D'Alessio, Legal Assistant

Donna D'Alessio

From: Donna D'Alessio
Sent: Wednesday, December 9, 2020 5:11 PM
To: 'dalexander@sccid.sc.gov'; 'lmatthews@sccid.sc.gov'
Subject: Hillary, Johnathan L. - Appellate case no. 2019-001048 - Seventh extension of time to file IBOR
Attachments: Hillary, Johnathan L., Appellate Case No. 2019-001048 - Motion for seventh ext of time to file IBOR 12-9-2020 (02445278xD2C78).pdf

Dear Mr. Alexander:

Attached is a scanned copy of the Respondent's seventh extension of time to file Initial Brief of Respondent regarding the above matter. The seventh extension and supporting document 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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