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Jan 04 2021
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Lexington County

Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KIERIN MARCELLUS DENNIS,

APPELLANT

APPELLATE CASE NO. 2019-001486

MOTION FOR A FINAL SIX BUSINESS DAY EXTENSION OF TIME
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

Counsel for Kierin Marcellus Dennis respectfully requests a **final extension of six business days from Monday, January 4, 2021 until Tuesday, January 12, 2021**, in which to file the Initial Brief of Appellant and Designation of Matter in this case. This motion, as seen infra, is based on health problems which exacerbated counsel's ability to handle an extraordinary caseload, as well as the unique aspects of the record in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. In support of this request, counsel shows:

1. The initial brief of appellant and designation of matter are due to be filed with this Court today, Monday, January 4, 2021.

2. Counsel for Kierin Marcellus Dennis respectfully submits that extraordinary circumstances exist, which warrant the granting of this six-business day final extension of time. Counsel suffered from a prior debilitating illness for six to eight weeks that limited his ability to meet his heavy caseload deadlines, and caused counsel to become behind through no fault of his own when he had deadlines to meet, including two death penalty direct appeals deadlines he met along with his other deadlines: State v. Jerome Jenkins, Jr., and State v. Timothy Ray Jones. Counsel had several visits with his physician and with specialists. Counsel tested negative for COVID-19 twice during this time period. *Counsel most recently had treatment on his spine last week on Wednesday, December 30, 2021 through a specialist to hopefully help relieve bad back pain which has reoccurred following back surgery approximately five years ago.* Counsel, and co-counsels have worked diligently on this case. However, there are seven meritorious issues which are being argued in the brief in this case. The transcripts in this case are in excess of three thousand four hundred (3,400) pages, and this case is procedurally very unusual. (Counsel has also filed a motion today, January 4, 2021 to exceed the fifty (50) page limit for the initial brief imposed by Rule 208 (b)(5), SCACR). *Importantly, the work from home staggered office mandates of the Phase II COVID-19 policy has complicated this situation, since computer efficiency during case work, research, briefing and communication between the attorneys is slowed.*

3. As for counsel's recent caseload: Counsel filed the return to the petition for writ of certiorari to this Court in the murder case of The State v. Javon Dion Gibbs from this Court with the Supreme Court on December 18, 2020. Counsel filed the merit initial brief of appellant and designation of matter in the murder case of The State v. Walter Murrey with this Court on December 17, 2020. Counsel had an oral argument before the Supreme Court as the respondent on December 9, 2020 in The State v. Joseph Bowers. Counsel filed the brief of appellant and

designation of matter in the case of The State v. Franklin Pierre Dover with this Court on December 1, 2020. Counsel has a WebEx oral argument before this Court on Tuesday, January 12, 2021 in the case of The State v. Nick Evangelista. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of Robert Frost v. The State with the Supreme Court on November 20, 2020. Counsel had an oral argument before the Supreme Court on November 17, 2020 in The State v. Ahshaad Mykiel Owens. Counsel filed the brief of appellant and designation of matter in the case of The State v. Robert Wayne Eaves with this Court on November 13, 2020. Counsel is also lead counsel in the death penalty case of The State v. Timothy Ray Jones, Jr., which had 8 issues upon its filing, the death penalty case of The State v. Jerome Jenkins, Jr., which had 7 issues upon its filing, and the death penalty case of Andres Antonio Torres v. The State, wherein the petition for writ of certiorari will be due to be filed with the Supreme Court on February 3, 2021. **Counsel has extensive administrative duties as the Chief Appellate Defender, including working directly with the most inexperienced appellate defenders, Appellate Project oversight duties and management of the Phase II work from home personnel during this coronavirus pandemic.**

Co-counsel Lara M. Caudy

On December 17, 2020, counsel, as co-counsel, filed the initial brief of appellant and designation of matter in The State v. Walter Murrey with this Court. On December 10, 2020, counsel filed the brief of petitioner in James Johnson v. The State with this Court. On December 4, 2020, co-counsel filed the petition for writ of certiorari and accompanying appendix in Michael D. Williams v. The State with the Supreme Court. On November 12, 2020, co-counsel filed the brief of appellant and designation of matter in The State v. Joey Coleman with this

Court. On November 9, 2020, co-counsel filed the petition for writ of certiorari and accompanying appendix in Keith Tate v. The State with the Supreme Court.

Co-counsel Adam Ruffin

Co-Counsel filed the initial brief of appellant and designation of matter in the case of State v. David L. Steadman with this Court on December 14, 2020. Co-counsel filed the initial brief of appellant and designation of matter in the case of State v. Dale Eugene King with this Court on December 1, 2020. Co-counsel filed the petition for writ of certiorari and accompanying appendix in the case of Carl Aiken v. State with the Supreme Court on November 23, 2020. Co-counsel filed the brief of appellant and record on appeal in the case of State v. Douglas Lavance Young with this Court on November 12, 2020. Co-counsel filed the initial brief of appellant and designation of matter in the case of State v. Otis Gibson with this Court on November 4, 2020.

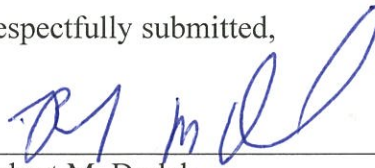
4. Undersigned Counsel makes this request in good faith and not for purpose of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become more manageable in the near future, and less extensions will need to be requested.

5. Counsel is requesting a final extension of six business days until Tuesday, January 12, 2021, or such lesser time as the Court is willing to grant under these circumstances. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, *absent a totally unforeseen emergency there will be no further extension requests in this case, and counsel will be caught up on his workload following his lengthy debilitating illness and medical treatments, including the medical procedure last week.*

6. Opposing counsel, the Attorney General's Office, has graciously consented to this extension request by way of the extended thirty-day general consent granted by Deputy Attorney General Donald J. Zelenka for all Appellate Defense extensions through January 31, 2020. That extended, emailed general consent was dated December 23, 2020.

WHEREFORE, the undersigned counsel would respectfully request a **final extension of six business days from Monday, January 4, 2021 until Tuesday, January 12, 2021**, in which to file the initial brief of appellant and designation of matter in this case based upon the above exigent circumstances, *or such lesser time as the Court is willing to grant under these extraordinary circumstances. Counsel will make every effort to file the brief before this deadline if possible.* Counsel requests that time limits for filing the initial brief and designation be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

Lara M. Caudy
Appellant Defender

Adam Sinclair Ruffin
Appellate Defender

Attorneys for Appellant



J. Hugh Ryan, III
Executive Director/
Hervey B. O. Young
Deputy Director and General Counsel/
W. Lawrence Brown
Deputy General Counsel and Training
Director

This 4th day of January, 2021.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Eugene C. Griffith, Circuit Court Judge

THE STATE,

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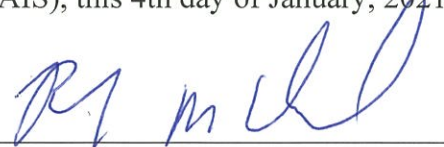
KIERIN MARCELLUS DENNIS,

APPELLANT

APPELLATE CASE NO. 2019-001486

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the motion for an extension of time, in which to file the initial brief of appellant and designation of matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 4th day of January, 2021.



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT.