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Apr 05 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

CHARLES BARHAM,

APPELLANT.

Appellate Case No. 2019-001981

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

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. This is a fourth extension request. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

Respondent's Initial Brief is due to be filed on Monday, April 5, 2021. Counsel for Appellant has graciously consented to this extension request. The undersigned attorney has had a number of personal, state, and federal matters to attend to since March 4, 2021. Specifically,

1. Counsel for Respondent had been out of the office on medical leave and on a reduced work schedule due to a continuous and on-going health condition, heart transplant and kidney transplant on October 17 and 18, 2020. Counsel has had various medical issues related

to this on-going health condition including doctors' appointments, ocular migraine headaches, stomach issues; allergies to medicine or medical tape, surgical hernia or defect; and a strained muscle or tendon near the surgical site. 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 suppressed immune system and the current situation regarding the Coronavirus.¹ Counsel began working again full-time *from home* in January of 2021. Counsel is scheduled for a heart biopsy this week at Duke University Medical Center on April 8, 2021.

2. Counsel prepared and filed the Return and Memorandum of Law in Support of Motion for Summary Judgment in the matter of Eric Ancrum v. State of South Carolina, C/A No. 1:20-4264-DCC-SVH, a (Federal Habeas Corpus)(Trafficking in Cocaine and Crack Cocaine) (LWOP) **filed March 30, 2021 in U.S. District Court;**

3. Counsel prepared and filed the Response to Petitioner's Objections to the Report and Recommendation of the U.S. Magistrate in Harold Ayton v. Warden, (Federal Habeas Corpus) **filed March 21, 2021 in U.S. District Court;**

4. Counsel drafted and filed Respondent's Response to Petitioner's Motion for Bail in Marshall Mack v. Warden (Federal Habeas Corpus) which was **filed on March 26, 2021 in U.S. District Court;**

5. Return to Petition for Certiorari in the United States Supreme Court in Andre King v. Warden (FHC) (Murder & ABWIK), as directed by the United States Supreme Court (in process);

¹ Counsel received the 1st Corona Virus Vaccine 2 weeks ago and is scheduled for the 2nd and final vaccine April 6, 2020 and hopes to return to the Office soon, when doctors permit.

6. Counsel is currently assisting in drafting the Return to the State Habeas Corpus Petition in the original jurisdiction of the South Carolina Supreme Court in Richard Moore v. State (Capital PCR) involving extensive legal research (in process);

7. Counsel drafted and filed the Response to Petitioner's 2nd Motion for Bail in Marshall Mack v. Warden (Federal Habeas Corpus) **filed April 2, 2021 in U.S. District Court;**

Counsel has also been actively working on the initial brief in this case and has completed a majority of the brief. Counsel had previously requested a copy of the October 14, 2021 Transcript of Record on January 26, 2021, and again on April 2, 2021. Today, counsel for Respondent received the Transcript of Record from Bobbi J. Fisher, court reporter. It is necessary for the completion of the Initial Brief of Respondent.

Counsel has also requested items from the Richland County Solicitor's Office with regard to this case [copies of trial exhibits and an order], some of which have been received and reviewed, and some of which have not been received as of the date of the filing of this requested extension. These are needed to complete the Initial Brief of Respondent; and

8. Counsel has been involved in working **on other matters in state and federal court** as well including reviewing Opinions from this Court in cases counsel handled and Orders from United States District Court in federal habeas corpus cases handled by counsel.

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 state court and United States district court, and the fact that counsel has not received a necessary transcript and certain items [copies of trial exhibits] from the Richland County Solicitor's Office pertinent to the appeal, counsel was unable to timely complete the Initial Brief of Respondent and Designation of Matter in this case.

Respondent has taken or will take the following measures to insure that timely filing of the Initial Brief of Respondent is completed:

1. Respondent has directed his legal assistant to have exhibits picked up from the 5th Circuit Solicitor's Office which has made copies of the same for Respondent;
2. Respondent has directed his legal assistant to speak with the 5th Circuit Solicitor's Office immediately regarding the status of obtaining an Order of the trial court in this case, and if unable to obtain the same, see if the same can be obtained from opposing counsel;

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

April 5, 2021.

I support the finding of extraordinary circumstances.



Donald J. Zelenka, Esq.
Deputy Attorney General



W. Jeffrey Young, Esq.
Chief Deputy Attorney General

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CHARLES BARHAM,

APPELLANT.

Appellate Case No. 2019-001981

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 Fourth Extension of Time to File Initial Brief of Respondent and Designation of Matter has been forwarded to appellant's counsel, Jack B. Swerling, Esq., via email today, Monday, April 5, 2021 to jacklaw@aol.com, and to Katherine C. Goode, Esq. at kcg@carruthgoode.net.

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

This 5th day of April, 2021.



Donna D'Alessio, Legal Assistant to
J. Anthony Mabry,
Senior Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

Donna D'Alessio

From: Donna D'Alessio
Sent: Monday, April 5, 2021 1:10 PM
To: 'jacklaw@aol.com' (jacklaw@aol.com); kcg@carruthgoode.net
Cc: Anthony Mabry
Subject: Barham, Charles - Appellate Case No. 2019-001981 - Fourth Extension of Time to File Initial Brief of Respondent 4-5-21
Attachments: Barham, Charles - Appellate Case No. 2019-001981 - Motion for Fourth Extension of Time to file IBOR 4-5-21 (02532608xD2C78).pdf

Dear Mr. Swerling and Ms. Goode:

Attached is a scanned copy of the Respondent's Motion for Fourth Extension of Time to File Initial Brief of Respondent regarding the above matter. The Fourth Motion for Extension of Time to file Initial Brief 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
Capital Litigation
Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549
DDAlessio@scag.gov
(803) 734-6305
(803) 734-4035 – Fax
(803) 734-1494 – Direct Line