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Oct 29 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lexington County
The Honorable Frank R. Addy, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JOSEPH RANDOLPH HENRY,

APPELLANT.

Appellate Case No. 2020-001404

**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 Wednesday, November 3, 2021. Counsel for Appellant, David Alexander, has graciously consented to the extension request. Counsel for Respondent has been actively working on this brief and has completed a large majority of the brief but has been unable to complete the Initial Brief of Respondent because the undersigned attorney has had a number of personal, state, and federal matters to attend to since September 29, 2021. Specifically,

1. Counsel for Respondent received a heart and kidney transplant in October of 2020 and has had complications from the heart condition resulting in a CT and MRI of the head conducted on or about September 15 and 16, 2021. Counsel has suffered from repeated ocular migraine headaches which are possibly attributable to previous heart attacks and transplant medication. Counsel was scheduled for a re-scheduled heart biopsy on October 4, 2021 at Duke University Hospital. The biopsy was rescheduled due to a possible COVID exposure. Counsel was also working remotely for a few days due to the possible COVID exposure.

2. Counsel filed on **October 1, 2021** the Return to the Amended Petition for Writ of Habeas Corpus [ECF #30], as per the Order directing same [ECF #29], in the matter of Kelvin Jackson, Sr., #356452 vs. Warden of Lee Correctional Institution, C/A No. 2:21-cv-108-BHH-MGB (Murder);

3. Counsel filed Respondent's Reply to Response in Opposition to Motion for Summary Judgment [ECF #24] in the matter of Milciades Alcantara vs. Warden of McCormick Correctional Institution, C/A No. 9:21-01498-RBH-MHC (Armed Robbery X 2 and CSC 1st) on **October 7, 2021**;

4. Counsel filed the Respondent's Reply to 2nd Response to Motion for Summary Judgment [ECF #35] in the matter of Touriarnold Spann vs. C. Williams, Warden, C/A No. 8:21-00892-JMC-JDA (Carjacking, Armed Robbery, Burglary 1st, etc. on **October 8, 2021**;

5. Counsel filed Respondent's Response to Petitioner's Motion to Strike [ECF #36] in the matter of Touriarnold Spann vs. C. Williams, Warden, C/A No. 8:21-00892-JMC-JDA (described above) on **October 12, 2021**;

6. Counsel filed the Respondent's Return to Petition for Writ of Certiorari in the matter of State vs. William C. Sellers, Appellate Case No. 2018-001667, an Edgefield County

murder direct appeal matter now pending in the South Carolina Supreme Court, filed on **October 14, 2021**;

7. Counsel filed in this Court the Respondent's Return to Motion to Stay Appeal and Permission to File a Motion for a New Trial pursuant to Rule 29(b) SCRPC in the matter of State vs. Charles Brandon Barham, Appellate Case No. 2019-001981, filed on **October 20, 2021**;

8. Counsel assisted in the preparation of the Reply to Response in Opposition to Application to Stay the Mandate of the United States Court of Appeals for the Fourth Circuit Pending the Warden's Filing of a Petition for Writ of Certiorari in the capital matter of Bryan P. Stirling, et al. vs. Sammie Louis Stokes, No. 21A61 (Capital Federal Habeas Corpus matter) which was filed in the United States Supreme Court on **October 21, 2021**;

9. Also on **October 21, 2021**, counsel filed a Motion for Leave to File Response to Motion to Amend/Correct Petition for Writ of Habeas Corpus, together with the Response to Motion to Amend/Correct Petition for Writ of Habeas Corpus [ECF #29] in the matter of Eric Ancrum vs. State of South Carolina, C/A No. 1:20-4264-DCC which was accepted by U.S. District Judge Donald Coggins;

10. On **October 27, 2021**, Respondent filed a Motion to Conform Filing Dates for the State's Response to Petitioner's Partial Motion for Summary Judgment to the Court's Scheduling Order for the State's Reply to Petitioner's Response to the State's Motion for Summary Judgment in the Capital Federal Habeas Matter of Stephen C. Stanko vs. Bryan Stirling, Director, South Carolina Department of Corrections, and Michael Stephan, Warden Broad River Correctional Institution, C/A No. 1:19-03257-RMG-SVH;

11. Counsel filed the Respondent's Response to Petitioner's Motion to Appoint Counsel, for Estoppel, and for an Evidentiary Hearing [ECF #41] in the matter of Touriarnold Spann vs. C. Williams, Warden, C/A No. 8:21-00892-JMC-JDA, filed on **October 28, 2021**;

12. Counsel is working on the Reply to the Response in Opposition to Motion for Summary Judgment, as well as the Response to Partial Summary Judgment in the capital Federal Habeas matter of Stephen C. Stanko vs. Bryan Stirling, Director, South Carolina Department of Corrections, and Michael Stephan, Warden Broad River Correctional Institution, C/A No. 1:19-03257-RMG-SVH due **November 22, 2015 according to the U.S. District Judge's Scheduling Order**;

13. Counsel has also completed and filed the Return to Petition for Writ of Certiorari in the matter of State vs. Jahru Harold Smith, Appellate Case No. 2021-001106, a Greenville County murder direct appeal now pending in the South Carolina Supreme Court, due to be filed on **Monday November 1, 2021**; and

14. Counsel is currently preparing the Return and Memorandum of Law in Support of Motion for Summary Judgment in Johnathan Johnson v. Warden (Federal Habeas Corpus Matter) (Burglary 1st & Kidnapping) scheduled to be filed November 26, 2021;

15. Counsel is currently preparing the Return and Memorandum of Law in Support of Summary Judgment in Quantae Priest v. Warden (FHC) which is scheduled to be filed on November 29, 2019;

16. Counsel is currently preparing the Return and Memorandum of Law in Support of Summary Judgment in Frankie McGee v. Warden (Federal Habeas Corpus) (Murder/Burglary 1st) which is scheduled to be filed on November 22, 2021;

17. Counsel has been involved in working **on other matters in state and federal court.**

Counsel is actively working on this brief; however, due to counsel's medical condition, and the other matters counsel has been working on and/or filed in this Court, the South Carolina Supreme Court, United States District Court, or the U.S. Supreme Court, undersigned counsel was unable to timely complete the Initial Brief of Respondent and Designation of Matter in this case. A law clerk is now assisting Respondent's attorney on this brief to timely complete the filing of the same.

WHEREFORE, for extraordinary circumstances shown, counsel respectfully requests a fourth (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
S.C. Bar No. 14244

J. ANTHONY MABRY
Senior Assistant Attorney General
S.C. No. 11973

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By: s/J. Anthony Mabry
J. ANTHONY MABRY
ATTORNEYS FOR RESPONDENT


October 29, 2021.

I support the finding of extraordinary circumstances.

By: 
MELODY J. BROWN

Senior Assistant Deputy Attorney General

I further support the finding of extraordinary circumstances.

By: 
DONALD J. ZELENKA
Deputy Attorney General

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JOSEPH RANDOLPH HENRY,

APPELLANT.

Appellate Case No. 2020-001404

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, David A. Alexander, Esq., via email today, October 29, 2021 to dalexander@sccid.sc.gov and to his assistant at lmattthews@sccid.sc.gov.

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

This 29th day of October, 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: Friday, October 29, 2021 4:22 PM
To: 'dalexander@sccid.sc.gov'; 'lmatthews@sccid.sc.gov'
Subject: Henry, Joseph Randolph - Appellate Case No. 2020-001404 - Fourth Extension of Time to file IBOR
Attachments: Henry, Joseph Randolph, Appellate Case No. 2020-001404 - Motion for Fourth Ext. of Time to file IBOR 10-29-21 (02802415xD2C78).pdf

Dear Mr. Alexander:

Attached is a scanned copy of the Respondent's Motion for Fourth Extension of Time to File Initial Brief of Respondent and Designation of Matter regarding the above case. The Fourth Extension of Time is 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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