

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
3:75-CR-26-3
5:06-CV-24-F

UNITED STATES OF AMERICA)
)
v.)
)
JEFFREY R. MacDONALD)
Defendant)

**MOTION FOR ONE WEEK EXTENSION OF TIME TO FILE
DEFENDANT’S POST-HEARING MEMORANDUM**

NOW COMES defendant, Jeffrey R. MacDonald, by and through his undersigned counsel, and moves this Court to extend the time for the filing of defendant’s post-hearing memorandum, allowed by this Court [DE 305], for one additional week, to and including 29 March 2013, about which the government takes no position. This additional time is necessitated by the workload of the undersigned since the extension of the deadline to 21 March 2013. In further support of this request, defendant shows the following:

1. This matter is before the Court on remand from the United States Court of Appeals for the Fourth Circuit for determination of defendant’s motion to vacate under 28 U.S.C. § 2255, a determination of the issues in the motion that must be assessed on the basis of the “evidence as a whole” under 28 U.S.C. § 2255(h)(1). *United States v. MacDonald*, 641 F.3d 596, 610-17 (4th Cir. 2011). This Court conducted a hearing from September 17 through September 25. It allowed the parties to file post-hearing memoranda regarding the legal

issues and the factual matters based on the evidence as a whole once the transcript of the hearing was completed. The transcript was filed with this Court on 19 November 2012. Defendant's supplemental memorandum was originally due on 18 January 2013, but this Court extended the time to 21 March 2013.

2. As this Court was previously made aware, the undersigned has been heavily involved in other litigation after the transcript was delivered. Since the Court granted the initial motion to extend, the undersigned filed a brief in the Supreme Court of North Carolina in *State v. Miles* on 14 January 2013; a petition for a writ of certiorari in the Supreme Court of the United States on 22 January 2013 in *United States v. Powell* (the issue in *Powell* involved the retroactivity of *Carachuri-Rosendo v. Holder*, 130 S.Ct. 2577 (2010) and its impact on *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc), an issue of especial importance to a host of cases in this Court and the circuit); served a proposed record on appeal in *State v. McGrady*, a first degree murder case, on 25 January 2013; served a proposed record on appeal in *State v. James* on 4 February 2013; filed a petition for discretionary review in *State v. Comeaux* in the Supreme Court of North Carolina on 5 February 2013; filed another petition for discretionary review in *State v. Broom* on 19 February 2013. He also has an oral argument in the Supreme Court of North Carolina on 12 March 2013 in *State v. Miles*.

3. Aside from those responsibilities, the undersigned had to deal with an eventual withdrawal of a motion for appropriate relief that necessitated serious communications and travel to meet with his client. The motion for appropriate relief was withdrawn in writing

on 27 February 2013. The preparations for the oral argument in the first degree murder appeal on March 12 took much longer than the undersigned anticipated. In addition, he was also required to file a reply brief in *State v. Floyd* in the North Carolina Court of Appeals on March 5 and reply brief in *United States v. Lespier* in the United States Court of Appeals for the Fourth Circuit on March 7. He had to file a supplemental brief in a capital habeas corpus proceeding on March 8, for which a requested extension was denied. The undersigned could not have foreseen these complications when he requested the previous extension. The result of those responsibilities essentially prevented any work on this memorandum during the past week.

4. The undersigned has been diligently working on this memorandum. But he genuinely needs an additional week to complete it.

5. This case is extremely complicated by the sheer number of pleadings, transcripts, documents, exhibits, and other material involved. Assimilating the pertinent information in a supplemental memorandum has been a daunting task.

6. The undersigned has communicated with opposing counsel, First Assistant United States Attorney John S. Bruce. The government is taking no position on this request.

7. This extension of one week is reasonable. The interests of justice would best be served by extending the time for one week, to 29 March 2013.

8. Based on these considerations, defendant respectfully requests that the time for filing his post-hearing supplemental memorandum be extended to 29 March 2013. A proposed order is attached.

WHEREFORE, Jeffrey R. MacDonald respectfully requests that this Court extend the time for filing of his post-hearing memorandum to 29 March 2013.

This the 19th day of March, 2013.

RUDOLF WIDENHOUSE & FIALKO

/s/ M. Gordon Widenhouse, Jr.

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Attorney for Jeffrey R. MacDonald

CERTIFICATE OF SERVICE

I hereby certify that on 19 March 2013, I electronically filed the foregoing Motion for One Week Extension of Time to File Defendant's Post-Hearing Memorandum with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record in this matter.

RUDOLF WIDENHOUSE & FIALKO

/s/ M. Gordon Widenhouse, Jr._____

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