UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-7136

UNITED STATES OF AMERICA,

Appellee,

v.

JEFFREY R. MACDONALD

Appellant.

**APPELLANT'S MOTION FOR LEAVE TO PROCEED
WITH FRAP 30(c) BRIEFING SCHEDULE**

NOW COMES APPELLANT Jeffrey R. MacDonald, through undersigned counsel, and respectfully moves this Court for an order permitting the parties to employ the deferred appendix option of Federal Rule of Appellate Procedure 30(c) and for issuance of a FRAP 30(c) briefing schedule. The Government joins in this Motion. In support of this Motion, Appellant shows the Court the following:

1.   Appellant was convicted in the United States District Court for the Eastern District of North Carolina in August 1979 of one count of first degree murder and two counts of second degree murder, involving the deaths of his wife and young daughters. This appeal is the appeal of the district court's order denying

Appellant's Motion to Vacate his Conviction under 28 U.S.C. § 2255, after an evidentiary hearing on remand resulting from this Court's most recent opinion in this matter. *See United States v. MacDonald*, 641 F.3d 596 (4th Cir. 2011). Appellant filed a timely Notice of Appeal from the district court's order denying his § 2255 motion on July 16, 2015.

2.   After Appellant filed an Informal Opening Brief, this Court on April 4, 2016 issued an order granting a certificate of appealability on the following issue: Whether the district court erred finding that MacDonald did not establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense. The Court also issued a briefing schedule setting the deadline for the filing of Appellant's Opening Brief and the Joint Appendix for May 16, 2016.

3.   The parties respectfully request that the Court issue an order permitting them to employ the deferred appendix procedure in FRAP 30(c) in this appeal. This appeal involves Appellant's convictions for three counts of murder at a trial that occurred more than 30 years ago. The record includes the transcript and exhibits from that multi-week trial, the record relating to several prior habeas petitions and new trial motions that were litigated in the district court and in this Court, and the record from the present Section 2255 Motion, which includes the transcript of a 7 day evidentiary hearing, hundreds of exhibits, and a 169 page

order from the district court that is the subject of this appeal. This is a very unusual case with an extraordinarily large record. Given the size and nature of the record, it is very difficult for the parties to efficiently determine which parts of the record will need to be included in the Joint Appendix until after all of the briefs are filed. The parties therefore respectfully request that the deferred appendix procedure in FRAP 30(c) be permitted in this case.

4.   Undersigned counsel has discussed this Motion with Acting U.S. Attorney John Bruce, one of the prosecutors handling this matter, and Mr. Bruce states that the Government joins in this Motion.

WHERFORE, Appellant respectfully requests that this Motion be granted, and that the Court issue an order permitting the parties to employ the deferred appendix procedure in FRAP 30(c), and issue a FRAP 30(c) briefing schedule.

This the 20th day of April, 2016.

/s/   Joseph E. Zeszotarski, Jr.
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3

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION was served through the electronic service function of the Court's electronic filing system, addressed as follows:

John Bruce
Acting United States Attorney
310 New Bern Avenue
Raleigh, NC 27601

This the 20th day of April, 2016.

/s/   Joseph E. Zeszotarski, Jr.
Counsel for Appellant