

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)
)

**UNOPPOSED SECOND MOTION TO EXTEND TIME TO FILE
DEFENDANT’S POST-HEARING MEMORANDUM**

NOW COMES defendant, Jeffrey R. MacDonald, by and through his undersigned counsel, with the consent of the government, and moves this Court to extend the time for the filing of defendant’s post-hearing memorandum, allowed by this Court [DE 305], for an additional thirty days, to and including 21 March 2013. This additional time is necessitated by the workload of the undersigned since filing of the transcript on 19 November 2012 and since the extension of the deadline to 19 February 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 19 February 2013.

2. As this Court was previously made aware, the undersigned has been heavily involved in other litigation after the transcript was delivered. He filed a petition for discretionary review in *State v. Nidiffer* in the Supreme Court of North Carolina on 6 November 2012; filed a brief in *United States v. Lespier* (a first degree murder case) in the United States Court of Appeals for the Fourth Circuit on 14 November 2012; filed a brief in the North Carolina Court of Appeals in *State v. Comeaux* on 16 November 2012; filed a brief in the state court of appeals in *State v. Floyd* on 21 November 2012; filed a brief in the state court of appeals in *State v. Quick* on 10 December 2012; filed a petition for a writ of certiorari in the state court of appeals in *State v. Allegra Dahlquist* on 14 December 2012; filed petitions for discretionary review in the Supreme Court of North Carolina in *State v. Sergakis* on 26 December 2012 and *State v. Foster* on 27 December 2012; filed another brief in the state court of appeals in *State v. Ingram* on 7 January 2013; presented an oral argument in the Supreme Court of North Carolina in *State v. Carver* on 8 January 2013; and served a proposed record on appeal in the state court of appeals in *State v. Kevin Dahlquist* on 9 January 2013.

3. 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; and is preparing another petition for discretionary review in *State v. Broom* that must be filed in the Supreme Court of North Carolina on 19 February 2013, a deadline that cannot be extended. He also has an oral argument in the Supreme Court of North Carolina on 12 March 2013 in *State v. Miles*.

4. In addition, it was necessary for the undersigned to visit with his client in January. This visit required a day of travel to Cumberland Correction Institute, a meeting of approximately seven hours, and a day of return travel.

5. Under these circumstances, the undersigned reasonably needs an additional thirty days in which to file the post-hearing memorandum.

6. As this Court undoubtedly knows, the present 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 that will be useful to the Court is a daunting task.

7. The undersigned has communicated with opposing counsel, First Assistant United States Attorney John S. Bruce. As Mr. Bruce explained,

The Government is concerned about further delay in resolving the matters that were the subject of the Fourth Circuit's 2011 remand. Illustrating this concern is the fact that just since the completion of the evidentiary hearing in September 2012, one person who appeared as a witness for the Government, retired FBI Special Agent Butch Madden, has passed away and another, author Joe McGinniss, has announced that he has serious illness. Any new material that departs from the record of the case and the evidence submitted with the prehearing order or at the hearing would become more difficult to respond to with each passing week. However, the Government understands that MacDonald's brief will not be including any such new material. Because the Government believes MacDonald's counsel request for more time is made in good faith, it will not oppose the motion. The Government would likely oppose any subsequent motion to extend the filing deadline for MacDonald's brief.

The undersigned appreciates the government's belief that this request is being made in good faith. He likewise shares the government's concerns. But the extension of thirty days will not needlessly risk further adverse developments. Here, the interests of justice would best be served by extending the time for thirty additional days. The undersigned does not believe that additional time will be needed.

8. Based on these compelling considerations, and in light of the government's consent, defendant respectfully requests that the time for filing his post-hearing supplemental memorandum be extended to 21 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 21 March 2013.

This the 8th day of February, 2013.

RUDOLF WIDENHOUSE & FIALKO

/s/ M. Gordon Widenhouse, Jr.

N.C. State Bar #10107

312 West Franklin Street

Chapel Hill, NC 27516

Telephone: 919-967-4900

Telefax: 919-967-4953

Email: mgwidenhouse@rwf-law.com

Attorney for Jeffrey R. MacDonald

CERTIFICATE OF SERVICE

I hereby certify that on 8 February 2013, I electronically filed the foregoing Unopposed Second Motion to Extend 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._____

N.C. State Bar #10107

312 West Franklin Street

Chapel Hill, NC 27516

Telephone: 919-967-4900

Telefax: 919-967-4953

Email: mgwidenhouse@rwf-law.com