

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 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 thirty days, to and including 17 February 2013. This additional time is necessitated by the workload of the undersigned since filing of the transcript on 19 November 2012. 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. Based on this Court's order, defendant's supplemental memorandum would be due on 18 January 2013.

2. Since the transcript was delivered, the undersigned has been heavily involved in other litigation. For example, the undersigned 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. In addition, the undersigned must file a brief in the Supreme Court of North Carolina in *State v. Miles* on 14 January 2013 and a petition for a writ of certiorari in the Supreme Court of the United States on 19 January 2013 in *United States v. Powell*. Neither

of those matters can reasonably be extended. The issue in *Powell* is 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.

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

5. Moreover, as this Court is keenly aware, 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.

6. The undersigned has communicated with opposing counsel, First Assistant United States Attorney John S. Bruce, who has consented to this extension of time. Defendant requests that the time for filing his post-hearing supplemental memorandum be extended to 18 February 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 18 February 2013.

This the 10th day of January, 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 10 January 2013, I electronically filed the foregoing Unopposed 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._____

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