

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 15-7136

(3:75-CR-00026-F-1)

UNITED STATES OF AMERICA)	
)	
Plaintiff - Appellee)	CORRECTED UNOPPOSED
v.)	MOTION OF THE UNITED STATES
)	FOR A 35-DAY EXTENSION OF
JEFFREY R. MacDONALD)	TIME WITHIN WHICH TO FILE
)	PAGE-PROOF RESPONSIVE BRIEF
Defendant – Appellant)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby moves the Court, pursuant to Federal Rule of Appellate Procedure 26(b), for a 35-day enlargement of time within which to file its Appellee’s Page-Proof Response Brief and to serve its additional appendix designations and, in support thereof, shows unto the Court the following:

1. The Appellant’s Page-Proof Opening Brief was filed, pursuant to unopposed extension request, on June 7, 2016. (Doc: 22). Appellant’s attorney emailed Appellant’s appendix designations to counsel for the Government the same day.

2. The Appellee’s Response brief is the first and only opportunity for the Government to set forth its position on MacDonald’s appeal from the denial of his successive collateral attacks on his conviction pursuant to 28 U.S.C. § 2255. The brief will need to summarize all of the litigation since this Court’s remand in 2011, see United States v. MacDonald, 641 F.3d 596 (4th Cir. 2011), against the backdrop of the litigation that led up to 2011, beginning with the indictment in 1975.

3. Under the Court’s Informal Preliminary Briefing Order, dated July 21, 2015, [Doc: 3-2], MacDonald was permitted to file an informal brief by August 14, 2015. MacDonald

obtained two 45-day extensions, with the Government's consent, and, on November 12, 2015, filed a 58-page informal brief, seeking issuance of a Certificate of Appealability. Pursuant to the Court's July 21 Order [Doc: 3-2] and Fourth Circuit Local Rule 22(a)(1)(B), no responsive brief from the Government was authorized. This Court granted the COA on April 4, 2016, and set a formal briefing schedule.

4. The MacDonald trial took place in 1979 and has been the subject of numerous appeals and post-conviction motions during the intervening years. The two Assistant U.S. Attorneys currently assigned to this case were assigned in 2006 and 2012, respectively, and they represented the Government at the 2012 evidentiary hearing that led to this appeal. They have had to become familiar with the extensive record in the case spanning over 40 years of litigation, but now face the formidable task of selecting the appropriate parts of the massive record for the joint appendix, in addition to preparing the brief. One of the attorneys (AUSA Leslie Cooley) was counsel for the Government in the recently concluded trial of United States v. Melton, No. 5:14-CR-72-D-1 (EDNC), which lasted from June 6 to June 21, 2016. The other (AUSA John Stuart Bruce) has been serving as Acting U.S. Attorney since January 2016, and those duties have required additional travel.

5. Counsel for appellant has been contacted for his position regarding this extension request and has stated that he does not oppose the motion.

6. This motion is filed not for the purpose of delay, but to permit meaningful explication of the issue for review.

WHEREFORE, the United States respectfully requests a 35-day extension for the filing of the Appellee's Page-Proof Responsive Brief, resulting in a deadline of August 16, 2016.

Respectfully submitted, this 6th day of July, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Motion for Extension of Briefing Deadline upon the Appellant in this action by filing same with the Court via the CM-ECF system, which will send notification of such filing to counsel for Appellant as follows:

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This, the 6th day of July, 2016.

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