

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 FOR ONE WEEK EXTENSION OF TIME
TO FILE DEFENDANT’S REPLY TO GOVERNMENT’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 346], for one additional week, to and including 21 August 2013. This additional time is necessitated by an unexpected development in another case in which the undersigned is counsel. 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. Both parties have filed their post-hearing memoranda.

2. On 6 July 2013, this Court granted defendant's motion to file a reply to the government's post-hearing memorandum. [DE 346] The government was also allowed to file a sur-reply, if desired, within thirty days after defendant files his reply. Defendant's reply is due to be filed on 14 August 2013 having been extended one week by this Court.

3. Since the Court granted the extension of time, the undersigned had a development in another case in which he is lead counsel. On Monday, August 5, the state filed its response to a petition for a writ of certiorari in *State v. Middlebrooks*, No. P13-529. The next day, August 6, the North Carolina Court of Appeals denied the petition. This denial restarted the one-year statute of limitations for Mr. Middlebrooks to seek a petition for a writ of habeas corpus in federal court. *See* 28 U.S.C. § 2244(d)(1). Only four days remained under this statute. Thus, the undersigned had to devote the remainder of the week to preparing and filing the petition for a writ of habeas corpus, which he did on Friday, August 9. The development in this other case prevented the undersigned from devoting important time to the reply in this matter.

5. As this Court is aware, the government's post-hearing memorandum is approximately 200 pages accompanied by two notebooks of exhibits. The undersigned is the only attorney actively representing defendant at this point. Preparing the reply to the government's memorandum, like other aspects of this litigation, is nothing sort of an ordeal.

6. The undersigned has been diligently working on this memorandum. But due to the unexpected development in the Middlebrooks matter, he genuinely needs an additional week to complete it. This extension of time is reasonable, and the interests of justice would best be served by extending the time for filing defendant's reply to 21 August 2013

7. The undersigned has communicated with opposing counsel, First Assistant United States Attorney John S. Bruce, who has graciously consented to this extension of time.

8. Based on these considerations, defendant respectfully requests that the time for filing his reply to the government's post-hearing memorandum be extended to 21 August 2013. A proposed order is attached.

WHEREFORE, Jeffrey R. MacDonald respectfully requests that this Court extend the time for filing of his reply to the government's post-hearing memorandum to 21 August 2013.

This the 13th day of August, 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 13 August 2013, I electronically filed the foregoing Unopposed Motion for One Week Extension of Time to File Defendant's Reply to Government'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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