

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Case No. 2007XX1116-CR

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED
DEC 1 2009
CLERK OF CIRCUIT COURT

STATE OF WISCONSIN,

Plaintiff,

v.

Manitowoc County
Case No. 05-CF-381

STEVEN A. AVERY,

Defendant.

**MOTION FOR ADDITIONAL EXTENSION OF TIME
FOR CIRCUIT COURT TO DECIDE DEFENDANT'S
POSTCONVICTION MOTION**

The defendant, Steven A. Avery, by his attorneys, Assistant State Public Defenders Suzanne L. Hagopian and Martha K. Askins, moves this court pursuant to Wis. Stat. § (Rule) 809.82(2)(a) for an order extending until January 29, 2010, the time for the circuit court to decide the defendant's postconviction motion. The following is shown in support of this motion:

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(1)

1. Mr. Avery was convicted by a jury in Manitowoc County, the Honorable Patrick L. Willis presiding, of first degree intentional homicide contrary to Wis. Stat. § 940.01(1)(a) and felon in possession of a firearm contrary to Wis. Stat. § 941.29(2)(a). Judge Willis subsequently imposed a life sentence for the homicide and a concurrent 10-year sentence for the firearm conviction.

2. Undersigned counsel were appointed to represent Mr. Avery for purposes of seeking postconviction relief pursuant to Wis. Stat. § (Rule) 809.30. After having obtained several extensions, on June 29, 2009, counsel filed a postconviction motion on Mr. Avery's behalf seeking a new trial.

3. At a scheduling conference held on July 9, 2009, the circuit court established a schedule for pre-hearing briefs on an evidentiary question concerning the postconviction hearing, and the court set the postconviction hearing for September 28, 2009. The court and parties anticipated that post-hearing briefs would also be filed addressing the merits of Mr. Avery's claims for a new trial. Given the briefing planned for both before and after the hearing, it was agreed among the parties and court that the court would need until December 1, 2009, to decide the postconviction motion. Accordingly, Mr. Avery filed a motion to extend the time limit under § 809.30(2)(i), which this court granted on August 20, 2009. Accordingly, the deadline for the circuit court to decide Mr. Avery's postconviction motion is currently December 1, 2009.

4. Since that extension was obtained, the circuit court held an all-day evidentiary hearing on September 28, 2009. At the end of the hearing, the court set a briefing schedule which, taking into account the roughly two weeks needed to prepare the transcript of the postconviction hearing, directed the parties to file opening briefs by October 30, 2009, and reply briefs by November 13, 2009. The parties have filed briefs pursuant to that schedule. When the briefing schedule was set, the parties and court recognized the court might have trouble meeting the December 1, 2009, decision deadline and that an additional extension might be necessary.

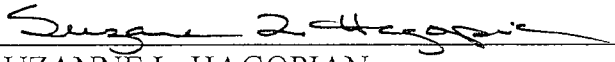
5. In a letter dated November 23, 2009, a copy of which is attached to this motion, Judge Willis notified the parties that he would not be able to meet the current deadline “[g]iven the complexity of the issues raised and the court’s calendar” The court asked counsel to seek an extension until January 29, 2010.

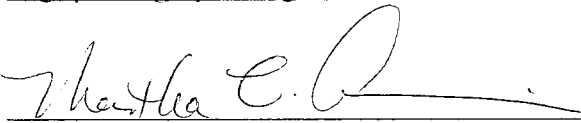
6. Good cause exists for the extension requested. The parties filed exceptionally lengthy post-hearing briefs, totaling more than 170 pages. The issues are complex and multi-layered, requiring review of many authorities cited by the parties. Indeed, the record of this case is itself voluminous, consisting of transcripts from a six-week jury trial, which, among other reasons, required undersigned counsel to obtain several extensions of the time for filing a postconviction motion. It is only reasonable that the judge be afforded the time needed to thoroughly review the issues raised and to prepare a decision addressing those claims.

FOR THESE REASONS, Mr. Avery, by counsel, respectfully requests that the court enter an order extending the deadline for the circuit court to decide his postconviction motion until January 29, 2010.

Dated this 30th day of November, 2009.

Respectfully submitted,


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Steven A. Avery, 122987
P.O. Box 9900
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PATRICK L. WILLIS, CIRCUIT JUDGE



CIRCUIT COURT BRANCH I

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November 23, 2009

Atty. Suzanne L. Hagopian
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Attorney Thomas J. Fallon
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Re: State of Wisconsin vs. Steven A. Avery
Case No. 05 CF 381

Dear Counsel:

I spent a good portion of this past weekend reading your briefs and reviewing the authorities cited therein. Given the complexity of the issues raised and the court's calendar, I do not believe the court can decide the defendant's post-conviction motion by the current deadline of December 1, 2009. I would ask counsel to request the Court of Appeals to extend the deadline to January 29, 2010. I hope to have a decision ready comfortably before that date.

Very truly yours,

A handwritten signature in cursive script that reads "Patrick L. Willis".

Patrick L. Willis,
Circuit Judge

Cc: Atty. Martha K. Askins
Atty. Kenneth Kratz
Atty. Norm Gahn

PLW/rm
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STATE PUBLIC DEFENDER
MADISON APPELLATE