

No. _____

In the
Supreme Court of the United States

STEVEN ANTHONY COZZIE,

Applicant,

v.

STATE OF FLORIDA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA**

DIRECTED TO THE HONORABLE CLARENCE THOMAS,
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT

ANDY THOMAS

Public Defender

Second Judicial Circuit of Florida

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November 13, 2017

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR
A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA**

**To the Honorable Clarence Thomas, Associate Justice of the
Supreme Court of the United States and Circuit Justice for the Eleventh
Circuit:**

Petitioner Steven Anthony Cozzie respectfully requests, pursuant to Rule 13(5) of the Rules of this Court, for an extension of time of 60 days, to and including January 29, 2018 (January 28 being a Sunday), for the filing of a petition for a writ of certiorari to review the decision of the Florida Supreme Court dated May 11, 2017 (Exhibit 1), on which a timely motion for rehearing was denied on August 31, 2017 (Exhibit 2). The jurisdiction of this Court is based on 28 U.S.C. § 1257.

1. The date within which a petition for a writ of certiorari would be due, if not extended, is November 29, 2017. This application is being filed more than 10 days before that date.

2. Petitioner was charged with first-degree murder. Prior to trial, he moved to bar imposition of the death penalty and argued that Florida's capital sentencing scheme was unconstitutional under the Sixth, Eighth, and Fourteenth Amendments. The trial court denied petitioner's motion.

At trial, petitioner was convicted of first-degree murder. The jury recommended the death penalty. After finding that the aggravating circumstances outweighed the mitigating circumstances, the trial court sentenced petitioner to death.

On appeal before the Florida Supreme Court, petitioner argued that his death

sentence should be vacated because Florida's capital sentencing scheme was unconstitutional under this Court's decisions in Ring v. Arizona, 536 U.S. 584 (2002), and Hurst v. Florida, 136 S. Ct. 616 (2016).¹ Petitioner further contended that the constitutional defect in Florida's capital sentencing scheme, including the jury being misled concerning its role in the sentencing process in a way that diminished its sense of responsibility for imposing the death penalty, gave rise to structural error under this Court's decision in Sullivan v. Louisiana, 508 U.S. 275 (1993).

The Florida Supreme Court affirmed petitioner's death sentence. While it agreed with petitioner's argument that Florida's capital sentencing scheme was unconstitutional, the constitutional error was subjected to harmless-error review and determined to be harmless.

3. Petitioner's initial lead counsel in the Florida Supreme Court, W.C. McLain, Esq., retired from the Second Judicial Circuit of Florida Office of Public Defender, after briefing was completed but before a decision issued. Petitioner's case was reassigned to Nada M. Carey, Esq., who filed the above-mentioned motion for rehearing. Subsequent to the denial of that motion, Ms. Carey also retired. For multiple decades, both Mr. McLain and Ms. Carey handled capital appeals for the Second Judicial Circuit of Florida Office of Public Defender. Following Ms. Carey's retirement, petitioner's case was reassigned to petitioner's Counsel of Record in this

¹While petitioner's case was pending in the Florida Supreme Court, this Court issued its decision in Hurst, 136 S. Ct. at 616. The Florida Supreme Court subsequently allowed supplemental briefing.

case.

4. Petitioner's Counsel of Record was not involved in the trial or appellate proceedings below. The trial record below is composed of approximately 40 volumes containing approximately 4500 pages. In addition, the case was briefed extensively in the Florida Supreme Court. Additional time is necessary for petitioner's Counsel of Record to completely familiarize himself with the record below, fully research the legal issues involved in this case, and prepare an appropriate petition for consideration by this Court.

5. This case presents substantial issues of law, among which are:

(1) whether a jury is "affirmatively misled . . . regarding its role in the sentencing process so as to diminish its sense of responsibility," Romano v. Oklahoma, 512 U.S. 1, 10 (1994), when the jury is repeatedly instructed regarding a capital sentencing scheme under which the jury renders "an advisory sentence" and "the final decision as to which punishment shall be imposed is the responsibility of the judge," but that sentencing scheme is later held to violate the Sixth Amendment right to jury trial; and

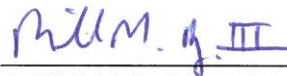
(2) whether, considering the Sixth Amendment right to jury trial in conjunction with the Fourteenth Amendment right to due process and the "Eighth Amendment's heightened 'need for reliability in the determination that death is the appropriate punishment in a specific case,'" Caldwell v. Mississippi, 472 U.S. 320, 323 (1985) (quoting Woodson v. North Carolina, 428 U.S. 280, 305 (1976)), structural error occurs when a jury not only is given misleading and inaccurate instructions that ultimate

responsibility for determining the appropriateness of imposing the death penalty rests elsewhere, but also fails to return beyond-a-reasonable-doubt findings as to multiple, critical elements necessary to impose the death penalty.

For the foregoing reasons, petitioner hereby requests that an extension of time to and including January 29, 2018, be granted within which petitioner may file a petition for a writ of certiorari.

Respectfully submitted,

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