

No. _____

IN THE
Supreme Court of the United States

LANCE SHOCKLEY,
Petitioner,
v.

CINDY GRIFFITH, WARDEN,
POTOSI CORRECTIONAL CENTER,
Respondent.

On Petition for a Writ of Certiorari
To the Supreme Court of Missouri

APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI

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**APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR WRIT OF CERTIORARI**

To: The Honorable Justice Neil M. Gorsuch, Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

Applicant Lance Shockley respectfully requests an extension of sixty (60) days in which to file his petition for writ of certiorari, challenging the Missouri Supreme Court's judgment denying his petition for writ of habeas corpus in *Lance Shockley v. Cindy Griffith, Warden, Potosi Correctional Center* (Missouri Supreme Court Case No. 96694), a copy of which is attached herewith. In support of this application, Applicant provides the following information:

1. On November 21, 2017, the Missouri Supreme Court issued a judgment summarily denying Applicant's petition for writ of habeas corpus. App. 1. Accordingly, the petition for certiorari is currently due on February 20, 2018. Granting this extension would make it due on April 23, 2018. This Court has jurisdiction under 28 U.S.C. § 1257(a).

2. This case is a serious candidate for certiorari review. It raises the question of whether Missouri's statutory section 565.030, RSMo, violates *Hurst v. Florida*, 136 S.Ct. 616 (2016), and the Sixth, Eighth, or Fourteenth Amendments when it authorizes the trial judge to repeat the steps followed by the jurors, reconsider the facts, and return a death verdict based on the judge's independent findings after the jury has made the required factual findings but cannot agree on the sentence.

3. The constitutional question presented here is vitally important. No decision made in a courtroom is more important than whether a criminal defendant should be put to death. The decision is held to standards of heightened reliability and subjected to the most rigorous constitutional scrutiny. Normally, Missouri fiercely protects a capital defendant's Sixth and Eighth Amendment rights to have this crucial decision made by a unanimous jury. But if the jury deadlocks, the right to trial by jury arbitrarily vanishes. Missouri's death penalty procedure conflicts with the holdings of *Hurst v. Florida*, 136 S.Ct. 616 (2016), and decisions of the Delaware and Florida Supreme Courts in *Rauf v. State*, 145 A.3d 430 (Del. 2016) and *Hurst v. State*, 202 So.3d 40, 44 (Fla. 2016), respectively. Of the 31 death penalty states, the vast majority – 27 states, or 87% – protect capital defendants' right to jury trial by mandating that if a jury deadlocks on punishment, the defendant cannot receive a death sentence. No defendant should go to his death except by the unanimous vote of a jury of his peers.

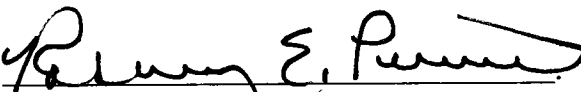
4. This application is not filed for purposes of delay. Applicant's lawyer is a public defender. She works in an office that is typically staffed with three trial lawyers and one appellate lawyer. As the appellate lawyer in a capital trial office, she is heavily engaged in motion practice before and after trial as well as representing capital defendants on appeal. Three months ago, one of the three trial lawyers resigned and has not yet been replaced. In addition to being short-staffed, the office had a particularly arduous trial schedule in 2017, which left the office behind schedule in preparing for the three capital trials scheduled in 2018. Fortunately, one

of these cases, scheduled for trial at the end of January 2018, was resolved by plea in early January. But the time spent in motion practice and research on that case took away from the extensive motion practice that must still be done for the two remaining capital trials this year (*State v. Bourne*, Barton County Case No. 13B4-CR00140-01, set for trial July 30, 2018, and *State v. Thompson*, Jasper County Case No. 15AO-CR00785-01, set for trial September 10, 2018). This is work that cannot be put off or done at the last minute. Because these trials have already been continued, they are not expected to be continued again. The office is also currently scheduled for trial in May 2018 in a first-degree murder case with a juvenile defendant who faces a potential sentence of life without parole. These juvenile cases involve significant motion practice because it is not clear that Missouri is fully complying with the mandate of *Miller v. Alabama*, 567 U.S. 460 (2012).

5. Applicant's counsel is also solely responsible for the pending capital appeal *State v. Craig Wood* (Missouri Supreme Court Case No. 96924), as well as several non-capital appeals. Furthermore, because of the importance of this case, Applicant is seeking to retain new lead counsel for the Supreme Court proceedings. Accordingly, the time sought here is necessary for any new counsel to adequately familiarize him or herself with the record and relevant law in this case, and to produce the best possible work product.

6. For all of these reasons, Applicant respectfully requests the entry of an order extending the time to file his petition for a writ of certiorari until April 23, 2018.

RESPECTFULLY SUBMITTED this 5th day of February, 2018

by 

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