

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2017

CHARLES KENNETH FOSTER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

*On Petition for a Writ of Certiorari to the
Supreme Court of Florida*

**APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

THIS IS A CAPITAL CASE

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

Petitioner Charles Kenneth Foster, a death-sentenced Florida prisoner, respectfully moves for a 45-day extension of time for undersigned counsel to file a petition for a writ of certiorari seeking review of the Florida Supreme Court's January 29, 2018, decision in his case. The Florida Supreme Court's decision is attached to this application. Petitioner has calculated the certiorari filing date from the date of the original denial. This application is filed more than 10 days ahead of the certiorari

filing deadline. This Court has jurisdiction to grant a writ of certiorari under 28 U.S.C. § 1257(a).

The Capital Habeas Unit (“CHU”) of the Office of the Federal Public Defender for the Northern District of Florida was appointed by the United States District Court pursuant to 18 U.S.C. § 3599 to represent Petitioner and will file the certiorari petition with co-counsel at the Capital Collateral Regional Counsel, Middle Region. This request for an extension of time is based on good cause. The CHU is one of the newest federal-defender capital habeas units in the country, with a small staff that includes three assistant federal defenders. Given the documented history of problems with federal capital representation in Florida, the CHU quickly became responsible for 45 cases in complicated procedural postures. *Cf. Lugo v. Sec’y, Fla. Dep’t of Corrs.*, 750 F.3d 1198, 1215 (11th Cir. 2014) (describing historical deficiencies in Florida federal capital representation leading to the creation of the CHU); *Banks v. Sec’y, Fla. Dep’t of Corrs.*, 592 F. App’x 771 (11th Cir. 2014) (Ed Carnes, C.J., concurring) (same).

Of the 45 clients the CHU directly represents, 20 are potentially subject to a death warrant and therefore require increased attention. Recently, the CHU conducted the death-warrant litigation culminating in *Branch v. Florida*, Nos. 17-7825 & 17-7758 (petitions & stay applications denied, Feb. 22, 2018). The Branch litigation required the focus of the CHU’s entire staff.

As the institutional federal capital defender of Florida, the CHU is also assisting state lawyers in approximately 25 additional cases. *See Lugo*, 750 F.3d at 1215 (“Not only could [the CHU] provide direct representation to capital inmates in

some federal habeas proceedings . . . but it could also provide critical assistance and training to private registry counsel who handle state capital cases in Florida’s collateral proceedings.”).

The CHU is directly representing and actively consulting in multiple cases where, as in Petitioner’s case, certiorari petitions will be filed in the coming weeks raising issues under *Hurst v. Florida*, 136 S. Ct. 616 (2017). These petitions implicate legitimate constitutional challenges to the Florida Supreme Court’s approach to *Hurst* claims. The condensed timeframe of these petitions arises from the Florida Supreme Court’s summary denial of 80 *Hurst* cases on retroactivity grounds during a two-week period beginning in late January 2018. A 45-day extension of time is reasonable in Petitioner’s case to allow the CHU to research, coordinate, and present the instant and other petitions in a professional manner. The CHU is not seeking 60 days, but 45—a shorter time than the rule allows.

The CHU contacted the Florida Attorney General’s Office, counsel for Respondent, regarding this motion. Respondent does not object to a 45-day extension.

Petitioner respectfully requests that the Court grant this request.

Respectfully submitted,

/s/ BILLY H. NOLAS

BILLY H. NOLAS

Counsel of Record

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