

App. No. _____

IN THE SUPREME COURT OF THE UNITED STATES

AKIL JAHI aka PRESTON CARTER, Petitioner-Applicant,

v.

STATE OF TENNESSEE, Respondent.

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR
WRIT OF CERTIORARI TO THE TENNESSEE SUPREME COURT

To The Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States, and Circuit Justice for the Sixth Circuit:

Pursuant to 28 U.S.C. § 2101 and Rule 13.5 of the Rules of this Court, Applicant Akil Jahi respectfully applies for a sixty-day extension of time, to and including February 15, 2019, within which to file a petition for writ of certiorari in this capital case seeking retroactive application of *Moore v. Texas*, 137 S. Ct. 1039 (2017). The Tennessee Supreme Court entered its final judgment on September 17, 2018, denying review of a lower-court's holding that *Moore* does not apply retroactively. Unless extended, Mr. Jahi's time to petition for certiorari expires on December 17, 2018. This application is being filed by pro bono counsel more than ten days before that date. Good cause exists to extend Mr. Jahi's time to petition for certiorari.

Copies of the Tennessee state court opinions below are attached hereto. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

This is a capital proceeding challenging the holding below that *Moore* does not establish any substantive rights that could be retroactively applied in Mr. Jahi’s case. The Tennessee Court of Criminal Appeals denied Mr. Jahi’s petition to appeal an adverse post-conviction ruling on that basis. *See Jahi v. State*, No. W2017-02527-CCA-R28-PD, 3–4 (Tenn. Crim. Ct. App. Apr. 24, 2018). The Tennessee Supreme Court subsequently denied Mr. Jahi’s application to appeal that intermediate appellate determination. These decisions violated *Moore* by depriving Mr. Jahi of any opportunity to demonstrate that his death sentence violates *Brumfield v. Cain*, 135 S. Ct. 2269 (2015), *Hall v. Florida*, 572 U.S. 701 (2014), and *Atkins v. Virginia*, 536 U.S. 304 (2002), which prohibit the execution of intellectually disabled individuals through the application of a “strict cutoff,” *Hall*, 572 U.S. at 718, even when clinical and professional standards of measurement place a defendant “squarely in the range of potential intellectual disability,” *Brumfield*, 135 S. Ct. at 2278.

The question decided adversely to Mr. Jahi below—whether *Moore* should be applied retroactively—is an important question arising under the Constitution of the United States that is worthy of this Court’s attention. Mr. Jahi’s petition for writ of certiorari would include viable constitutional challenges to his death sentence establishing that the opinion below is in conflict with *Moore* and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), because the Tennessee courts have failed to provide Mr. Jahi with a forum for the vindication of his *Atkins* claim.

Good cause exists under Rule 13.5 to extend the time for Mr. Jahi to seek certiorari through his pro bono counsel. The time to file should be extended for sixty days for these reasons:

1. The lawyers primarily responsible for Mr. Jahi's petition, Christopher E. Thorsen and Peter C. Sales,¹ are representing Mr. Jahi on a pro bono basis and require additional time to prepare a comprehensive certiorari petition for the Court's consideration.

2. Mr. Thorsen has an upcoming trial in the United States District Court for the Eastern District of Tennessee, *North American Specialty Insurance Company v. Heritage Glass, LLC*, Case No. 2:16-cv-00263, scheduled for December 4–6, 2018. Additionally, Mr. Sales has a jury trial in the United States District Court for the Central District of California, *Neofonie GMBH v. Artissimo Designs, LLC*, Case No. 8:17-cv-00772, scheduled for January 22–25, 2019. Given counsel's current and ongoing responsibilities, counsel will require additional time to prepare and present Mr. Jahi's petition for writ of certiorari to this Court.

3. Counsel for the Respondent, Assistant Attorney General Nicholas Spangler, has authorized undersigned counsel to state that he has no objection to this application.

¹ Mr. Thorsen's application for admission before this Court has been submitted for consideration. Mr. Sales's application for admission before this Court will be submitted for consideration as soon as counsel receives documentation of good standing from the Tennessee Supreme Court, which he has requested and expects to receive soon.

For these reasons, Mr. Jahi requests that the Court grant this application for a sixty-day extension of time, to and including February 15, 2019, within which to file a petition for a writ of certiorari.

Respectfully submitted,



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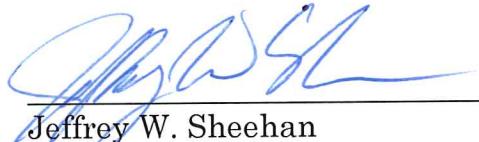
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Attorneys for Akil Jahi aka Preston Carter

November 29, 2018

CERTIFICATE OF SERVICE

I, Jeffrey W. Sheehan, counsel for Applicant Akil Jahi aka Preston Carter and a member of the Bar of this Court, hereby certify that on the 29th day of November, 2018, a copy of this Application for Extension of Time to File Petition for Writ of Certiorari in the above-entitled case was mailed, first-class postage, to Assistant Attorney General Nicholas W. Spangler, Criminal Appeals Division, P.O. Box 20207, Nashville, TN 37202-0207, 615-741-3486 (Counsel for Respondent). I further certify that all parties required to be served have been served.



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