

App. No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BOBBY JOHNSON,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

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

DIRECTED TO THE HONORABLE JOHN G. ROBERTS, JR.,
CHIEF JUSTICE OF THE UNITED STATES SUPREME COURT AND
CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Brian D. Boone
Counsel of Record
Michael R. Hoernlein
ALSTON & BIRD LLP
101 S. Tryon Street, St. 4000
Charlotte, NC 28280
(704) 444-1000
brian.boone@alston.com

Christine C. Mumma
Executive Director
N.C. Center on Actual Innocence
P.O. Box 52446
Shannon Plaza Station
Durham, NC 27717-2446
(919) 489-3268
cmumma@nccai.org

Counsel for Petitioner Bobby Johnson

TO THE HONORABLE JOHN G. ROBERTS, JR., AS CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT:

Under Supreme Court Rules 13.5, 22, and 30, Petitioner Bobby Johnson requests an extension of 60 days to file a petition for writ of certiorari in *State of North Carolina v. Bobby Johnson*, 821 S.E.2d 822 (N.C. 2018) (attached as Appendix A). In support of his application, Johnson states the following:

1. The North Carolina Supreme Court filed its opinion on December 21, 2018 and entered judgment 20 days later (January 10, 2019), so as it stands, Johnson must file his certiorari petition by April 10, 2019.

2. In accordance with Supreme Court Rule 13.5, Johnson has filed this application at least ten days before the April 10, 2019 deadline.

3. We have consulted with the State's counsel, and the State does not oppose the requested extension.

4. This Court will have jurisdiction over the certiorari petition under 28 U.S.C. § 1257.

5. This case presents an important question of constitutional law that has kept the federal and state courts in disarray: When does a pre-*Miranda* custodial interrogation render a post-*Miranda* confession involuntary?

6. On October 24, 2011, Bobby Johnson walked into a police station because two detectives wanted to speak with him. The detectives questioned Johnson in an interrogation room behind locked doors. Within 20 minutes, the detectives showed Johnson a two-year-old DNA report—which was based on a subjective analysis of a complex DNA mixture—purporting to prove his involvement in a 2007

murder. The detectives told Johnson, among many other things, that the evidence “locked” him in on charges of armed robbery and murder, that it was a “scientific fact” that he was involved, that he was facing the death penalty, and that the only way to get out of the “box” that he was in was to give up the names of the others involved in the robbery. They explained that they had probable cause to charge him with murder and that they could have “come and locked [him] up” based on the evidence that they already had. For more than four hours, Johnson denied having anything to do with the robbery or murder. But the detectives kept pressing to convince him that he had no choice but to admit his involvement. During that time, the detectives did not advise Johnson of his *Miranda* rights.

7. Before formally placing him under arrest, one of the detectives asked Johnson if he believed that he was free to leave. Johnson twice said that he did not think that he could leave. Frustrated, the detectives told Johnson that for his statements to be voluntary, he had to believe that he could leave. Otherwise, the detectives said, they would have to arrest him. Confused and distressed, Johnson said that he could not give the detectives what they wanted.

8. Eventually, after almost five hours of interrogation, the detectives formally arrested Johnson. The detectives continued to interrogate him for ten more minutes before reading him his *Miranda* rights. At that point, Johnson waived his rights and made inculpatory statements to the detectives.

9. The trial court denied Johnson’s motion to suppress the coerced confession, concluding that he “was not in custody until the time that he was advised

that he was under arrest and Mirandized.” The North Carolina Court of Appeals disagreed, concluding that the statements should have been suppressed as involuntary but ultimately holding that the constitutional violation was harmless error. *See State v. Johnson*, 795 S.E.2d 625, 640 (N.C. Ct. App. 2017) (attached as Appendix B). The North Carolina Supreme Court modified the ruling of the Court of Appeals, holding that Johnson’s inculpatory statements were voluntary. *State v. Johnson*, 821 S.E.2d 822, 824 (N.C. 2018).

10. Johnson requests an extension because he did not retain his appellate counsel—who represents him *pro bono* and will prepare the petition—until March 18, 2019. Given the press of business in other cases and the substantial record below, counsel needs the additional time to analyze the record, coordinate with the North Carolina Center on Actual Innocence, and prepare Johnson’s petition.

Accordingly, Johnson requests an extension of the deadline for his certiorari petition up through and including June 9, 2019.

Respectfully submitted on March 22, 2019.



Brian D. Boone
Counsel of Record
Michael R. Hoernlein
ALSTON & BIRD LLP
101 S. Tryon Street, St. 4000
Charlotte, NC 28280
(704) 444-1000
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Christine C. Mumma
Executive Director
N.C. Center on Actual Innocence
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Durham, NC 27717-2446
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cmumma@nccai.org

Counsel for Petitioner Bobby Johnson

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMIT, TYPEFACE REQUIREMENTS, AND
TYPE-STYLE REQUIREMENTS**

1. This document complies with the form and content requirements of Supreme Court Rule 22 because the original and two copies of the Application have been filed with the Clerk.
2. This document complies with the form and content requirements of Supreme Court Rule 33.2 because it has been presented double-spaced on 8.5- by 11-inch paper and, excluding the parts of the document exempted by Supreme Court Rule 33.1(d), contains 3 pages.

Respectfully submitted on March 22, 2019.



Brian D. Boone
Counsel of Record
ALSTON & BIRD LLP
101 S. Tryon Street, St. 4000
Charlotte, NC 28280
(704) 444-1000
brian.boone@alston.com

CERTIFICATE OF SERVICE

I certify that today I served this **Application for Extension of Time to File Petition for Writ of Certiorari** by email and first class U.S. mail in accordance with Supreme Court Rule 29.3 on the following:

Josh Stein
Attorney General, State of North Carolina

Derrick C. Mertz
Special Deputy Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602
(919)716-6500
dmertz@ncdoj.gov

Respectfully submitted on March 22, 2019.



Brian D. Boone
Counsel of Record
ALSTON & BIRD LLP
101 S. Tryon Street, St. 4000
Charlotte, NC 28280
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brian.boone@alston.com