

No. _____

IN THE
Supreme Court of the United States

RON NEAL, Superintendent, Indiana State Prison

Petitioner,

v.

FREDERICK MICHAEL BAER,

Respondent.

**APPLICATION FOR EXTENSION OF TIME TO FILE A
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

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**To the Honorable Justice Elena Kagan, as Circuit Justice for the
United States Court of Appeals for the Seventh Circuit:**

Petitioner, Ron Neal, respectfully requests a 59-day extension of time, to and including August 31, 2018, to file a petition for writ of certiorari. In support of this application, Petitioner states as follows:

1. The United States Court of Appeals for the Seventh Circuit issued its decision granting habeas relief to Respondent, Frederick Michael Baer, on January 11, 2018. This decision is attached. Petitioner timely filed a petition for rehearing en banc, and the Seventh Circuit issued its decision denying that petition on April 4, 2018. That decision is also attached. Absent an

extension of time, the petition for writ of certiorari would therefore be due on July 3, 2018. Petitioner files this application at least ten days before the petition's due date. *See* Sup. Ct. R. 13.5.

2. The Court to which certiorari would be directed is the United States Court of Appeals for the Seventh Circuit. This Court would have jurisdiction to review the judgment of the United States Court of Appeals for the Seventh Circuit under 28 U.S.C § 1254.

3. The State seeks a 59-day extension for two reasons: other cases requiring the attention of undersigned counsel of record, and the complexity of the issue presented for review.

4. First, undersigned counsel has been engaged in other litigation matters that have interfered with counsel's ability to research and prepare an adequate petition by the current due date of July 3, 2018. Those matters include:

- *Andersen v. Planned Parenthood of Kansas and Mid-Missouri*, No. 17-1340 (U.S.): On April 23, 2018, the State filed an amicus brief in support of the respondent.
- *California v. B.P.*, No. 3:17-cv-06012 (N.D. Cal.): On April 19, 2018, the State filed an amicus brief in support of the defendants.
- *City of Gary v. Smith & Wesson*, No. 18A-CT-00181 (Ind. Ct. App.): The State is drafting its appellee's brief, which is due on June 21, 2018.

- *City of Hammond v. Herman & Kittle Properties, Inc.*, No. 49AO4-1612-PL-2784 (Ind. Ct. App.): On March 22, 2018 the State filed a petition to transfer the case to the Indiana Supreme Court. Appellant's brief in response was filed on April 11, 2018 and the State's reply brief was filed on April 23, 2018.
- *Board of School Trustees of Madison Consolidated Schools v. Elliott*, No. 17-1259 (U.S.): The State filed a petition for a writ of certiorari on March 5, 2018. The respondent filed an opposition to the petition on May 4, 2018 and the State filed a reply on May 17, 2018.
- *First Church of Cannabis v. Pence*, No. 49C01-1507-MI-022522 (Marion County Circuit Court): The State filed its motion for summary judgement on December 15, 2017, and filed its reply to the plaintiffs' response on March 29, 2018. The State argued in support of its motion for summary judgment at a hearing on May 2, 2018.
- *Franchise Tax Board v. Hyatt*, No. 17-1299 (U.S.): The State filed an amicus brief in support of the petitioner on April 13, 2018.
- *Horner v. Curry*, No. 18A-PL-00916 (Ind. Ct. App.): After appealing a negative trial-court decision to the Indiana Court of Appeals, on May 3, 2018, the plaintiffs moved for immediate transfer to the Indiana Supreme Court. The State filed a response to the motion for immediate transfer on May 18, 2018.

- *Kaushal v. Indiana*, No. 17-1356 (U.S.): On March 16, 2018, Kaushal filed a petition for a writ of certiorari, and on April 9, 2018, the Court requested the State to respond. The State filed a brief in opposition to the petition on May 9, 2018.
- *Lopez-Aguilar v. Marion County Sheriff's Department, et al.*, No. 1:16-cv-2457-SEB-TAB, (S.D. Ind.): The district court denied the State's motion to intervene on January 5, 2018. The State appealed the final judgement and denial of the motion to intervene to the Seventh Circuit. The State filed its opening brief on March 9, 2018, and the appellee filed his brief on April 30, 2018. The State filed its reply brief June 4, 2018.
- *Nevada Department of Wildlife v. Smith*, No. 17-1348 (U.S.): On April 25, 2018 the State filed an amicus brief in support of Nevada's petition for a writ of certiorari.
- *Planned Parenthood of Ind. & Ky. v. Commissioner*, 1:16-cv-00763 (S.D. Ind.): Following an adverse opinion issued by the Seventh Circuit on April 19, 2018, the State petitioned for rehearing en banc on May 3, 2018.
- *Popovich v. Ind. Dep't of State Revenue*, Tax Court Case No. 49T10-1010-TA-53 (Ind.): The State filed a response to Popovich's petition for review on June 1, 2018.

- *Tyson Timbs and a 2012 Land Rover LR2 v. State of Indiana*, No. 17-1091 (U.S.): The State filed a brief in opposition to the petition for a writ of certiorari on May 4, 2018.

5. Second, the issue presented in this case is factually and procedurally complex. The Respondent, Fredrick Michael Baer, was sentenced to death for brutally murdering a mother and daughter. After his direct appeal concluded unsuccessfully, Baer filed a petition for state post-conviction relief. Among many other contentions, his petition argued that his defense counsel were ineffective for failing to challenge certain jury instructions and for failing to present a claim for prosecutorial misconduct. His jury-instruction claim was based on a guilt-phase instruction stating that voluntary intoxication was not a defense to murder and a penalty-phase instruction that failed to say that intoxication could be considered as a mitigating factor. His prosecutorial-misconduct claim was based on several statements the prosecutor made during voir dire—an alleged misrepresentation of the consequence of a guilty-but-mentally-ill conviction, comments regarding victim impact, and a suggestion that a life without parole sentence may eventually result in probation—and the prosecutor’s statement during closing argument that his childhood, exemplified by his mother’s work as a prostitute, was rougher than Baer’s. The Indiana Supreme Court rejected both of these claims. It held that the jury-instruction claim failed because the instructions were correct as a

matter of Indiana law and that the prosecutorial-misconduct claim failed because the prosecutor's comments did not affect the outcome of his trial.

On January 11, 2018, the Seventh Circuit granted Baer habeas relief, holding that the Indiana Supreme Court's denial of Baer's jury-instruction and prosecutorial-misconduct claims constituted an unreasonable application of *Strickland v. Washington*, 466 U.S. 668 (1984).

In its petition for writ of certiorari, the State intends to ask the Court to review whether, in light of this Court's repeated instructions to federal courts to not reexamine state-law questions and to not grant habeas relief on the basis of mere disagreements with state-court conclusions, the Seventh Circuit properly held that the Indiana Supreme Court unreasonably applied *Strickland*. As undersigned counsel is new to this case, he requires additional time to familiarize himself with the record below and the relevant case law.

6. A 59-day extension of time is necessary so that the State can devote adequate time and attention to its petition in this matter. No meaningful prejudice would arise from a 59-day extension.

CONCLUSION

Petitioner, Ron Neal, respectfully requests a 59-day extension of time, to and including August 31, 2018, to file a petition for writ of certiorari.

Respectfully submitted,

/s/ Thomas M. Fisher

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June 12, 2018