

Supreme Court, U.S.
FILED

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No. _____

In the

Supreme Court of the United States

MARILYN KAYE FREEMAN

Applicant,

v.

MATTHEW CATE and EDMUND G. BROWN, Jr.,

Respondents.

APPLICATION TO THE HONORABLE ANTHONY M. KENNEDY
FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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April 28, 2018

Applicant

LIST OF PARTIES AND RULE 29.6 STATEMENT

In the court of appeals, the petitioner/appellant was Marilyn Kaye Freeman and the respondents/appellees were Matthew Cate, in his official capacity as a former Secretary of California Department of Corrections and Rehabilitation and Edmund G. Brown, Jr., in his official capacity as the Governor of the State of California. The State of California is the real party in interest.

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To the Honorable Anthony Kennedy, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3, Marilyn Kaye Freeman respectfully request a 156 day extension of time, to and including October 15, 2018, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the

Ninth Circuit in this case. The court of appeals issued its opinion on July 27, 2017 and denied Applicants' petition for rehearing and rehearing *en banc* on January 12, 2018. (A copy of the Ninth Circuit's unreported memorandum and of the Order denying rehearing and rehearing *en banc* are in case 13-55872 are attached as Exhibits C and D.)

Applicant previously requested an extension of time until January 2019 (Application No 17A1075) and was granted a 30 day extension to May 12, 2018. See Exhibit B. The first application was based on the facts that, in December 2017, Applicant learned her previous 2014 breast cancer had regrown. Applicant had mastectomy surgery on January 22, 2018 and began chemotherapy in March 2018.

Currently, any petition would be due May 12, 2018. Applicant is completely incapacitated due to chemotherapy and needs additional time to file her petition for writ of certiorari. See the updated letter from Applicant's physician attached as Exhibit A. Applicant is informed and believes that the 60 day limit for petitions for writ of certiorari does not apply to appeals arising from petitions for writs of habeas corpus arising from state court decisions.

This application has been filed more than 10 days before the date a petition would be due. *See* Sup. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review this case.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 156-day extension of time, to and including October 15, 2018, within which to file petitions for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Ninth Circuit in this case. This extraordinary lengthy extension of time is warranted due to the extraordinary circumstances in which Applicant finds herself.

Applicant is informed and believes that only civil cases are limited to a 60-day extension of time to file a petition for writ of certiorari and not to this habeas corpus case arising from a state criminal case.

Applicant formerly practiced family law and represents herself.

In December 2017, Applicant was diagnosed with a new, primary breast cancer. Applicant sought additional medical opinions and, after further testing, it was determined in January 2018 that Applicant's 2014 breast cancer tumor had regrown. Applicant underwent mastectomy surgery on January 22, 2018. Applicant's recovery was difficult due the inability to move her arm and severe pain requiring opiate medication during her recovery. Applicant was unable to work on her petition during her recovery from surgery.

Applicant began chemotherapy in March 2018. The side effects of chemotherapy are cumulative. As expected, the side effects that developed over Applicant's 2014-2015 course of chemotherapy returned, in full, upon her first

2018 treatment and have worsened since then. Additional side effects have occurred. The chemotherapy has caused mental confusion, severe stabbing pains, peripheral neuropathy and extreme fatigue. Applicant is essentially bedridden. Applicant tires very easily and her numerous medical appointments so tire her that she sleeps all of the rest of the time. Applicant must undergo four additional chemotherapy treatments at three week intervals to limit the chance of cancer spread. Applicant will not be able to work on the petition until early September 2018. See the updated letter from Applicant's physician that is attached as Exhibit A. Fairness requires that Applicant receive additional time to file her petition for writ of certiorari to and including October 15, 2018.

The trial judge in this case disqualifed himself *sua sponte* early in this case due to his admitted inability to be fair to Applicant. The San Diego County bench disqualifed itself for the same reason. When it became clear that all charges against Applicant would and should be dismissed due to insufficient evidence, the San Diego County bench wrongfully acted further in this case to assign Applicant's dismissal motion to a judge who summarily dismissed Applicant's motions in a hearing for which there is no record. The San Diego County bench then reinstated itself and assigned the case to the trial judge who had first disqualifed himself. The trial judge and the bench repeatedly denied and ignored Applicant's objections to their return to the case. Applicant's appointed trial

counsel provided ineffective assistance in that he argued against Applicant and for the return of the biased judges. Applicant’s request to substitute retained counsel was denied. Applicant was convicted on all charges in an incredibly unfair trial.

The convictions were reversed by the California Court of Appeal but the California Supreme Court granted review and upheld the convictions claiming that this Court’s decision in *Caperton v. Massey*, 566 U.S. 868 (2009) did “not implicate any of the concerns – pecuniary interest, enmeshment in contempt proceedings, or the amount and timing of campaign contributions – which were the factual bases for the United States Supreme Court’s decisions in which it found that due process required judicial disqualification.” The California Supreme Court misinterpreted and misapplied *Caperton* to this case concluding that judicial bias implicates due process only in “extraordinary” circumstances and in the context of “extreme facts.” They decided the circumstances in this case were not “extraordinary” or the facts “extreme” to create a constitutionally intolerable “risk of actual bias or pre-judgment.” The United States District Court and the Court of Appeals for the Ninth Circuit affirmed the decision.

Applicant’s due process rights have been violated. The state court’s decision was contrary to federal law and all decisions of this Court. The panel misapprehended clearly established law regarding Constitutional Due Process as set forth in the decisions of this Court. The panel misapprehended material points

of fact. Unlike the cases cited by the lower courts, this case does not involve whether or not a judge should, or must, recuse himself. This case involves the reinstatement of admittedly biased, disqualified judges. The real question in this case is whether or not due process guarantees a fair and impartial judge.

The fifth and fourteenth amendments to the Constitution guarantee the due process right to a fair and impartial judge. The court below decided this important federal question in a way that conflicts with all rulings the Supreme Court.

Caperton did not restrict any right to a fair and impartial trial or a fair and impartial judge. Long-established due process rights to a fair and impartial judge were restated in *Caperton*. The Court, in *Caperton*, expanded the list of circumstances wherein judges must disqualify themselves to include judges who have received huge campaign contributions from a litigant. The Constitution and this Court has always required disqualification when a judge has a personal bias toward, or inability to be fair to, a litigant.

There can be no contingent or conditional disqualifications. It is wrong to apply standards for when judges must disqualify themselves to their reinstatement to a case. The judge(s) admitted their bias when they disqualified themselves. They returned to this case because of their bias.

No trial can be fair if the judge is biased. A judge is not allowed to act in a case in which he is disqualified. No judge, especially an admittedly biased judge,

can return to a case from which he is disqualified. Both the existence of actual bias and the appearance of bias violate Constitutional Due Process and require reversal.

The court below sanctioned such a departure by a lower court as to call for an exercise of this Court's supervisory power. This case presents important issues related to due process and the right to fair and impartial judicial proceedings which are fundamental to our legal system. If allowed to stand, the State Court and panel's decisions will effectively nullify fundamental due process rights to fair and impartial trials and fair and impartial judges. Judges will feel free to return to any case in which they are disqualified causing chaos in the courts. Judges will feel free to treat litigants unfairly and with bias. The public will continue to lose confidence in our judicial system.

CONCLUSION

For the foregoing reasons and exceptional circumstances, applicant respectfully requests that this Court grant her a 156 day extension of time, to and including October 15, 2018.

April 28, 2018

Respectfully submitted,

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