

No. \_\_\_\_\_

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**IN THE SUPREME COURT OF THE UNITED STATES**

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DEREK W. PELTO, *Petitioner*,

v.

STATE OF FLORIDA, *Respondent*.

---

**ON PETITION FOR WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT  
COURT OF APPEALS**

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

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Counsel for the Petitioner

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

### **Introduction**

Pursuant to this Court's Rule 13.5, the Petitioner, Derek W. Pelto, respectfully requests a thirty-day extension of time within which to file a petition for a writ of certiorari in this Court, to and including July 11, 2018.

### **Jurisdiction**

The opinion/order of the Eleventh Circuit Court of Appeals denying a certificate of appealability was entered on January 5, 2018. The motion for reconsideration/rehearing was denied on March 12, 2018. Unless extended, the time within which to file a petition for a writ of certiorari would expire on June 11, 2018.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Copies of the opinion/order of the Eleventh Circuit Court of Appeals and the order denying rehearing/reconsideration are included in the appendix to this motion.

### **Argument**

The issue in this case is whether the court of appeals improperly denied the Petitioner a certificate of appealability under 28 U.S.C. § 2253(c) on the ineffective assistance of counsel claim raised in the Petitioner's 28 U.S.C. § 2254 petition. In his § 2254 petition, the Petitioner alleged that his defense counsel misapprehended a change of law in Florida as to the burden of proof for an insanity defense. As a result, the Petitioner asserted that defense counsel interfered with the Petitioner's right to

testify (because counsel misadvised the Petitioner as to the burden of proof for the insanity defense).

Unfortunately undersigned counsel's recent schedule requires him to seek an extension of time in this case. In particular, in recent days, in addition to filing numerous briefs and attending various hearings, undersigned counsel has participated in three oral arguments before Florida appellate courts – an unusually high number for undersigned counsel.<sup>1</sup> Additionally, in the near future, undersigned counsel will be out of his office attending various bar meetings (i.e, the annual meeting of The Florida Bar, the annual meeting of the Florida Association of Criminal Defense Lawyers, etc.).

Therefore, the Petitioner requests an extension of thirty days to file the petition for a writ of certiorari. No party will be prejudiced by the granting of a thirty-day extension in this case.

*Certificate of counsel.* Undersigned counsel has contacted opposing counsel (Assistant Attorney General Kristen Lynn Davenport), who stated that she does not oppose the relief requested.

Accordingly, the Petitioner respectfully requests that an order be entered extending the time to petition for writ of certiorari by thirty days.

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<sup>1</sup> Undersigned counsel has appeared at the following oral arguments: (1) *Martin v. State*, case number 1D16-3953, pending before the Florida First District Court of Appeal; (2) *Koroly v. State*, case number 1D17-1381, pending before the Florida First District Court of Appeal; and, (3) *McCann v. State*, case number 2D16-812, pending before the Florida Second District Court of Appeal.

Respectfully submitted,

/s/ Michael Ufferman  
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Counsel for the Petitioner

## CERTIFICATE OF SERVICE

I, Michael Ufferman, a member of the Bar of this Court, hereby certify that on the 24th day of May, 2018, a copy of this Application For Extension of Time To File A Petition For A Writ Of Certiorari in the above-entitled case was mailed, first class postage prepaid, to Assistant Attorney General Kristen Lynn Davenport, Office of the Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118 (counsel for the Respondent herein). I further certify that all parties required to be served have been served.

/s/ Michael Ufferman  
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**APPENDIX TO UNOPPOSED APPLICATION FOR EXTENSION OF TIME TO  
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IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 17-12735-E

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DEREK W. PELTO,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,  
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Middle District of Florida

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ORDER:

Derek Pelto's motion for a certificate of appealability ("COA") is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

/s/ Stanley Marcus  
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 17-12735-E

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DEREK W. PELTO,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,  
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Middle District of Florida

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Before TJOFLAT and MARCUS, Circuit Judges.

BY THE COURT:

Derek Pelto has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's order dated January 5, 2018, denying his motion for a certificate of appealability in the appeal of the denial of his habeas corpus petition, 28 U.S.C. § 2254. Because Pelto has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motion, this motion for reconsideration is DENIED.