

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

**ROBERT PAUL LANGLEY, JR. ,
Petitioner,**

v.

**JEFF PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY,
Respondent.**

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

**To: The Honorable John G. Roberts, Jr.,
Chief Justice of the Supreme Court of the United States and
for the Ninth Circuit:**

Robert Paul Langley, Jr, an Oregon prisoner serving a life sentence in the Oregon State Penitentiary for aggravated murder convictions, respectfully requests the Court, pursuant to Supreme Court Rule 13.5, for an extension of time to file his Petition for Writ of Certiorari to the Oregon Supreme Court.

Petitioner is requesting an extension of 60 days. The present deadline for filing a Petition for a Writ of Certiorari is September 19, 2018, and petitioner is requesting an extension until November 18, 2018. This application is being filed more than 10 days before the due date.

The reasons for this request are as follows:

1. Petitioner is an Oregon prisoner serving a life sentence for his aggravated murder convictions. Petitioner is indigent and undersigned counsel was appointed to represent him pursuant to ORS 138.590.

2. Petitioner was denied post-conviction relief, and the Oregon Court of Appeals affirmed without opinion the denial of post-conviction relief.

Langley v. Premo, 288 Or. App. 168, 403 P.3d 832 (2017). The Oregon Supreme Court denied review and enter an Order Denying Review. 362 Or. 665, 415 P.3d 588 (2018). Petitioner requested the Oregon Supreme Court to reconsider its decision denying review. The Oregon Supreme Court denied reconsideration and entered an Order Denying Petition for Reconsideration on June 21, 2018. The Oregon Court of Appeals then entered the Appellate Judgment and Supplemental Judgment with an effective date of July 3, 2018. Petitioner has attached copies of the aforementioned documents.

3. Jurisdiction of this Court is invoked under 28 U.S.C.A. § 1257(a).

4. This case presents significant constitutional issues regarding the Sixth Amendment right to effective assistance of counsel when defense counsel failed to competently litigate a Fourth Amendment claim, and whether a claim that defense counsel failed to move to suppress evidence seized pursuant to search warrants that did not particularly describe the items to be seized, and did not have judicial authorization to seize items is meritorious under the Fourth Amendment.

5. Defense counsel failed to move to suppress evidence that was seized in 1988 pursuant to five search warrants that did not particularly describe the items to be seized, and that did not have judicial authorization to seize any items. The search warrants did particularly describe the items to be searched for, and did have judicial authorization to search for the items, but the search warrants did not particularly describe the items to be seized, and did not have judicial authorization to seize any items. There were over 100 items seized pursuant to the five search warrants, and admitted into evidence at trial, including medical records protected by federal law (42 CFR Part 2).

This Court has held that defense counsel's failure to litigate a Fourth Amendment claim competently constitutes ineffective assistance of counsel if the claim is meritorious, and prejudice is established. *Kimmelman v. Morrison*, 477 U.S. 365, 375, 106 S.Ct. 2574, 91 L.Ed. 2d 305 (1986).

Counsel submits the claim is meritorious. In *Marron v. United States*, 275 U.S. 192, 48 S.Ct. 74, 76, 72 L.Ed. 231 (1927), the United States Supreme Court stated:

"The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant."

275 U.S. at 196.

See also Berger v. New York, 388 U.S. 41, 58, 87 S.Ct. 1873, 18 L.Ed.2d 1040 (1967). In *United States v. Spilotro*, 800 F.2d 959 (9th Cir. 1986), the Court stated:

"The Fourth Amendment requires that a warrant particularly describe both the place to be searched and the person or things to be seized. The description must be specific enough to enable the person conducting the search reasonably to identify the things authorized to be seized."

800 F.2d at 963.

6. The issues presented are issues of first impression: 1) is a search warrant facially insufficient under the Fourth Amendment when it does not particularly describe the items to be seized, and does not have judicial authorization to seize any items; and 2) does defense counsel's failure to litigate the foregoing claim constitute ineffective assistance of counsel under the Sixth Amendment.

7. These issues present important constitutional questions and undersigned counsel seeks to present these issues to the Court with compelling arguments why Certiorari should be granted.

8. Counsel is requesting this Application For Extension because I am scheduled for a medical procedure later this month. I have been advised by my physician that it will require approximately two weeks to recover and return to work after the procedure. Counsel largely confines his practice to aggravated murder cases. Counsel has pending deadlines in two aggravated murder cases following his return to work after the medical procedure, and before the current due date of the Petition for Writ of Certiorari.

9. Accordingly, counsel requests an extension until November 18, 2018, so that he can adequately prepare a Petition for Writ of Certiorari in this case.

10. Counsel for Respondent does not object to this Application for Extension of Time.

DATED this 9th day of August, 2018.

Respectfully Submitted:

s/ Frank E. Stoller
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Dundee, Oregon 97115
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E-mail: fstoller@frontier.com
Counsel for Petitioner

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 9, 2018, I sent a certified true copy of the foregoing APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI TO THE OREGON SUPREME COURT by United States Mail, first class postage pre-paid, and by e-mail to:

Timothy A. Sylwester
Sr. Assistant Attorney General
Oregon Department of Justice
1162 Court Street N.E.
Salem, Oregon 97301-4096
timothy.sylwester@state.or.us

s/ Frank E. Stoller

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Counsel for Petitioner

FILED: October 04, 2017

IN THE COURT OF APPEALS OF THE STATE OF OREGON

ROBERT PAUL LANGLEY, JR.,
Petitioner-Appellant,

v.

JEFF PREMO, Superintendent, Oregon State Penitentiary,
Defendant-Respondent.

Marion County Circuit Court
03CI0024

A161154

Linda Louise Bergman, Senior Judge.

Argued and submitted on September 12, 2017.

Before Egan, Presiding Judge, and DeVore, Judge, and Aoyagi, Judge.

Attorney for Appellant: Frank E. Stoller.

Attorney for Respondent: Timothy A. Sylwester.

AFFIRMED WITHOUT OPINION

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

No costs allowed.
 Costs allowed, payable by Appellant.

IN THE SUPREME COURT OF THE STATE OF OREGON

ROBERT PAUL LANGLEY, JR.,
Petitioner-Appellant,
Petitioner on Review,

v.

JEFF PREMO, Superintendent, Oregon State Penitentiary,
Defendant-Respondent,
Respondent on Review.

Court of Appeals
A161154

S065540

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.



Balmer, C.J., and Kistler and Duncan, JJ., not participating.

THOMAS A. BALMER CHIEF JUSTICE, SUPREME COURT 3/22/2018 11:20 AM
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c: Frank E Stoller
Ryan P Kahn
Timothy A Sylwester

jr

ORDER DENYING REVIEW

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

IN THE SUPREME COURT OF THE STATE OF OREGON

ROBERT PAUL LANGLEY, JR.,
Petitioner-Appellant,
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v.

JEFF PREMO, Superintendent, Oregon State Penitentiary,
Defendant-Respondent,
Respondent on Review.

Court of Appeals
A161154

S065540


ORDER DENYING PETITION FOR RECONSIDERATION

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.

Balmer, C.J., and Kistler and Duncan, JJ., not participating.

c: Frank E Stoller
Ryan P Kahn
Timothy A Sylwester


MARTHA L. WALTERS
PRESIDING JUSTICE, SUPREME COURT
6/21/2018 10:44 AM

jr

ORDER DENYING PETITION FOR RECONSIDERATION

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

