

Capital Case

Case No. _____

In the
Supreme Court of the United States

KEVIN RAY UNDERWOOD,
Petitioner/Applicant,

v.

MIKE CARPENTER, INTERIM WARDEN,
OKLAHOMA STATE PENITENTIARY,
Respondent.

On a Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

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

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October 31, 2018

* Counsel of Record

**PETITIONER’S APPLICATION FOR EXTENSION OF
TIME TO FILE PETITION FOR A WRIT OF CERTIORARI**

**To the Honorable Sonia Sotomayor, Associate Justice of the United States
Supreme Court and Circuit Justice for the Tenth Circuit:**

In accordance with Rules 13, 22, 30.2, and 30.3 of the *Rules of the Supreme Court of the United States*, and for the reasons set forth herein, Petitioner/Applicant, Kevin Underwood, respectfully applies to this Court for an order extending the time in which to file his petition for a writ of certiorari from November 15, 2018, until January 14, 2019, a period of sixty (60) days. In support of this Application, Petitioner shows the Court as follows:

BACKGROUND

Mr. Underwood is in the custody of the State of Oklahoma. He is incarcerated under a conviction of First-Degree Murder for which he has been sentenced to death. On July 2, 2018, the United States Court of Appeals for the Tenth Circuit issued a published opinion in Case No. 16-6262, wherein the circuit court affirmed the original judgment entered by the United States District Court for the Western District of Oklahoma in Case No. CIV-12-111-D. *See* Opinion and Judgment, attached hereto as Attachment 1. Petitioner sought rehearing from the Tenth Circuit Court of Appeals, but the same was denied on August 17, 2018. *See* Order, attached hereto as Attachment 2.

ARGUMENT AND AUTHORITIES

Petitioner, Kevin Ray Underwood, seeks a writ of certiorari to the United States Court of Appeals for the Tenth Circuit with respect to its decision rendered on July 2, 2018, as referenced above. This Court’s jurisdiction to grant the same arises pursuant to 28 U.S.C. § 1254(1). According to Supreme Court Rule 13, a petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit is due on or before November 15, 2018. *See* Supreme Court Rule 13.3 (“the time to file the petition for a writ of certiorari . . . runs from the date of the denial of rehearing”). However, the time granted by Supreme Court Rule 13 will be insufficient to allow Petitioner’s counsel to do justice to the issues at hand, which are of vast import. Therefore, Petitioner seeks an extension of sixty (60) days in which to file his petition for a writ of certiorari. *See* Supreme Court Rule 13.5 (“[A] Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days”). In accordance with Supreme Court Rule 13.5, this Application is submitted at least ten (10) days prior to the present due date.

The requested extension is made in good faith and not for the purposes of delay.¹ The requested extension is made because of the vital importance associated with the issues in this capital case, namely, the right to a fair and reliable sentence. This Court has repeatedly emphasized that “[o]ur duty to search for constitutional error with painstaking care is never

¹ No execution date has been set. Thus, an extension of time will not create an unreasonable delay in the administration of justice.

more exacting than it is in a capital case.” *Burger v. Kemp*, 483 U.S. 776, 785 (1987). It is respectfully submitted that counsel’s duty to present all authorized claims of constitutional error with painstaking care is equal or greater. Thus, it is important that counsel be granted additional time to research the constitutional issues at hand so that counsel may prepare Petitioner’s petition with the care and accuracy demanded of such capital cases.

Mr. Underwood’s counsel, Sarah M. Jernigan and Patti Palmer Ghezzi, are Assistant Federal Public Defenders with the Capital Habeas Unit of the Office of the Federal Public Defender for the Western District of Oklahoma. The division’s exclusive responsibility is to represent clients who have been sentenced to death in the state of Oklahoma and who have exhausted all of their state appeals. Both counsel are presently lead or co-counsel for the federal representation of multiple death row inmates including Mr. Underwood.² Obligations on behalf of many of these clients have precluded counsel from being able to direct their full time and attention to the preparation of a petition for a writ of certiorari on behalf of Petitioner. Therefore, even if counsel exercise due diligence and give priority to preparing the petition, it will not be possible to file the petition on time.

In light of counsel’s current obligations and the importance of the constitutional issues that will be presented in this capital case, counsel submit that a sixty (60) day extension is

² *Bosse v. Carpenter*, CIV-08-204-4 (W.D. Okla.); *Grant v. Carpenter*, 18A283 (U.S.); *Grissom v. Carpenter*, 16-6271 (10th Cir.); *Harmon v. Carpenter*, 16-6360 (10th Cir.); *Johnson v. Carpenter*, 16-5165 (10th Cir.); *Malone v. Carpenter*, 17-6027 (10th Cir.); *Carpenter v. Patrick Murphy*, 17-1107 (U.S.); *Pavatt v. Carpenter*, 14-6117 (10th Cir.); *Simpson v. Carpenter*, 16-6191 (10th Cir).

necessary and appropriate in order to efficiently and effectively prepare the petition for certiorari on behalf of Mr. Underwood.

WHEREFORE, in the interest of justice and for good cause shown, counsel submit that a reasonable extension of time should be granted to complete Mr. Underwood's petition for a writ of certiorari. Counsel respectfully request this Court extend the current November 15, 2018 deadline until January 14, 2019.

Respectfully submitted,

s/ Sarah M. Jernigan
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