

No.

OCTOBER TERM, 2018

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL JOSEPH MULDER, Petitioner,

v.

WILLIAM GITTERE, Warden, et al., Respondents.

*On Petition for Writ of Certiorari to the
Supreme Court of the State of Nevada*

**Petitioner's Application to Extend Time to File
Petition for Writ of Certiorari**

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

Petitioner Michael Joseph Mulder respectfully requests that the time to file a Petition for Writ of Certiorari in this matter be extended for thirty days, to and including, January 20, 2019. The Nevada Supreme Court issued an order affirming the denial of post-conviction relief on July 26, 2018, App. A, and its order denying the petition for rehearing on September 21, 2018, App. B. Petitioner's original due date for filing a Petition for Writ of Certiorari is December 20, 2018. Petitioner is filing this Application at least ten days before that date. *See* S. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1257(a).

BACKGROUND

Mr. Mulder was convicted of first degree murder, robbery of a victim over 65, and burglary while in possession of a firearm in the Eighth Judicial District Court

in Las Vegas, Nevada in February 1998. *Mulder v. State*, 992 P.2d 845 (Nev. 2000). He was sentenced to death in March 1998. *Id.*

On May 15, 2001, Mr. Mulder filed his first state post-conviction petition. Two months prior to filing the first state post-conviction petition, Mr. Mulder suffered a stroke that left him with dementia, memory loss, receptive, expressive, and anomic aphasia, as well a paralyzed right side and a very severe contracture of the right arm. Post-conviction counsel had yet to visit or speak with Mr. Mulder by the time of the stroke. *Mulder v. State*, 422 P.3d 1231 (Nev. 2018)); App. A.

Mr. Mulder filed a second state post-conviction petition on December 9, 2014. *Id.* The instant appeal comes to this Court from the denial of Mr. Mulder's state petition for post-conviction relief. *Id.*

REASONS FOR GRANTING THE EXTENSION

The time for filing a Petition for Certiorari should be extended for thirty days for the following reasons:

1. Heather Fraley, counsel of record for Petitioner, has been unable to complete the Petition for Writ of Certiorari, despite her diligent efforts to do so, due to her extensive caseload and numerous deadlines in other capital habeas cases that became due in the last ninety days. Ms. Fraley recently participated in a three day evidentiary hearing in federal court in *Rogers v. Filson*, Case No. 3:02-cv-00342-GMN-WGC (D. Nev.). The hearing lasted from October 22-24, 2018, and required extensive preparation in the months leading up to the hearing. Thereafter, on October 29, 2018, Ms. Fraley filed a reply brief in the Nevada Supreme Court in *Hill v. State*, Case No. 74631 (Nev.). On December 3, 2018, Ms. Fraley filed a supplemental reply brief in the Ninth Circuit in the capital case of *Snow v. Gittere*, Case No. 15-99012 (9th Cir.).

2. As a result of the aforementioned filing deadlines, Ms. Fraley has been unable to complete the Petition for Writ of Certiorari. She is requesting thirty days to file the petition so that she can have an adequate amount of time to work on the pleading while also meeting her filing deadlines in other capital cases that will become due over the next thirty days. Ms. Fraley is currently drafting a Closing Brief in *Rogers v. Filson*, Case No. 3:02-cv-00342-GMN-WGC (D. Nev.), which is due on December 26, 2018. She also has a reply to answer due in federal district court on December 26, 2018 in *Munoz v. Smith*, Case No. 3:11-CV-00197-LRH-RAM (D. Nev.). Ms. Fraley has an opening brief due in the Nevada Supreme Court on January 3, 2019, in the capital case of *Bollinger v. State*, Case No. 76853 (Nev). She also has an opposition to motion to dismiss due in state district court in the capital case of *Weber v. Filson*, Case No. A-18-779833-W (8JDC) on January 7, 2019.

3. Mr. Mulder's case raises a substantial constitutional issue that merits the consideration of this Court. The Nevada Supreme Court rejected Mr. Mulder's claim that his death sentence is unconstitutional because his dementia, aphasia, paralysis, and personality change as a result of a stroke has caused him to become functionally intellectually disabled, thereby categorically excluding him from the death penalty. Mr. Mulder notes that his claim is similar to the issue currently before the Court in *Madison v. Alabama*, 2018 WL 1129057 (U.S.) (No.17-7505), in which this Court is considering whether the Eighth Amendment prohibits the execution of an individual who, like Mr. Mulder, suffers from severe cognitive dysfunction as a result of a stroke and no longer remembers committing the offense for which he is convicted. Mr. Mulder deserves an opportunity for this Court to consider his petition in light of the Court's current review of this country's evolving standards of decency as they relate to individuals who suffer from severe cognitive deficits that render them incompetent.

4. This application for an extension of time is not sought for the purposes of delay or for any other improper purpose, but only to ensure that Mr. Mulder receives competent representation in this matter.

DATED this 7th day of December, 2018.

Respectfully submitted,

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APPENDICES

Appendix A	Order of Affirmance, <i>Mulder v. State of Nevada</i> , Case No. 69490 (filed July 26, 2018)	APP001-017
Appendix B	Order Denying Rehearing, <i>Mulder v. State of Nevada</i> , Case No. 69490 (filed September 21, 2018)	APP018-019