

**FEDERAL COMMUNITY DEFENDER OFFICE
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Capital Habeas Unit

FEDERAL COURT DIVISION DEFENDER ASSOCIATION OF PHILADELPHIA

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December 3, 2018

BY FEDERAL EXPRESS

Scott S. Harris, Clerk
United States Supreme Court
One First Street, N.E.
Washington, DC 20543

Re: Application to Justice Gorsuch
Charles Russell Rhines v. Darin Young (Capital Case)

Dear Mr. Harris:

Enclosed please find an original and three (3) copies of an *Application for an Extension of Time for the Filing of a Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit*. This application pertains to a capital case.

I would appreciate your directing this motion to Justice Gorsuch. I also would appreciate your time-stamping one copy and returning it in the enclosed, self-addressed, postage-prepaid envelope.

Thank you for your kind assistance in this matter.

Very truly yours,



Claudia Van Wyk

Enclosures

cc: Paul S. Swedlund, Esquire (w/encl.)

CASE NO. _____ (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES RUSSELL RHINES,
Petitioner,

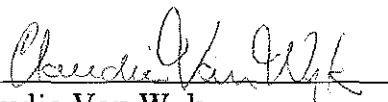
v.

DARIN YOUNG, WARDEN, SOUTH DAKOTA STATE PENITENTIARY,
Respondent.

CERTIFICATE OF SERVICE

I, Claudia Van Wyk, certify that on December 3, 2018, I caused a copy of the foregoing Application for an Extension of Time for the Filing of a Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit to be served by Federal Express upon the following person:

Paul S. Swedlund, Esquire
Assistant Attorney General
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Claudia Van Wyk

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** Counsel of Record for Petitioner
Member of the Bar of the Supreme Court*

CASE NO. _____ (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES RUSSELL RHINES,
Petitioner,

v.

DARIN YOUNG, WARDEN, SOUTH DAKOTA STATE PENITENTIARY,
Respondent.

On Petition for a Writ of Certiorari to
The United States Court of Appeals for the Eighth Circuit

APPLICATION FOR AN EXTENSION OF TIME FOR THE FILING OF A
PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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** Counsel of Record
Member of the Bar of the Supreme Court*

Counsel for Petitioner, Charles Russell Rhines

Dated: December 3, 2018

CASE NO. _____ (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

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v.

DARIN YOUNG, WARDEN, SOUTH DAKOTA STATE PENITENTIARY,
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TO THE HONORABLE NEIL M. GORSUCH, ASSOCIATE JUSTICE OF THE
SUPREME COURT AND CIRCUIT JUSTICE FOR THE EIGHTH CIRCUIT:

PETITIONER, Charles Russell Rhines, through undersigned counsel, respectfully applies for an extension of sixty (60) days to prepare and file his Petition for a Writ of Certiorari to seek review of an order of the United States Court of Appeals for the Eighth Circuit that declined to issue a certificate of appealability. *See Rhines v. Young*, No. 18-2376 (8th Cir. Sept. 7, 2018) (Appendix A). On September 18, 2018, the Eighth Circuit denied a petition for rehearing. *See Rhines v. Young*, No. 18-2376 (8th Cir. Sept. 18, 2018) (Appendix B). In support of this application, Petitioner respectfully submits as follows:

1. This is a capital case. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). Petitioner intends to seek certiorari review of the order entered by the United States Court of Appeals for the Eighth Circuit on September 7, 2018. The majority of a three-judge panel voted to deny Petitioner's application for a certificate of appealability regarding his motion for leave to amend his initial federal habeas petition in light of *Pena-Rodriguez v. Colorado*, — U.S. —, 137 S. Ct. 855 (2017). Petitioner filed a timely motion for rehearing, which the panel, again in a divided vote, denied on September 18, 2018. Pursuant to Rule 13 of the Rules of the Supreme Court of the United States, Petitioner may file a writ of certiorari within 90 days after entry of the order denying rehearing, i.e., by December 17, 2018.

2. Undersigned counsel is a member of a defender services office responsible for numerous capital cases that have competing deadlines, including statutory deadlines, in various courts this fall and winter. In addition, undersigned counsel has scheduled out-of-state travel in connection with these cases and personal obligations during the holiday season.

3. Under these circumstances, the undersigned most respectfully requests that the Court grant this application and extend the date on which to file the petition for a writ of certiorari by sixty (60) days, from December 17, 2018, to Friday, February 15, 2019.

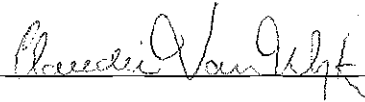
4. In accordance with this Court's Rule 13.5, this request is made more than ten (10) days prior to the deadline for filing the petition and is timely.

5. There is no execution warrant pending and, thus, the grant of this extension request will not delay the litigation of this case or cause prejudice to the State.

6. This request is made in good faith and not predicated on an intent to delay the resolution of this litigation.

WHEREFORE, Petitioner prays that the Court allow a sixty (60) day extension for the preparation and filing of the petition for a writ of certiorari.

Respectfully submitted,



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** Counsel of Record
Member of the Bar of the Supreme Court*

Counsel for Petitioner, Charles Russell Rhines

Dated: December 3, 2018

CASE NO. _____ (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES RUSSELL RHINES,
Petitioner,

v.

DARIN YOUNG, WARDEN, SOUTH DAKOTA STATE PENITENTIARY,
Respondent.

On Petition for a Writ of Certiorari to
The United States Court of Appeals for the Eighth Circuit

APPENDIX A
IN SUPPORT OF THE APPLICATION FOR AN EXTENSION OF TIME
FOR THE FILING OF A PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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** Counsel of Record
Member of the Bar of the Supreme Court*

Counsel for Petitioner, Charles Russell Rhines

Dated: December 3, 2018

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-2376

Charles Russell Rhines

Appellant

v.

Darin Young, Warden, South Dakota State Penitentiary

Appellee

Appeal from U.S. District Court for the District of South Dakota - Rapid City
(5:00-cv-05020-KES)

ORDER

With the district court's final order denying Charles Russell Rhines's federal petition for a writ of habeas corpus pending on appeal, Rhines filed in the district court a Rule 15(a)(2) motion for leave to amend the petition and a Rule 60(b) motion for relief from judgment. The district court denied relief on the ground that Rhines was seeking second or successive habeas relief that had not been authorized by the court of appeals, see 28 U.S.C. § 2244(b)(3)(A), and denied a certificate of appealability. We deny Rhines's application for a certificate of appealability from that ruling. Judge Kelly would grant the certificate.

Rhines also filed a motion in the district court for an order requiring respondent to produce Rhines for evaluation by mental health experts retained by the defense to support a potential request for executive clemency, relief that the South Dakota state courts have denied. The district court denied relief on the merits and denied a certificate of appealability. We conclude that no certificate of appealability is required to appeal this issue. A separate order establishing a briefing schedule will be issued.

The motion for leave to file an amicus brief is hereby granted.

September 07, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

CASE NO. _____ (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES RUSSELL RHINES,
Petitioner,

v.

DARIN YOUNG, WARDEN, SOUTH DAKOTA STATE PENITENTIARY,
Respondent.

**On Petition for a Writ of Certiorari to
The United States Court of Appeals for the Eighth Circuit**

**APPENDIX B
IN SUPPORT OF THE APPLICATION FOR AN EXTENSION OF TIME
FOR THE FILING OF A PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

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** Counsel of Record
Member of the Bar of the Supreme Court*

Counsel for Petitioner, Charles Russell Rhines

Dated: December 3, 2018

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-2376

Charles Russell Rhines

Appellant

v.

Darin Young, Warden, South Dakota State Penitentiary

Appellee

American Civil Liberties Union, et al.

Amici on Behalf of Appellant(s)

Appeal from U.S. District Court for the District of South Dakota - Rapid City
(5:00-cv-05020-KES)

CORRECTED ORDER

This order corrects the Judge order entered 09/18/2018, denying the petition for rehearing.

The petition for rehearing by the panel is denied. Judge Kelly would grant the petition for rehearing.

September 18, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-2376

Charles Russell Rhines

Appellant

v.

Darin Young, Warden, South Dakota State Penitentiary

Appellee

American Civil Liberties Union, et al.

Amici on Behalf of Appellant(s)

Appeal from U.S. District Court for the District of South Dakota - Rapid City
(5:00-cv-05020-KES)

ORDER

The petition for rehearing by the panel is denied.

September 18, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans