

No. 18A-

CAPITAL CASE

IN THE

SUPREME COURT OF THE UNITED STATES

CARMAN DECK – PETITIONER

vs.

TROY STEELE – RESPONDENT

**APPLICATION FOR SIXTY (60) DAY EXTENSION OF TIME
IN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI**

TO: THE HONORABLE NEIL M. GORSUCH, ASSOCIATE JUSTICE OF
THE UNITED STATES SUPREME COURT, AND CIRCUIT JUSTICE
FOR THE EIGHTH CIRCUIT:

Pursuant to Rule 13.5, Petitioner respectfully requests a sixty (60) day extension of time in which to file his petition for a writ of certiorari in this Court, up to and including March 11, 2019. This application is being filed at least ten days before the due date of the petition for writ of certiorari pursuant to Supreme Court Rule 30.2. In support of this application, Petitioner states the following grounds:

1. Petitioner, Carman Deck, a Missouri prisoner under sentence of death, will be filing a Petition for Writ of Certiorari challenging the Eighth Circuit Court of Appeals' order denying him a certificate of appealability from the United States District Court for

the Eastern District of Missouri's denial of numerous claims in his petition for writ of habeas corpus. This Court has jurisdiction under 28 U.S.C. § 1254(1) and Article III, Section 2 of the United States Constitution.

2. Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Eastern District of Missouri on August 14, 2013. On April 13, 2017, the district court granted relief on two grounds and ordered his sentence to be commuted to life in prison without the possibility of parole. The district court denied relief on all other grounds, and denied a certificate of appealability as to each of these grounds.

3. On May 12, 2017, the State appealed the district court's grant of habeas relief as to Mr. Deck's death sentence. The State's appeal remains pending in the Eighth Circuit Court of Appeals. On March 20, 2018, following the denial of his Rule 59(e) motion, Mr. Deck filed a timely notice of cross-appeal. On May 23, 2018, Mr. Deck filed an application for a certificate of appealability in the court of appeals. On August 20, 2018, the court of appeals denied Mr. Deck a certificate of appealability. *Deck v. Steele*, No. 18-1617 (8th Cir.). (Attached). A timely petition for rehearing by the panel or en banc was denied by the court on October 10, 2018. (Attached). It is from the Eighth Circuit's denial of this cross-appeal that Mr. Deck is seeking certiorari.

4. Mr. Deck sought a certificate of appealability from the Eighth Circuit on a number of grounds which included his right to an evidentiary hearing on claims that

went undeveloped in the state court due to ineffective assistance of post-conviction counsel, *see Martinez v. Ryan*, 566 U.S. 1 (2012), and the denial of funds to investigate grounds for relief which relied on *Martinez* to overcome the procedural bar. Mr. Deck also sought a certificate on his grounds concerning the improper admission of a confession, trial venue, ineffective assistance of trial counsel at both the guilt and penalty phases of his trial, and trial court error. Mr. Deck's constitutional claims deserve further review.

5. Mr. Deck is indigent and is represented by appointed counsel. Since the Eighth Circuit's denial of rehearing in this case, counsel for Mr. Deck have not been able to devote any substantial time to the preparation of the Petition on Mr. Deck's behalf due to other obligations. During the past ninety days, counsel Kevin Schriener has filed an amended habeas petition in *Kellner v. Wallace* in the U.S. District Court for the Western District of Missouri; filed a petition for writ of habeas corpus in *Harris v. Korneman* in the Circuit Court of DeKalb County; filed a petition for writ of habeas corpus in *Williams v. Lewis* in the Missouri Court of Appeals, Southern District; conducted an expungement hearing in *State v. Henok*, in the Circuit Court of St. Charles County; filed a petition and amended petition for writ of habeas corpus in *King v. Payne*, in the U.S. District Court for the Eastern District of Missouri; conducted depositions in *Weeks v Birch* in the U.S. District Court Eastern District of Missouri; drafted a Rule 91 habeas petition in *Berry v. Lawson* for filing in the St. Francois County Circuit Court; filed a traverse in *Dibble v.*

Kink in the U.S. District Court, Southern District Illinois; and filed a motion to vacate one count of a multi-count conviction on double jeopardy grounds in *State v. Prince* in the Circuit Court of St. Charles County.

6. During that same time period, counsel Elizabeth Unger Carlyle has filed a brief in the Missouri Court of Appeals in *State v. Milcendeau*; filed an application for certificate of appealability in the Eighth Circuit in *Kilgore v. Pash*; filed a traverse in the U.S. District Court of Kansas in *Hassen v. United States*; filed traverses in the U.S. District Court, Western District of Missouri in *Lynch v. U.S.*, and *Hack v. Cassady*; conducted oral argument in the Eighth Circuit in *U.S. v. Strubberg*; filed briefs in the Eighth Circuit in *United States v. Ball* and *Carnahan v. United States*, filed a reply in support of a Rule 59(e) motion in U.S. District Court, Eastern District of Missouri, in *Rutlin v. Griffith*.

WHEREFORE, for the foregoing reasons, petitioner respectfully requests that Justice Gorsuch, in his capacity as Circuit Justice for the Eighth Circuit, issue an order granting petitioner a sixty (60) day extension, up to and including, March 11, 2019, for the filing of his Petition for Writ of Certiorari.

Respectfully submitted,

/s/ Kevin L. Schriener

KEVIN L. SCHRIENER
Missouri Bar No. 35490
Law and Schriener, LLC
141 North Meramec Avenue, Suite 314
Clayton, Missouri 63105
(314) 721-7095 – telephone
(314) 863-7096 – facsimile
kschriener@SchrienerLaw.com – e-mail

/s/ Elizabeth Unger Carlyle

ELIZABETH UNGER CARLYLE
Counsel of Record
Missouri Bar No. 41930
Carlyle Parish LLC
6320 Brookside Plaza #516
Kansas City, Missouri 64113
(816) 525-6540 – telephone
(816) 764-1249 – facsimile
elizabeth@carlyleparishlaw.com – e-mail

Counsel for Petitioner

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