

CAPITAL CASE

No. 19-A-_____

IN THE
SUPREME COURT OF THE UNITED STATES

FARRIS GENNER MORRIS,

Petitioner-Applicant

vs.

STATE OF TENNESSEE

Respondent

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

*To The Honorable Sonia Sotomayor, Associate Justice, and Circuit Justice
For The United States Court Of Appeals For The Sixth Circuit:* In this capital case, Applicant Farris Morris respectfully applies for a sixty (60) day extension of time, to and including Friday, April 12, 2019, within which to file a petition for writ of certiorari.

In support of this application, Farris Morris states:

1. This is a death penalty case.
2. Mr. Morris, an African-American, was sentenced to death by all-white jury, where the only African-American juror who survived “cause challenges” was struck by the prosecution with a peremptory challenge. Madison County,

Tennessee, where this trial was held, has a population that is one-third African-American.

3. Counsel for Mr. Morris has changed since the Sixth Circuit denied relief. Both attorneys who had represented Mr. Morris for many years have left the Federal Public Defender for the Middle District of Tennessee, and they have been replaced by undersigned counsel, who is responsible for drafting the petition for writ of certiorari.

4. Undersigned counsel was concurrently re-assigned multiple other death penalty cases, when Mr. Morris' counsel left. Immediately pending is a brief due in the Sixth Circuit on February 25, 2019, on a very complicated case with many thousands of pages of record, as well as representation of the next individual scheduled to be executed in the State of Tennessee on May 16, 2019. Counsel also is assigned to assist in the preparation of a certiorari petition due in this Honorable Court, following 60-day extension, on March 7, 2019, which will raise issues concerning Tennessee's secrecy laws and a petitioner's ability to establish a constitutional violation by the state's method of execution. *Abdur'Rahman et al. v. Parker* Sup. Ct. Case No. 18-A-709.

5. In light of undersigned counsel's other responsibilities, and his many recently assigned cases, he cannot complete a helpful and legally complete petition for certiorari that concisely addresses the relevant law by February 11, 2019.

6. Counsel for Mr. Morris at trial, on direct appeal, and on State post-conviction all failed to raise a meritorious claim under *Batson v. Kentucky*, 476 U.S.

79 (1986).

7. Mr. Morris attempted to raise a *Batson* claim in his original 28 U.S.C. § 2254 proceeding challenging his convictions and death sentence, but this claim was dismissed due to the procedural default wrought by prior counsel at the earlier stages of representation.

8. No court has ever addressed, on the substantive merits, Mr. Morris' claim that he was denied his equal protection rights under Fourteenth Amendment; despite the fact that the lone African-American juror who made it through cause challenges was then (it appears) struck for a pretextual reason that applied equally to two white jurors who were allowed to remain. No evidentiary hearing has ever been held where the prosecution could explain their rationale for selecting an all-white jury in this capital case. No hearing has been held where the prosecution could justify their decision to try a black man for capital murder in a county that is one-third African-American without a single black citizen being permitted to sit on the jury.

9. On June 18, 2018, Mr. Morris sought leave from the Sixth Circuit Court of Appeals to file a second or successive *habeas corpus* petition, pursuant to 28 U.S.C. §§ 2244, 2254. He submitted that this Court's decision in *Foster v. Chatman*, 136 S. Ct. 1737 (2016), established a new rule that was retroactive to cases on collateral review, to wit the "motivated in substantial part by discriminatory intent" analysis.

10. On November 13, 2018, the Sixth Circuit Court of Appeals denied Mr.

Morris' application to file a second or successive petition. *In re: Farris Genner Morris*, 18-5626, R. 15-1 (Exhibit 1). The Sixth Circuit's decision may conflict with the application of this Court's decision in *Foster* by other courts, which are adopting more rigorous tests that are more protective of the equal protection rights of defendants and minority jurors. See, e.g., *People v. Watson*, -- No. 15595, 2019 WL 149460 (N.Y. App. Div. Jan. 10, 2019) (applying a more rigorous standard of review, rejecting argument that jurors who had been stopped-and-frisked were excused for race neutral reason); *State v. Jefferson*, 429 P.3d 467, 481 (Wash. 2018) (adopting a new three-part test, where a prosecutor must provide a race neutral explanation for striking the "last member of a cognizable racial group," and where the strike will be prohibited if "if an objective observer could view race as a factor in the use of the peremptory challenge."); *State v. Hampton*, -- So.3d --, 2018 WL 5931772 (La. App. 2 Cir. Nov. 14, 2018), reh'g denied (Jan. 17, 2019) (noting that *Batson* jurisprudence is "evolving" and twice citing *Foster* for proposition that striking a single juror violates equal protection, while granting new trial).

11. Given the importance of correctly applying this Court's jurisprudence and the need to resolve any conflicting applications of *Foster*, undersigned counsel will submit that plenary review by this Court is appropriate. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254.

12. Farris Morris presently has until February 11, 2019 to file a petition for writ of certiorari. See U.S. S. Ct. R. 13.1.

13. Under Rule 13.5, this Court may extend the time for seeking certiorari

for up to sixty (60) additional days. Your Honor should do so under the circumstances.

14. This application is being filed at least ten days prior to the due date of the petition for writ of certiorari. U.S. Sup. Ct. Rule 30.2.

15. Your Honor has previously granted similar extensions of time in capital cases in Tennessee. *See e.g., Jahi v. Tennessee*, U.S. No. 18A574 (December 3, 2018) (Sotomayor, J.) (granting 60-day extension); *Dellinger v. Tennessee*, U.S. No. 18A440 (October 26, 2018) (Sotomayor, J.) (granting 60-day extension).

CONCLUSION

Accordingly, petitioner respectfully requests that a sixty-day extension of time be granted within which to file a petition for a writ of certiorari in this Court to and including April 12, 2019.

Respectfully Submitted,

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/s/ Richard Lewis Tennent
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CERTIFICATE OF SERVICE

I certify that a copy of this application was served upon counsel for Respondent, John Bledsoe, Deputy Attorney General, P. O. Box 20207, Nashville, Tennessee 37202 this the 31st day of January, 2019.

/s/ Richard Lewis Tennent
Richard Lewis Tennent