

No.

OCTOBER TERM, 2018

IN THE SUPREME COURT OF THE UNITED STATES

BRUCE MAYO ENNIS, Petitioner,

v.

BRIAN WILLIAMS, Sr., Warden, Respondent.

*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 Bruce Mayo Ennis respectfully requests that the time to file a Petition for Writ of Certiorari in this matter be extended for forty-five days, to and including, May 30, 2019. The Nevada Supreme Court issued an order affirming the denial of post-conviction relief January 17, 2019. *See* App. A. Petitioner's original due date for filing a Petition for Writ of Certiorari Petitioner is April 15, 2019. 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. Ennis was convicted of first-degree murder and sentenced to life without the possibility of parole in the Eighth Judicial District Court in Las Vegas, Nevada

in 1996. The instant appeal comes to this Court from the denial of Mr. Ennis' second state petition for post-conviction relief. *See* App. A.

REASONS FOR GRANTING THE EXTENSION

The time for filing a Petition for Certiorari should be extended for forty-five days for the following reasons:

1. C.B. Kirschner, who was counsel in the lower court and is primarily responsible for filing the petition,¹ has been unable to complete the Petition for Writ of Certiorari, despite her diligent efforts to do so, due to her extensive caseload and deadlines in other matters over last 90 days. For example, on February 14, 2019, Ms. Kirschner co-counselled an oral argument before the Ninth Circuit Court of Appeals which required extensive preparation, as the State appealed from the district court's grant of a habeas petition and the petitioner is serving a sentence of life without the possibility of parole. *See Hanson v. Baker*, case number 18-15547.

2. Additionally, Ms. Kirschner has had to meet numerous other filing deadlines in habeas matters in state and federal court that became due in the last 90 days. Ms. Kirschner filed a Reply Brief and a Response to Motion to Strike with the Nevada Supreme Court on January 16 and January 22, 2019, respectively, in *Yaag v. Baker*, case number 75626. On February 4, 2019, Ms. Kirschner filed a Reply to Answer to First Amended Petition for Writ of Habeas Corpus in *Page v. Baker*, district court case number 3:16-cv-00600-MMD-WGC. Ms. Kirschner filed a Reply to Response to Motion for Discovery on February 8, 2019, in *Taukitoku v. Filson*, district court case number 3:16-cv-00762-HDM-WGC. On March 1, 2019, Ms. Kirschner filed an Opposition to Motion to Dismiss in *Marshall v. Williams*, district court case

¹ Jonathan M. Kirshbaum is appearing as counsel of record because Ms. Kirschner is not yet admitted to this Court's bar.

number 2:18-cv-00075-JAD-CWH. Ms. Kirschner filed an Application for Certificate of Appealability with the Ninth Circuit Court of Appeals on March 12, 2019, in *DeCastro v. LeGrand*, case number 19-15238. On March 18, 2019, Ms. Kirschner filed an Opposition to Motion to Dismiss in *Chao v. Baker*, district court case number 2:14-cv-02039-GMN-PAL. And Ms. Kirschner filed an Opening Brief with the Ninth Circuit Court of Appeals on March 25, 2019 in *Alvarez v. Neven*, case number 18-15516.

3. As a result of the aforementioned filing deadlines, Ms. Kirschner has been unable to complete the Petition for Writ of Certiorari. She is requesting forty-five 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 cases that are due over the next thirty days. Ms. Kirschner has a Reply to Answer to First Amended Petition for Writ of Habeas Corpus due on April 19, 2019 in *Sanchez-Dominguez v. Baker*, district court case number 3:17-cv-00053-HDM-WGC; an Opposition to Motion to Dismiss due on April 22, 2019 in *Gonzalas v. Williams*, district court case number 2:17-cv-01653-RFB-GWF; another Reply to Answer to First Amended Petition for Writ of Habeas Corpus due on April 29, 2019 in *Fields v. Baker*, district court case number 3:16-cv-00298-MMD-CBC; another Reply to Answer to First Amended Petition for Writ of Habeas Corpus due on May 3, 2019 in *Lara v. Baker*, district court case number 3:17-cv-00544-MMD-WGC; and an Opposition to Motion to Dismiss due on May 13, 2019 in *Silva v. Williams*, district court case number 2:17-cv-02149-GMN-CWH.

4. Mr. Ennis' case raises substantial constitutional issues that merit the consideration of this Court. This case concerns the proper application and scope of the new constitutional rule of retroactivity established in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), and clarified in *Welch v. United States*, 136 S. Ct. 1257 (2016).

More specifically, the question is whether the constitutionalized “substantive exception” to the *Teague* retroactivity rules that now applies to the States includes decisions narrowing the interpretation of a substantive criminal statute. After Mr. Ennis’ conviction became final, the Nevada Supreme Court narrowed the interpretation of the State’s first-degree murder statute. However, in contrast to the large number of state courts that have granted full retroactivity to such a narrowing interpretation, the Nevada appellate courts have imposed a full bar on the retroactivity of decisions narrowing the interpretation of a criminal statute.

5. As a result of the new constitutional rule of retroactivity, many petitioners in Nevada filed petitions raising this constitutional challenge. Rather than presenting this issue in a piecemeal fashion, counsel believes it would be most efficient to attempt to consolidate the cases into as few petitions as possible before this Court. Some cases have become final after the decision in Ennis’ case, *see Branham v. State*, 434 P.3d 313 (Nev. Ct. App. 2018), *petition for review denied*, February 27, 2019; *Jones v. State*, Nevada Supreme Court (N.S.C.) case number 74459 (order of affirmance dated January 17, 2019); while others are near completion in the Nevada appellate process as the Nevada Court of Appeals has issued an order of affirmance, *see*, e.g., *Chavez v. State*, N.S.C. case number 74554; *Chaco v. State*, N.S.C. number 74552; *Mercado v. State*, N.S.C. case number 74513; and *Cooper v. State*, N.S.C. case number 74159. Thus, in addition to needing more time to draft the petition, which includes providing a 50-state survey of this area of law, counsel believes that it will conserve judicial resources for an extension to be granted.

6. Ms. Kirschner contacted counsel for the State, Jonathan VanBoskerck, to determine whether the State opposes the request. Counsel of record is authorized to represent that counsel for the State does not oppose this request.

7. This application for an extension of time is not sought for the purposes of delay, but only to ensure that Mr. Ennis receives competent representation in this matter.

DATED this 3rd day of April, 2019.

Respectfully submitted,

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