

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Jerrard T. Cook,
Applicant,

v.

State of Mississippi,
Respondents.

**APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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To the Honorable Samuel A. Alito, Associate Justice of the United States and Circuit Justice for the Fifth Circuit:

Pursuant to this Court's Rules 13.5, 22, and 30.3, Applicant Jerrard T. Cook respectfully requests a 30-day extension of time to file a petition for a writ of certiorari to review the judgment of the Supreme Court of Mississippi in this case, to July 11, 2018. As discussed herein, this case appears to involve an important question of federal constitutional law upon which state courts of last resort are divided: whether the Eighth Amendment authorizes a juvenile to be sentenced to life without parole absent an explicit judicial finding of permanent incorrigibility. Mr. Cook requests this extension because he only recently retained Counsel of Record David M. Shapiro to represent him *pro bono* before this Court, and Mr. Shapiro has numerous filing deadlines (including several before this Court) and other professional commitments which would otherwise prevent him from providing the sort of comprehensive analysis that aids this Court in determining whether to grant certiorari.

Mr. Cook has not previously sought an extension of time from this Court. The Mississippi Supreme Court issued its order denying Mr. Cook's writ application on March 22, 2018. *See Attachment A.* The time for filing a petition would therefore expire on June 20, 2018 absent an extension. Consistent with Rule 13.5, this application has been filed at least 10 days before that date. This Court has jurisdiction over this case under 28 U.S.C. § 1254(1).

1. In 2003, a Mississippi court imposed on Mr. Cook a mandatory sentence of life imprisonment without the possibility of parole for a murder he committed when he was seventeen years old.
2. In 2012, this Court held that the Eighth Amendment prohibits mandatory sentences of life without parole for crimes committed by juveniles. *Miller v. Alabama*, 132 S. Ct. 2455 (2012). The Court elaborated on this rule in 2016, stating that a sentence of life without parole may imposed only on "the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery v. Louisiana*, 136 S. Ct. 718, 733–34 (2016).
3. Following *Miller*, Mr. Cook filed a motion in the state circuit court requesting that his original sentence be vacated and that he be resentenced to life with possibility of parole. The circuit court vacated Mr. Cook's original sentence and ordered a resentencing hearing. At the hearing, a court-appointed psychologist testified that Mr. Cook "does not represent one of those rare offenders who could not be rehabilitated." Nevertheless, the circuit court re-sentenced Mr. Cook to life without possibility of parole. Final Order at 4, *Cook v. State*, No. CI2013-0219-LS (Miss. Cir.

Ct. Apr. 1, 2016) (attached hereto as Exhibit B). The circuit court did not make a specific finding of permanent incorrigibility. *Id.*

4. Mr. Cook appealed, and the Court of Appeals of Mississippi affirmed. The court of appeals opined that the Eighth Amendment: (1) does not require a sentencing authority to make a finding of permanent incorrigibility before imposing a sentence of life without parole for a crime committed by a juvenile, and (2) does not categorically bar sentences of life without parole for crimes committed by juveniles.

Cook v. State, No. 2016-CA-00687-COA, slip op. at 18, 21 (Miss. Ct. App. Aug. 8, 2017) (attached hereto as Exhibit C).

5. The Supreme Court of Mississippi denied Mr. Cook's petition for a writ of certiorari. *Cook v. State*, 237 So. 3d 1269 (Miss. 2018) (attached hereto as Exhibit A).

6. This case presents important issues involving the Eighth Amendment's protections against subjecting juveniles to cruel and unusual punishment. Mr. Cook intends to file a petition for certiorari asking this Court to hold that (1) consistent with the Eighth Amendment, a sentence of life imprisonment without the possibility of parole may be imposed for a crime committed by a juvenile only when the sentencing authority makes a finding that the juvenile is permanently incorrigible; or (2) the Eighth Amendment categorically prohibits the imposition of life imprisonment without the possibility of parole for crimes committed by juveniles.

7. Mr. Cook's petition will satisfy the Court's criteria for certiorari because it concerns an important question of federal constitutional law that divides state courts of last resort. At least seven state courts of last resort hold that a sentencing authority

must make a finding of permanent incorrigibility before imposing a sentence of life without parole for a crime committed by a juvenile. *See Veal v. State*, 784 S.E.2d 403, 412 (Ga. 2016); *People v. Holman*, 91 N.E.3d 849, 863 (Ill. 2017); *Luna v. State*, 387 P.3d 956, 961 (Okla. Crim. App. 2016); *Landrum v. State*, 192 So. 3d 459, 469 (Fla. 2016); *Davis v. State*, 415 P.3d 666, 695 (Wyo. 2018); *Commonwealth v. Batts*, 163 A.3d 410, 435 (Pa. 2017); *State v. Seats*, 865 N.W.2d 545, 555–56 (Iowa 2015). In contrast, four state courts of last resort hold that a finding of permanent incorrigibility is not required. *State v. Valencia*, 386 P.3d 392, 396 (Ariz. 2016); *Chandler v. State*, No. 2015-KA-01636-SCT, 2018 WL 1193479, at *3 (Miss. Mar. 8, 2018); *State v. Ramos*, 387 P.3d 650, 663 (Wash. 2017); *Johnson v. State*, 395 P.3d 1246, 1258 (Idaho 2017).

8. Mr. Cook respectfully requests additional time to file his petition for certiorari for two reasons:

First, Mr. Shapiro did not represent the applicant before the Mississippi Court of Appeals or Supreme Court; therefore, Mr. Shapiro requires additional time to evaluate the record developed below in order to provide the sort of comprehensive analysis that would aid this Court in deciding whether to address this fundamental constitutional issue.

Second, Mr. Shapiro has a number of other substantial competing commitments, including:

- a reply brief in the Supreme Court of Illinois in *Beaman v. Freesmeyer*, No. 122654, due June 12, 2018;

- an amicus brief due in the U.S. Court of Appeals for the Seventh Circuit in *Gaston v. Ghosh*, No. 18-1281, due June 26;
- a reply brief in support of certiorari in *Davis v. Mississippi*, 17-1343, to be filed before distribution on June 28, 2018;
- an opening brief in the U.S. Court of Appeals for the Ninth Circuit in *Priest v. Holbrook, et al.*, No. 18-35018, due July 2;
- a petition for certiorari for review of a decision of the U.S. Court of Appeals for the Eleventh Circuit in *Loor v. Bailey*, 708 F. App'x 992 (11th Cir. 2017) due July 6; and
- a reply brief in support of certiorari in *Johnson v. United States*, No. 17-1349, to be filed before distribution on July 8, 2018.

9. These obligations are in addition to Mr. Shapiro's responsibilities as a full-time faculty member at Northwestern Pritzker School of Law.

10. For these reasons, Mr. Cook respectfully requests that the time to file a petition for a writ of certiorari be extended to and including July 20, 2018.

Respectfully submitted,

/s/ David M. Shapiro

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