

No. 19-_____

IN THE
SUPREME COURT OF THE UNITED STATES

Michael Baraka Mason,

Applicant,

v.

Daniel Paramo, Warden, et al.

Respondents.

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

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

JAMES AND ASSOCIATES
Counsel of Record
BECKY S. JAMES (CA Bar # 151419)
E-mail: BJames@jamesaa.com
JAMES AND ASSOCIATES
Telephone: (310) 492-8105
Facsimile: (888) 711-7103

Attorneys for Plaintiff and Appellant
MICHAEL BARAKA MASON

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

TO: Hon. Elena Kagan, Circuit Justice for the Ninth Circuit:

Under this Court's rules 13.5 and 22, Applicant Michael Baraka Mason respectfully requests a 60-day extension to file his Petition for Writ of Certiorari. In support of this application, Applicant states:

1. Applicant intends to seek review of the decision of the United States Court of Appeals for the Ninth Circuit in *Michael Baraka Mason v. Daniel Paramo., Warden, et al.*, Case No.: 18-55803 (9th Cir. 2018), a copy of which is annexed hereto. The Ninth Circuit's decision was issued on February 28, 2019. Absent the requested extension of time, a petition for certiorari would be due on May 28, 2019. Applicant requests that the time for filing be extended by 60 days, to and including July 27, 2019.
2. The Ninth Circuit decision summarily affirmed the district court's denial of a Certificate of Appealability for both of the grounds raised in Applicant's Petition for a Writ of Habeas Corpus by a Person in State Custody. In doing so, the court found that the Applicant had not that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *See Mason v. Paramo et al.* (No 18-55803), Slip Op. at 1 (9th Cir. Feb. 28, 2019) (citations omitted).

3. That decision – as a petition for writ of certiorari will develop more fully – is a serious candidate for this Court’s review because:

- a. The Ninth Circuit unreasonably adopted the District Court’s application of the standard set forth in *Strickland v. Washington*, 466 U.S. 558 (1984), when it denied a Certificate of Appealability on Applicant’s contention that he had good cause for failing to exhaust his ineffective assistance of counsel claim (claim two) under *Rhines v. Weber*, 544 U.S. 269, 277 (2005). *Rhines* does not require that the petitioner demonstrate prejudice under *Strickland* in order to establish good cause for failing to exhaust a claim in state court. The district court’s reliance on the *Strickland* standard and the Ninth Circuit’s decision upholding it were clear error and improperly heightened the standard for obtaining a stay and abeyance under *Rhines*.
- b. Further, Mr. Mason’s claim for ineffective assistance of counsel was not plainly meritless, as he was able to show that Juror No. 4 expressed doubts about the guilty verdict and asked to speak with the judge privately, rather than in open court. Trial and appellate counsel nevertheless inexplicably failed to raise the issue at any time.
- c. With respect to Applicant’s claim one, the Ninth Circuit unreasonably adopted the District Court’s decision that the prosecution’s minimal efforts to locate an unavailable witness – in fact, the only eyewitness to Mr. Mason’s alleged crimes – despite knowledge that she was unlikely to appear at trial, were in good faith and sufficient to pass Constitutional

muster. The Sixth Amendment right to confront and cross-examine witnesses is fundamental to our criminal justice system and may not be taken lightly. *See, e.g., Crawford v. Washington*, 541 U.S. 36, 68 (2004); *Barber v. Page*, 390 U.S. 719, 724-25 (1968). When the prosecution contends a witness is unavailable, it has the burden of demonstrating that it engaged in a “good-faith effort” to secure the witness’s presence at trial. *Ohio v. Roberts*, 448 U.S. 56, 74-75 (1980), overruled in part on other grounds by *Crawford*, 541 U.S. at 60-69. Here, the prosecution relied on the testimony of an investigator that the witness “did not explicitly resist” the notion of appearing at trial. Many other methods were available under state law to attempt to secure the witness’s presence, but the prosecution elected not to pursue them. Under the circumstances, that decision was unreasonable.

- d. The conduct and events described above in parts (a)-(c) was, if not objectively unreasonable applications of clearly established law on their face, at the very least a matter upon which reasonable jurists disagree.

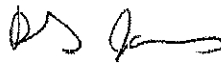
See Slack v. McDaniel, 529 U.S. 473, 484 (2000); 28 U.S.C. § 2253(c)(2).

4. Appellant’s counsel of record, who operates a small firm with only herself and two associates, is about to begin a four-week jury trial, and has, among other urgent professional commitments, an opening brief in the state court of appeal due May 16, a reply brief due in the state court of appeal on May 24, another opening brief due in the state court of appeal on June 3, and an opening brief due in the Ninth Circuit

on June 10. Further, Applicant is incarcerated, thus making it difficult to communicate promptly, fully and adequately with him about his claims. The extension requested would allow Applicant and his counsel the necessary additional time to review and analyze his claims, and bring counsel and her firm up to speed in this matter.

For these reasons, Applicant requests that the date for his filing a petition for a writ of certiorari be extended to and including July 27, 2019.

Respectfully submitted,



Becky S. James

Counsel for Applicant Michael Baraka Mason

CERTIFICATE OF SERVICE

Michael Baraka Mason v. Daniel Paramo, Warden, et al.

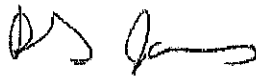
I hereby certify that on this 16th day of May, 2019, I caused one copy of this Application for Extension of Time to File a Petition for Writ of Certiorari to be served on each of the following by first-class mail:

Noel Francisco
Solicitor General of the United States
950 Pennsylvania Avenue
Room 5616
NW Washington DC 20530-0001
(202)514-2203

Lisa Nesbitt
U.S. Supreme Court
1 First St. NE
Washington DC, 20543

I hereby certify that all parties required to be served have been served. I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 16, 2019



Becky S. James
Counsel of Record
JAMES AND ASSOCIATES
23564 Calabasas Road, Suite 201
Calabasas, CA 91302
Telephone: (310) 492-5104
Facsimile: (888) 711-7103

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 28 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL BARAKA MASON,

Petitioner-Appellant,

v.

DANIEL PARAMO, Warden and
KAMALA D. HARRIS, Attorney General,

Respondents-Appellees.

No. 18-55803

D.C. No. 3:16-cv-01176-JLS-MDD
Southern District of California,
San Diego

ORDER

Before: TROTT and MURGUA, Circuit Judges.

Appellant's motion for an extension of time to file a certificate of appealability (Docket Entry No. 5) is granted.

The request for a certificate of appealability (Docket Entry No. 4) is denied because appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

If you view the [Full Docket](#) you will be charged for 1 Pages \$0.10

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 18-55803		Docketed: 06/18/2018	
Nature of Suit: 3530 Habeas Corpus		Termed: 02/28/2019	
Michael Mason v. Daniel Paramo, et al			
Appeal From: U.S. District Court for Southern California, San Diego			
Fee Status: Paid			
Case Type Information:			
1) prisoner			
2) state			
3) 2254 habeas corpus			
Originating Court Information:			
District: 0974-3 : 3:16-cv-01176-JLS-MDD			
Trial Judge: Janis L. Sammartino, District Judge			
Date Filed: 05/13/2016			
Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
05/18/2018	05/18/2018	06/18/2018	06/18/2018

06/18/2018	<u>1</u>	Open 9th Circuit docket: needs certificate of appealability. Date COA denied in DC: 05/18/2018. Record on appeal included: Yes. [10912659] (JMR) [Entered: 06/18/2018 02:36 PM]
07/02/2018	<u>2</u>	Filed (ECF) notice of appearance of Rachael A. Robinson for Appellant Michael Baraka Mason. Date of service: 07/02/2018. [10929382] [18-55803] (Robinson, Rachael) [Entered: 07/02/2018 03:36 PM]
07/02/2018	<u>3</u>	Added attorney Rachael A. Robinson for Michael Baraka Mason, in case 18-55803. [10929501] (QDL) [Entered: 07/02/2018 04:11 PM]
07/02/2018	<u>4</u>	Filed (ECF) Appellant Michael Baraka Mason Motion for certificate of appealability. Date of service: 07/02/2018. [10929518] [18-55803] --[COURT UPDATE: Removed motion (refiled in entry [5]). 7/3/2018 by TYL] (Robinson, Rachael) [Entered: 07/02/2018 04:17 PM]
07/02/2018	<u>5</u>	Filed (ECF) Appellant Michael Baraka Mason Motion for miscellaneous relief [Motion to file late request for certificate of appealability]. Date of service: 07/02/2018. [10929923] --[COURT ENTERED FILING to correct entry [4] .] (TYL) [Entered: 07/03/2018 08:28 AM]
02/28/2019	<u>6</u>	Filed order (STEPHEN S. TROTT and MARY H. MURGUIA): Appellant's motion for an extension of time to file a certificate of appealability (Docket Entry No. [5]) is granted. The request for a certificate of appealability (Docket Entry No. [4]) is denied because appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also 28 U.S.C. § 2253(c)(2); Gonzalez v. Thaler, 565 U.S. 134, 140-41 (2012); Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). Any pending motions are denied as moot. DENIED. [11211360] (AF) [Entered: 02/28/2019 11:57 AM]

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Billable Pages:	1	Cost:	0.10