

Application No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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THE COMMONWEALTH OF PENNSYLVANIA,  
Petitioner

v.

MILTON NOEL MONTALVO,  
Respondent

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On Petition for Writ of Certiorari to the  
Supreme Court of Pennsylvania

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APPLICATION FOR 30 DAY EXTENSION OF TIME  
TO FILE PETITION FOR WRIT OF *CERTIORARI*

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DATE: June 17, 2019

**TO THE HONORABLE SAMUEL ANTHONY ALITO, JR:**

Pursuant to Rule 13.5 of the Supreme Court of the United States, the Petitioner, the Commonwealth of Pennsylvania, hereby respectfully files this application for a 30-day extension of time within which to file a Petition for Writ of *Certiorari* seeking review of the March 26, 2019 Judgment of the Supreme Court of Pennsylvania in *Commonwealth of Pennsylvania v. Milton Noel Montalvo*, No. 750 CAP, thereby establishing a new filing deadline of July 24, 2019. In support thereof, the Petitioner avers the following:

1. In an opinion dated May 22, 2017, the Court of Common Pleas of York County (“Common Pleas Court”) entered an order granting, in part, a petition for post-conviction relief filed by death-sentenced prisoner, Milton Noel Montalvo (“Montalvo”). Specifically, Montalvo was denied relief on his guilt phase claims, but granted a new penalty phase. The Common Pleas Court found that counsel was ineffective for failing to present mental health expert testimony to support the additional mitigating circumstance that Montalvo was laboring under extreme mental or emotional disturbance. The Common Pleas Court concluded that counsel’s failure to properly explore the mitigation issue, coupled with the fact that the trial court failed to grant Montalvo’s request for pre-trial funding for a mental health expert, deprived Montalvo of a fair proceeding.

2. Secondly, the Common Pleas Court found that trial counsel was ineffective for failing to object when the prosecutor informed the jury that its sentencing verdict was only a “recommendation” and that the trial court had agreed

with this sentiment by stating that the jury's sentencing decision was a recommendation to the court.

3. In its appeal to the Supreme Court of Pennsylvania, the Commonwealth of Pennsylvania challenged these determinations and argued, *inter alia* with reference to *Bobby v. Van Hook*, 558 U.S. 4 (2009), that the Common Pleas Court had erred when it admittedly superimposed contemporary standards with respect to how capital cases should be tried onto a case that was tried in the year 2000.

4. On March 26, 2019, the Supreme Court of Pennsylvania affirmed the grant of a new penalty phase. Applying *Caldwell v. Mississippi*, 472 U.S. 320 (1985), the court concluded that Montalvo's Eighth Amendment right to a reliable sentencing proceeding was violated by the statements of the prosecutor and trial court that the sentencing verdict was merely a recommendation. The court did not address any of the additional issues raised by the Commonwealth of Pennsylvania. See Appendix "A."

5. The Petitioner seeks to challenge the decision of the Supreme Court of Pennsylvania. Pursuant to Rule 13.3, the time to file a Petition for Writ of *Certiorari* runs from the date of entry of the judgment or order sought to be reviewed. Accordingly, the Petitioner would be required to file the Petition for Writ of *Certiorari* by June 24, 2019.

6. Due to the recent schedule of your undersigned counsel, the Petitioner respectfully submits that additional time is needed to prepare the Petition. In

addition to her appellate cases, your undersigned counsel is responsible for overseeing the operations of three statewide investigating grand juries in Pennsylvania. All three grand juries meet one week each month. At the time that the Supreme Court of Pennsylvania entered its judgment in Montalvo's case, your undersigned counsel was in the midst of completing a 7-county *voir dire* process to select prospective jurors for a new statewide investigating grand jury in Norristown that was ultimately empaneled on April 22, 2019. In April, she also commenced the county *voir dire* process to select prospective jurors for a new statewide investigating grand jury in Harrisburg that was ultimately empaneled on June 3, 2019. Since April, she has also had extensive meetings in connection with a request for post-conviction DNA testing in a capital case, including meeting with experts. She also prepared for post-conviction evidentiary hearings in two murder cases and filed a brief in the Superior Court of Pennsylvania in a murder case.

7. In light of her schedule, your undersigned counsel is respectfully requesting an extension of time until July 24, 2019 to file the Petition for Writ of *Certiorari*.

8. Undersigned counsel certifies that the instant application is being filed in sincere good faith and for no improper purpose.

WHEREFORE, the Petitioner hereby respectfully requests this Honorable Court to grant a 30-day extension of time within which to file a Petition for Writ of *Certiorari* seeking review of the March 26, 2019 Judgment of the Supreme Court of Pennsylvania, establishing a new filing deadline of July 24, 2019.

Respectfully submitted,

**JOSH SHAPIRO**  
Attorney General

By: /s/ Jennifer A. Buck  
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Date: June 17, 2019

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing

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upon the person(s) and in the manner indicated below:

*Service by first-class mail  
addressed as follows:*

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Date: June 17, 2019