

No. _____

OCTOBER TERM 2017

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID LEE ROBERTS,
Petitioner,

v.

STATE OF ALABAMA,
Respondent

On Petition for a Writ of Certiorari
to the Alabama Supreme Court

APPLICATION TO THE HONORABLE JUSTICE CLARENCE THOMAS
FOR EXTENSION OF TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI TO THE ALABAMA SUPREME COURT

CAPITAL CASE -- NO EXECUTION DATE PENDING

* * * * *

To the Honorable Justice Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Eleventh Circuit, wherein the State of Alabama is situated:

Petitioner, by undersigned counsel, pursuant to Supreme Court Rules 13.5 and 30.2, respectfully requests that this Court grant him a 40-day extension within which to file a Petition for a Writ of Certiorari to the Alabama Supreme Court, rendering his petition due on or before Tuesday, August 28, 2018. This Court has jurisdiction under 28 U.S.C. § 1257(a).

The Federal Defender's office for the Middle District of Alabama was appointed to represent the Petitioner, who is indigent and has pursued all steps in his litigation *in forma pauperis*, in his original federal habeas corpus proceedings. A copy of the order of appointment is attached as attachment A. Undersigned counsel, an Assistant Federal Defender with the Middle District of Alabama, entered a notice of appearance in the United States District Court.¹ Following the conclusion of his federal appeals, counsel worked in cooperation with Mitchell McGuire, a volunteer Alabama attorney, in the prosecution of a separate habeas petition brought in the Alabama courts, the denial of which forms the basis for this appeal.

The judgment of the Alabama Supreme Court denying Mr. Roberts' petition for a writ of certiorari to the Alabama Court of Criminal Appeals was entered on April 20, 2018. A copy of the judgment is attached as attachment C. The last reasoned state court decision of the Alabama Court of Criminal Appeals is attached as attachment D. A petition for a writ of certiorari is due to be filed in this Court on or before July 19, 2018.

¹ See (Attachment B).

This death penalty case presents a significant issue: the proper application of *Ring v. Arizona*, 536 U.S. 584 (2002), and *Hurst v. Florida*, 136 S. Ct. 616 (2016), where the jury issued a non-binding life recommendation, which a judge overrode to impose a death sentence.

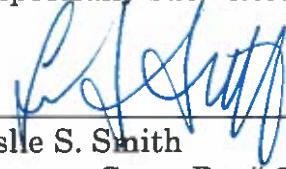
Supreme Court Rule 13.5 permits a Justice of this Court, "for good cause," to extend the time to file a petition for a writ of certiorari for a period not exceeding sixty (60) days. The application must be received by the Clerk at least ten (10) days before the petition is due, except in extraordinary circumstances. Rules 13.5, 30.2. This request for an extension of time is being electronically filed fourteen (14) days before the petition is due.

Undersigned counsel believes that there is good cause to justify the requested extension of time. Undersigned counsel is the supervising attorney in the Capital Habeas Unit for the Federal Defender Office in the Middle District. As such, she maintains a substantial caseload of capital habeas clients, and supervises a number of other attorneys representing numerous Alabama inmates under death sentences in the Middle District of Alabama. Those attorneys, including undersigned counsel, have numerous cases pending in federal district court, the Eleventh Circuit Court of Appeals, and this Court. In addition, as an officer in the United States Army Reserve, undersigned counsel has performed multiple periods of inactive and active duty military service over the past 90 days.

Wherefore, in order to afford undersigned counsel the opportunity to best apprise this Court of the relevant facts and law, Petitioner respectfully requests that

an order be entered extending his time to petition for certiorari by 40 days, rendering his petition due on or before Tuesday, August 28, 2018.

Respectfully submitted,



Leslie S. Smith
Supreme Court Bar# 258742
Counsel of Record
Assistant Federal Defender
Federal Defenders
Middle District of Alabama
817 S. Court Street
Montgomery, Alabama 36104

E-mail: leslie_smith@fd.org
(334) 834-2099

Certificate of Service

I, Leslie S. Smith, hereby certify that on July 5, 2018 a copy of this Application for Extension of Time to File a Petition for Writ of Certiorari in the above entitled case was mailed, first class postage pre-paid, to counsel for Respondent herein, listed below, in compliance with Rule 29(3) and a copy was emailed to counsel on July 5, 2018 as well. I further certify that all parties required to be served have been served.

Andrew Brasher
Solicitor General
ABrasher@ago.state.al.us

Stephen M. Frisby
Assistant Attorney General
SFrisky@ago.state.al.us

Office of the Attorney General
Capital Litigation Division
501 Washington Avenue
P.O. Box 300152
Montgomery, AL 36130

Counsel for the Commissioner



Leslie S. Smith
Supreme Court Bar # 258742
Counsel of Record
Assistant Federal Defender
Federal Defenders
Middle District of Alabama
817 S. Court Street
Montgomery, Alabama 36104