

CAPITAL CASE

No. 18-A-_____

IN THE SUPREME COURT OF THE UNITED STATES

JAMES DELLINGER,

Petitioner-Applicant

vs.

TONY MAYS, Warden

Respondent

UNOPPOSED APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI

To The Honorable Sonia Sotomayor, Associate Justice, and Circuit Justice
For The United States Court Of Appeals For The Sixth Circuit: Pursuant to
U.S.S.Ct.R. 13.5, in this capital case, Applicant James Dellinger respectfully applies
for a sixty (60) day extension of time, to and including January 3, 2019, within
which to file a petition for writ of certiorari. In support of this application, James
Dellinger states:

1. This is a capital proceeding. On August 8, 2018, the Tennessee
Supreme Court denied Mr. Dellinger's application to appeal from the Court of

Criminal Appeals opinion affirming the lower court's denial of Mr. Dellinger's motion to reopen his post-conviction proceeding pursuant to *Moore v. Texas*.

Dellinger v. State, No. E2018-00130-SC-R11-PD (Tenn. August 8, 2018) (Exhibit 1).

2. James Dellinger presently has until November 4, 2018 to file a petition for writ of certiorari. *See* U.S.S.Ct.R. 13.1.

3. Under Rule 13.5, this Court may extend the time for seeking certiorari for up to sixty (60) additional days. Your Honor should do so under the circumstances.

4. Since the first of the year, six lawyers of the eight person capital habeas unit at the Office of the Federal Defender for the Middle District of Tennessee have resigned. Four of those positions have been filled, with the most recent hire starting October 1, 2018, but two positions remain open. Additionally, the new attorneys hired are all inexperienced in capital work and require training and supervision. Because of this mass exodus, undersigned counsel have had their individual caseloads double, while having to continue with their supervisory and training duties. Much of counsels' time has been consumed attempting to learn those new cases sufficiently to manage those cases' critical deadlines.

5. Additionally, since the time the Tennessee Supreme Court denied review of this case, counsel participated as one of the lead litigators in *Abdur'Rahman, et. al. v. Parker, et. al*, 18-183-II (Chancery Court of Davidson County February 20, 2018) and *Abdur'Rahman et al. v. Parker et al.*, No. M2018-01385-SC-RDO-CV, 2018 WL 4858002 (Tenn. 2018). That litigation, including a two week trial and subsequent

oral argument as well as attendant litigation preceding Mr. Irick's execution has consumed much of counsels' time. See *Irick v. Tennessee*, 585 U.S. ____ (2018) (Sotomayor, J., dissenting).

6. Given counsels' current and ongoing responsibilities, counsel will require additional time to prepare and present to this Court Mr. Dellinger's petition for writ of certiorari.

7. The issues to be presented in Mr. Dellinger's petition are significant. A petition for writ of certiorari would include viable constitutional challenges to his death sentence establishing that the opinion of the Tennessee courts is in conflict with *Moore v. Texas*, 137 S.Ct. 1039 (2017), and *Montgomery v. Louisiana*, 577 U.S. ___, 138 S.Ct. 718 (2016), where the Tennessee courts have failed to provide Mr. Dellinger with a forum for the vindication of his *Atkins* claim.

9. Opposing counsel, Assistant Attorney General Nicholas Spangler, has authorized undersigned counsel to state that he has no objection to this application.

10. In this capital case, therefore, Your Honor should grant James Dellinger a sixty (60) day extension of time, to and including January 3, 2019, within which to file a petition for writ of certiorari. See e.g., *Dupree v. Laster*, U.S.No. 10A444 (Nov. 1, 2010) (Kagan, J.) (granting sixty day extension of time to file petition for writ of certiorari); *Wynne v. Renico*, U.S.No. 10A372 (Oct. 14, 2010) (same); *Marshall v. Huber*, U.S.No. 10A335 (Oct. 1, 2010) (same); *Smith v. Bell*, U.S. No. 10A493 (Nov. 16, 2010) (same).

CONCLUSION

The application for extension of time should be granted.

Respectfully Submitted,

/s/ Kelley J. Henry

Kelley J. Henry

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CERTIFICATE OF SERVICE

I certify that a copy of this application was served upon counsel for
Respondent, Nicholas Spangler, 425 Fifth Avenue North, Nashville, Tennessee
37243 this the 24th day of October , 2018.

/s/ Kelley J. Henry

Kelly J. Henry

Counsel for James Dellinger