

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BRIAN D. BAUR,

Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

APPLICATION FOR EXTENSION OF TIME
TO FILE WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

Mary Catherine Baur, Esquire
United States Supreme Court Bar No. 252020
Counsel of Record for Brian D. Baur, Petitioner
P.O. Box 2561
Philadelphia, PA 19147-0561
mbaur@isp.com
(215) 285-9484

**APPLICATION TO JUSTICE ALITO, THIRD CIRCUIT, TO
EXTEND TIME TO FILE
PETITION FOR CERTIORARI**

JURISDICTIONAL STATEMENT

The Order of the Pennsylvania Supreme Court was entered on July 18, 2018. Reconsideration was requested and denied on August 24, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

RELIEF SOUGHT

Brian D. Baur, Petitioner, requests that Justice Alito, Justice for the Third Circuit, extend the time for filing a Petition for Writ of Certiorari to the United States Supreme Court in the matter of Commonwealth of Pennsylvania v. Brian D. Baur, Pennsylvania Supreme Court No. 66 EAL 2018, for a period of 60 days, or from November 22, 2018 up to and including January 18, 2019, because January 21, 2019 is Martin Luther King Day, a federal holiday, and the Court cannot grant more than sixty (60) days.

GROUND FOR RELIEF

Judgments Below

1. On January 29, 2016, Petitioner was convicted by a Jury of one count of Murder of the Third Degree. The Jury found Petitioner Not Guilty of Possession of an Instrument of Crime. Petitioner had been charged with Murder in the First Degree and Possession of an Instrument of Crime. Petitioner was held without bail

prior to trial due to the fact that he was charged with First Degree Murder, and has been continuously incarcerated since August 21, 2014. Petitioner was not arraigned until August 24, 2014. Petitioner was sentenced on April 8, 2016. A true and correct copy of this conviction is attached to this Application as Exhibit "A".

2. On April 21, 2016 Petitioner filed his Notice of Appeal from the Judgment of Sentence to the Pennsylvania Superior Court. The Pennsylvania Court of Common Pleas Trial Judge Sandy L.V. Byrd filed an Order on April 25, 2016, pursuant to Pa. R.A. P 1925(b), requiring Petitioner to file a Statement of Matters Complained of on Appeal. Also on April 25, 2016, the Superior Court of Pennsylvania issued a directive to Petitioner, pursuant to Pa.R.A.P. 3517, to complete a Criminal Docketing Statement by May 9, 2016. Petitioner timely filed the Pa.R.A.P. 3517 Statement on May 9, 2016; and the Pa.R.A.P. 1925(b) Statement of Matters Complained of on Appeal on May 16, 2016.

3. On December 28, 2016, 226 days after Petitioner filed his Rule 1925(b) Statement of Matters Complained of on Appeal, Trial Judge Sandy L.V. Byrd issued his Pa.R.A.P. 1925 Opinion. On December 22, 2017 the Superior Court of Pennsylvania issued a "Non-Precedential Decision – See Superior Court I.O.P. 65.37", Memorandum by P.J. Gantman, affirming the judgment of sentence based on the trial court's opinion. The Superior Court Decision was not signed by P.J. Gantman, but by Joseph D. Seletyn, Esquire, the Prothonotary of Superior Court of Pennsylvania.

4. Petitioner filed a Praeclipe to Enter Final Order with the Superior Court on January 20, 2018. Additionally, Petitioner filed a Praeclipe to Enter Final Order on January 22, 2018 with legal argument and a Request for Reargument and Reconsideration. Also on January 22, 2018 Petitioner filed a Notice of Appeal with the Pennsylvania Supreme Court. Petitioner's Notice of Appeal to the Pennsylvania Supreme Court was accepted as a Petition for Allowance of Appeal as of January 22, 2018. Subsequently, Superior Court of Pennsylvania issued a Per Curium Order on January 24, 2018. On July 18, 2018 the Pennsylvania Supreme Court issued a Per Curium Order Denying Petitioner's Petition for Allowance of Appeal (90 days later is October 16, 2018). A true and correct copy of this conviction is attached to this Application as Exhibit "B". Petitioner timely filed an Application for Reconsideration with the Pennsylvania Supreme Court which was Denied via Per Curium Order dated August 24, 2018 (90 days later is November 22, 2018 or Thanksgiving Day, which means the last day to file is November 23, 2018). A true and correct copy of this conviction is attached to this Application as Exhibit "C". On August 29, 2018 Petitioner filed an Application to Stay Remand of the Record Pending Review in the Supreme Court of the United States with the Pennsylvania Supreme Court. A Per Curium Order was issued on September 20, 2018 granting a Stay until November 20, 2018, a date three (3) days before Petitioner's Due Date to file his Writ of Certiorari on November 23, 2018.

Reasons Why Relief From Time Limit Needed

5. Under Supreme Court Rule 13.1, time for filing of a Petition for Writ of Certiorari in this matter expires on November 22, 2018, Thanksgiving Day, or one day later on November 23, 2018, a non-legal holiday under 5 U.S.C. Section 6103. The Supreme Court of Pennsylvania has only granted a Stay until November 20, 2018; the basis of the calculation is not provided, but in the Commonwealth of Pennsylvania Thanksgiving and the day after Thanksgiving are legal state holidays.

6. Petitioner requests a 60 day extension of time which would bring the filing deadline to yet another legal holiday, January 21, 2019 (Martin Luther King Day). Since this Court cannot under the law grant more than 60 days the true deadline would only be extended to January 18, 2019.

7. Petitioner's counsel, Mary Catherine Baur, Esquire, suffers from a genetic disorder, hemochromatosis, that has rigid dietary, exercise and phlebotomy requirements, to which she is still adjusting to since July 2018. Even when these requirements are adhered to, she often suffers from illness and shortness of breath. The metabolic disorder, which is known as iron-overload, is the direct cause of loss of work time due to coping with and recovering from the illness.

8. In an abundance of caution, Petitioner's counsel, Mary Catherine Baur, Esquire, requests a sixty (60) day extension of time to file the Writ of Certiorari on behalf of Petitioner, Brian D. Baur, who may also suffer from the genetic disorder.

9. Petitioner, Brian D. Baur, does not want other counsel. Petitioner's verification is attached.

Persuasive Grounds for Certiorari in This Case

10. The arrest and conviction of Petitioner raise grave Constitutional questions concerning the 2nd, 4th, 5th, 6th and 14th Amendments to the Constitution of the United States and the Pennsylvania "Castle Doctrine".

11. Petitioner is currently serving 20 to 40 years, under an illegal sentence, as he has been denied credit for time served since August 21, 2014.

WHEREFORE, in the interests of justice, Petitioner requests this extension of time in order to present his Constitutional claims that were ignored by the Commonwealth of Pennsylvania.

Dated: November 12, 2018

Mary Catherine Baur, Esquire
Mary Catherine Baur, Esquire
700 Mollbore Terrace
P.O. Box 2561
Philadelphia, PA 19147-0561
mbaur@isp.com
(215) 285-9484
Attorney of Record for Petitioner
Brian D. Baur

EXHIBIT "A"

Commonwealth of Pennsylvania
v.
Brian D. Baur

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

DOCKET NO: CP-51-CR-0010543-2014
DATE OF ARREST: 08/21/2014
OTN: N 929136-5
SID: 300-81-25-1
DOB: 04/22/1958
PID: 0950231

ORDER OF SENTENCE

AND NOW, this 8th day of April, 2016, the defendant having been convicted in the above-captioned case is hereby sentenced by this Court as follows:

Count 1 - 18 § 2502 §§ C - Murder Of The Third Degree (F1)

To be confined for 20 YEARS - 40 YEARS at State Correctional Institution.

The following Judge Ordered Conditions are imposed:

<u>Condition</u>	<u>Start Date</u>	<u>End Date</u>
<u>Condition Text</u>		
Court Costs		
Defendant is to pay imposed mandatory court costs.		
Anger management		
To participate in anger management counseling/program as ordered by the court.		
Psychiatric Treatment		
To undergo available medical or psychiatric and psychological treatment.		

The defendant shall pay the following:

	Fines	Costs	Restitution	Crime Victim's Compensation Fund - Victim / Witness Services Fund	Total Due
Amount:	\$25,000.00	\$763.00	\$0.00	\$60.00	\$25,823.00
Balance Due:	\$25,000.00	\$688.00	\$0.00	\$60.00	\$25,748.00

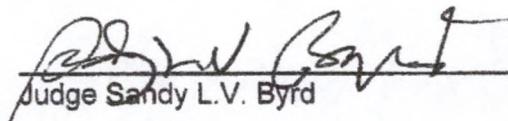
Judge: Byrd; ADA: Pescatore; Atty: Fairle; Court Reporter: Hall; Court Clerk: Sharpe

CP-51-CR-0010543-2014 Comm. v. Baur, Brian D
Order - Sentence/Penalty Imposed



7430441511

BY THE COURT:


Judge Sandy L.V. Byrd

DC-300B (PART I)
Rev. 12/05

COURT COMMITMENT
STATE OR COUNTY CORRECTIONAL INSTITUTION
Commonwealth of Pennsylvania
v.
Brian D. Baur

Type or Print Legibly

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
BOX 8837 CAMP HILL, PA 17001-0598
Attn: Central Office Records

DC-300B (PART II) Attached

COMMITMENT NAME: Baur, Brian D.				COURT OF INITIAL JURISDICTION <input type="checkbox"/>	COMMON PLEAS <input checked="" type="checkbox"/>
SEX	DATE OF BIRTH	SID	OTN	COMMITTING COUNTY: Philadelphia	
<input type="checkbox"/> F <input checked="" type="checkbox"/> M	04/22/1958	300-81-25-1	N 929136-5	COURT NUMBER AND TERM: 0010543-2014 Ct. 1	
MANDATORY SENTENCE		BOOT CAMP RECOMMENDED		COUNTY REFERENCE #: 950231	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		SEX OFFENDER CLASS:	
The above defendant after		<input type="checkbox"/> Pleading Guilty	<input type="checkbox"/> Nolo Contendere	<input type="checkbox"/> Alford Plea	<input checked="" type="checkbox"/> Being Found Guilty <input type="checkbox"/> GBMI

was on 04/08/2016, sentenced by Sandy L.V. Byrd to Confinement for a term of 20 YEARS - 40 YEARS, or 20 YEARS - 40 YEARS for the offense of Murder Of The Third Degree (Section 18 § 2502 §§ C of the Crimes and Offenses Code). It is further ordered that the said defendant be delivered by the proper authority to and treated as the law directs at the State Correctional Institution facility located at _____.

Fine:	Cost:	Restitution:	Crime Victim's Compensation Fund - Victim/Witness Services Fund:
Amount \$25,000.00	Amount \$763.00	Amount \$0.00	Amount \$60.00
Balance \$25,000.00	Balance \$688.00	Balance \$0.00	Balance \$60.00

CREDIT FOR TIME SERVED (EXPLANATION OF CREDIT COMPUTATION ON PAGE TWO) 0 Days	EFFECTIVE DATE OF SENTENCE 4/8/2016
--	--

THIS SENTENCE IS CONCURRENT WITH:

THIS SENTENCE IS CONSECUTIVE TO:

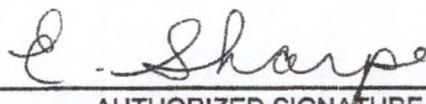
PROSECUTING ATTORNEY: Philadelphia County District Attorney's Office	DEFENSE ATTORNEY: Steven Fisher Fairlie
---	--

DISPOSITION ON NON-INCARCERATION OFFENSE(S): (THIS BLOCK NOT TO BE USED FOR INCARCERATION OFFENSE)

Ct. 2 - Poss Instrument Of Crime W/Int - Not Guilty



In witness, whereof I have hereunto set my hand and seal of
said court, this 8 day of April,
2016.


E. Sharp

AUTHORIZED SIGNATURE

The sentence for Baur, Brian D. was computed as follows:

Date of Sentence	County or Magisterial District	Court Number and Term	Type Sentence	Minimum			Maximum			Judge or Magisterial District Judge	OTN (Include Alpha Suffix)
				Yrs.	Mos.	Days	Yrs.	Mos.	Days		
04/08/2016	Philadelphia	0010543-2014	Ct 1 Conf.	0	0	0	0	0	0	Sandy L.V. Byrd	N 929136-5
			Total Sentence								

Credit for Time Served

Locked Up (Location)	Dates		No. of Days
	From	To	
			Total

All Detainers Must Be Attached To This Form

Total Number Of Detainers Attached

Dated	Indict - Warrant Nos.	Remarks

Recommendations of the Court

The following Judge Ordered Conditions are imposed:

Condition

Defendant is to pay imposed mandatory court costs.

To participate in anger management counseling/program as ordered by the court.

To undergo available medical or psychiatric and psychological treatment.

The Following Additional Reports are Attached			The Following Additional Reports will be Forthcoming		
<input type="checkbox"/> Continuation Sheet (DC-300B, Part II)	<input type="checkbox"/> Arrest Report	<input type="checkbox"/> FBI	<input type="checkbox"/> Arrest Report	<input type="checkbox"/> Presentence or Postsentence Investigation	
<input type="checkbox"/> Pre / Postsentence Investigation	<input type="checkbox"/> Behavior Clinic	<input type="checkbox"/> PSP			
<input type="checkbox"/> Sentencing Sheet	<input type="checkbox"/> Sentencing Guidelines	<input type="checkbox"/> Statement of Costs			
<input checked="" type="checkbox"/> Sentence Order	<input type="checkbox"/> Criminal Complaint				

COURT COMMITMENT
CONTINUATION SHEET
STATE OR COUNTY CORRECTIONAL INSTITUTION
Commonwealth of Pennsylvania
V.
Brian D. Baur

Type or Print Legibly

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
BOX 8837 CAMP HILL, PA 17001-0598
Attn: Central Office Records

Case Assessment Summary

<u>Offense No</u>	<u>Statute Description</u>	<u>Fines</u>	<u>Costs</u>	<u>Restitution</u>	<u>CVC</u>
1	Murder Of The Third Degree	\$25,000.00	\$688.00	\$0.00	\$60.00
	Non-offense related	\$0.00	\$75.00	\$0.00	\$0.00
	Total Ordered:	\$25,000.00	\$763.00	\$0.00	\$60.00
	Amount Paid:	\$0.00	-\$75.00	\$0.00	\$0.00
	Total Due:	\$25,000.00	\$688.00	\$0.00	\$60.00

EXHIBIT "B"

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 66 EAL 2018
Respondent	:	Petition for Allowance of Appeal from the Order of the Superior Court
v.		
BRIAN D. BAUR,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 18th day of July, 2018, the Petition for Allowance of Appeal is
DENIED.

A True Copy
As Of 07/18/2018

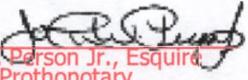
Attest: 
John W. Person Jr., Esquire
Deputy Prothonotary
Supreme Court of Pennsylvania

EXHIBIT "C"

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

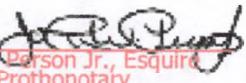
COMMONWEALTH OF PENNSYLVANIA,	:	No. 66 EAL 2018
Respondent	:	Application for Reconsideration
v.	:	
BRIAN D. BAUR,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 24th day of August, 2018, the Application for Reconsideration is
DENIED.

A True Copy
As Of 08/24/2018

Attest: 
John W. Person Jr., Esquire
Deputy Prothonotary
Supreme Court of Pennsylvania

VERIFICATION

I, Brian D. Baur (ML-9550) certify under penalty of perjury that I am the Petitioner in the above-captioned action, that I have read this Application to Extend Time to File Petition for Certiorari, and that, to the best of my knowledge, information, and belief, the allegations set forth therein are true and correct and that this Application to Extend Time to File Petition for Certiorari is not interposed for delay or other improper purposes.

Dated: 10-22-18

Brian D. Baur

Brian D. Baur (ML-9550), Petitioner
SCI Chester
500 E. 4th Street
Chester, PA 19013-4551