

**A CAPITAL CASE
NO EXECUTION CURRENTLY SCHEDULED
IN THE SUPREME COURT OF THE UNITED STATES**

October Term, 2018

No. 18-_____

THOMAS ALEXANDER PORTER,
Petitioner,

v.

DAVID ZOOK, WARDEN,
SUSSEX I STATE PRISON,
Respondent.

**APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice
for the Fourth Circuit:

The petitioner Thomas Alexander Porter asks the Court to enter an order extending the time for filing a petition for a writ of certiorari for a period of sixty (60) days from its current due date of November 29, 2018 to January 28, 2019. This application is submitted more than ten days prior to the scheduled filing date for the petition.

On August 3, 2018, a panel of three judges from the U.S. Court of Appeals for the Fourth Circuit vacated the decision of the district court with regard to two claims and remanded with instructions. *Porter v. Zook*, 898 F.3d 408 (4th Cir. 2018). The court affirmed the district court's dismissal of Porter's other alleged constitutional violations as a matter of law, denying Porter's requests for an opportunity for factual develop of these claims through discovery or an evidentiary hearing. The state court likewise had dismissed all claims as a matter of law—including one of the

claims remanded by the Court of Appeals—and refused Porter’s requests for an opportunity for factual development in support of his allegations. The Court of Appeals denied Porter’s Petition for Rehearing on August 31, 2018.

Porter subsequently asked the Court of Appeals to withhold issuance of its mandate in order to allow Porter to seek review in this Court before initiating the discovery and evidentiary hearing ordered in the district court on remand. The court denied this request on October 2, 2018. The Court of Appeals issued its mandate on October 10, 2018.

On November 5, 2018, the district court held a status conference on the discovery and evidentiary hearing it was ordered to conduct on remand. The court set May 1, 2019, as the date for an evidentiary hearing.

Porter’s counsel has been researching and developing issues for certiorari review relevant to claims that were dismissed as a matter of law in the courts below without providing any opportunity for discovery or an evidentiary hearing. The state court granted the motion to dismiss numerous claims based on evidence proffered by the Warden, the party moving for dismissal; based on evidence in conflict with evidence presented by Porter, the nonmoving party; based on disputed evidence and evidence without support in the record; and without presuming the allegations of the nonmoving party and all reasonable inferences made therefrom to be true. *But see, e.g., Juniper v. Zook*, 876 F.3d 441, 563 (4th Cir. 2017) (“a petitioner who has diligently pursued his habeas corpus claim in state court is entitled to an evidentiary hearing in federal court, on facts not previously developed in the state court proceedings, if the facts alleged would entitle him to relief, and if he satisfies one of the six factors enumerated by the Supreme Court in *Townsend v. Sain*, 372 U.S. 293, 313 (1963).”) (quoting *Conaway v. Polk*, 453 F.3d 567, 582 (4th Cir. 2006)); *Juniper*,

876 F.3d at 564 (a habeas petitioner has alleged facts sufficient to obtain relief if, “constru[ing] facts in the light most favorable to the [petitioner],” the claim is “plausible on its face.”) (quoting *United States ex rel. Oberg v. Penn. Higher Educ. Assist. Agency*, 745 F.3d 131, 136 (4th Cir. 2014)); *Juniper*, 876 F.3d at 567 (court also must “draw all reasonable inferences” from allegations in favor of petitioner); *see also Wolfe v. Johnson*, 565 F.3d 140, 165–69 (4th Cir. 2009). The inconsistent manner in which the standard for addressing motions to dismiss is applied in death penalty cases justifies review and resolution by this Court. In the circumstances of Porter’s case, the state court’s decisions to dismiss claims as a matter of law were based on unreasonable determination of facts under § 2254(d)(2), and Porter is entitled to de novo review of these claims in federal court.

The petitioner will invoke this Court’s jurisdiction under 28 U.S.C. § 1254(1). The circumstances in which Porter’s capital conviction and death sentence were imposed and upheld, provide significant bases for the Court to invoke certiorari review.

This extension of time is requested because:

(a) This is a capital case and as such requires especially complete research and careful drafting so as to properly present the petitioner’s federal constitutional claims to this Court.

(b) Based on the Court of Appeals’s refusal to stay issuance of its mandate, remand proceedings in the district court will be initiated, drawing considerable time and attention away from counsel’s work on this petition.

(c) Counsel also is appointed in another Virginia death penalty case that the U.S. Court of Appeals remanded for an evidentiary hearing in which discovery is underway, also requiring counsel’s considerable time and attention.

WHEREFORE, petitioner requests an order extending the time for filing his petition for a

writ of certiorari to and including January 28, 2019.

Respectfully submitted,

/s/
ROBERT LEE

ATTORNEY FOR PETITIONER.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of this Application for Extension of Time has been served upon opposing counsel identified below through this Court's electronic filing system on this [REDACTED] day of November, 2018, to:

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/s/
ROBERT LEE

ATTORNEY FOR PETITIONER.