

No. 17A _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2017

Capital Case

ROBERT TREASE,
Petitioner

v.

STATE OF FLORIDA,
Respondent

On Petition for Writ of Certiorari To the Supreme Court of Florida

TO: The Honorable Associate Justice Clarence Thomas, Circuit Justice for the Eleventh Circuit

Comes the Petitioner and respectfully requests an extension of sixty (60) days to file a petition for writ of certiorari the Florida Supreme Court, and for cause shows as follows:

1. The Florida Supreme Court opinion from which certiorari will be sought is *Trease v. State*, 242 So. 3d 302 (Fla. 2018), and is attached. *Trease* was decided April 26, 2018, and, without an extension of time, a petition for writ of certiorari to the Florida Supreme Court is due July 25, 2018. With the requested extension, the petition would be due September 23, 2018. This motion is being filed more than ten (10) days before July 25, 2018. Rule 30 (2).

2. Petitioner was sentenced to death pursuant to the Florida capital sentencing scheme

found by this Court to be unconstitutional in *Hurst v. Florida*, 136 S.Ct. (2016). However, the Florida Supreme Court held in *Mosley v. State*, 209 So. 3d 1248 (Fla. 2016), that inmates whose death sentences were not yet final on June 24, 2002 (when *Ring v. Arizona*, 536 U.S. 584 (2002) was decided) were entitled to resentencing under *Hurst*. It held in *Asay v. State*, 210 So. 3d 1 (Fla. 2016), that inmates whose death sentences became final before June 24, 2002, were not entitled to resentencing. Petitioner's death sentence was final before June 24, 2002. The Florida Supreme Court applied its arbitrary *Ring* cutoff to Petitioner and denied *Hurst* relief.

3. Petitioner intends to seek certiorari review, *inter alia*, on the basis that such arbitrary division of death-sentenced and not death-sentenced inmates is itself unconstitutional. “[I]f a State wishes to authorize capital punishment it has a constitutional responsibility to tailor and apply its law in a manner that avoids the arbitrary and capricious infliction of the death penalty,” *Godfrey v. Georgia*, 446 U.S. 420, 428 (1980). Succinctly put, this principle “insist[s] upon general rules that ensure consistency in determining who receives a death sentence.” *Kennedy v. Louisiana*, 554 U.S. 407, 436 (2008). The Eighth Amendment's concern against capriciousness in capital cases refines the older, settled precept that Equal Protection of the Laws is denied “[w]hen the law lays an unequal hand on those who have committed intrinsically the same quality of offense and . . . [subjects] one and not the other” to a uniquely harsh form of punishment. *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942). Leaving Petitioner with a death sentence, while vacating others' similarly, means the death penalty struck Petitioner like lightning.

4. However, counsel has not been able to complete a petition raising these and other bases for granting the writ. The bases for this request for an extension of time include that undersigned

counsel has had: extensive out of state work travel since the *Trease* decision; continuing responsibilities to numerous other clients; responsibility for consulting on many cases; and has had to file other pleadings on behalf of Mr. Trease.

WHEREFORE, Petitioner seeks an extension of sixty (60) days to file a petition for writ of certiorari to the Florida Supreme Court, making the petition due on or before September 23, 2008.

July 13, 2018

/s/ Mark E. Olive
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