

IN THE
Supreme Court of the United States

CHRISTA GAIL PIKE,

Applicant,

v.

WARDEN,

Respondent.

**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI**

To the Honorable Sonia Sotomayor, Associate Justice of the United States
Supreme Court and Circuit Justice for the Sixth Circuit:

1. Pursuant to 28 U.S.C. 2101(c) and Supreme Court Rule 13.5, Applicant Christa Gail Pike (“applicant”) respectfully requests a 60-day extension of time, to and including February 24, 2020, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this capital case. The court of appeals issued its opinion on August 22, 2019 (attached hereto as Tab A), and issued an order denying applicant’s timely petition for rehearing on September 26, 2019 (attached hereto as Tab B). The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

2. Absent an extension, the time for filing a petition will expire on December 26, 2019. Consistent with Rule 13.5, this application is being filed at least 10 days before that date, and no prior application has been made in this case.

3. Applicant was convicted of murder in a Tennessee state court in 1996. After a hearing, the jury sentenced applicant—who was 18 years old at the time of her crime—to death by electrocution. See Tab A at 5.

4. The counsel who defended applicant during that hearing built their entire mitigation case around the testimony of an expert mitigation specialist, who prepared an in-depth “Social History” of applicant supported by record evidence. But defense counsel failed to call the mitigation specialist to testify due to a last-minute “misunderstanding” between defense counsel and the witness. Instead, defense counsel presented the testimony of family members who happened be in attendance at trial, despite the fact that they shared culpability for applicant’s abusive upbringing and were unprepared to testify. Worsening matters, when the family members were cross-examined, the prosecution made use of the mitigation specialist’s materials to impeach them, because defense counsel had turned over those materials to the prosecution before abandoning the expert’s testimony at the last minute.

5. Applicant appealed her convictions and sentences, which the Tennessee courts affirmed. She then filed a petition for postconviction relief in state court, but the Tennessee courts denied that relief. See Tab A at 6.

6. Applicant next filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254 in the Eastern District of Tennessee. The district court granted the warden's motion for summary judgment. The court concluded that trial counsel's last-minute decision to forgo testimony from the expert mitigation specialist was a tactical decision; that applicant failed to establish prejudice from the failure to present that evidence, on the ground that testimony from the expert mitigation specialist would have been cumulative; and that trial counsel's meager mitigation investigation did not constitute ineffective assistance.

7. The Sixth Circuit affirmed the district court's denial of applicant's habeas petition. The court of appeals ruled that the State of Tennessee did not deprive applicant of her right to effective assistance of counsel under the Sixth Amendment and this Court's decision in *Strickland v. Washington*, 466 U.S. 668 (1984), even though her attorneys failed to present compelling mitigation evidence during the penalty phase of her capital trial. The court of appeals characterized the detailed expert testimony that applicant's counsel failed to present to the jury as similar to the "evidence actually presented at sentencing" by applicant's abusive family members, including family members who disbelieved applicant's account of sexual abuse she experienced as a child. Tab A at 7-11. The court of appeals also found that counsel's failure to investigate and discover other mitigating evidence, including evidence of various relevant medical diagnoses, did not constitute ineffective assistance. Tab A at 10-13.

8. Judge Stranch filed a separate concurring opinion. She noted that the case presents “an issue with which our society must be concerned—whether 18-year-olds should be sentenced to death. Had she been 17 rather than 18 at the time of her crime, like her codefendant * * * , [applicant] would not be eligible for the death penalty.” Tab A at 15.

9. This case merits this Court’s review. The Court has long recognized that a defendant’s Sixth Amendment rights are violated where defense counsel fails to adequately develop and present mitigation evidence in capital cases. See *Williams v. Taylor*, 529 U.S. 362, 393-394 (2000); *Wiggins v. Smith*, 539 U.S. 510, 521-523 (2003); *Rompilla v. Beard*, 545 U.S. 374, 380-384 (2005). The decision of the court of appeals is irreconcilable with *Strickland* and with this Court’s subsequent decisions addressing the critical responsibility of defense counsel in the mitigation phase of capital cases. It also departs from the decisions of other courts of appeals that have found ineffective assistance in cases in which trial counsel presented some limited mitigating evidence but failed to present much more detailed and compelling evidence on the same topics. See, e.g., *Abdul-Salaam v. Sec’y of Pennsylvania Dep’t of Corr.*, 895 F.3d 254 (3d Cir. 2018).

9. Applicant respectfully requests an extension of time to file a petition for a writ of certiorari. Undersigned counsel was recently retained to draft the petition. A 60-day extension would allow counsel sufficient time to fully research and analyze the issues presented, to coordinate with co-counsel, and to prepare the petition for filing. In addition, undersigned counsel has a number of other pending

matters that will interfere with counsel's ability to file the petition on December 26, 2019, including a brief due in the Ninth Circuit on December 20, 2019 (in *In re PG&E Corporation*, Nos. 19-16833, 19-16834) and preparations for oral argument in the Ninth Circuit in January 2020 (in *Wegner v. Wells Fargo Bank, N.A.*, No. 18-16278).

Wherefore, applicant respectfully requests that an order be entered extending the time in which to file a petition for a writ of certiorari to and including February 24, 2020.

Dated: December 6, 2019

Respectfully submitted,

/s Elaine J. Goldenberg
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