

**CAPITAL CASE**

No. 19-A-\_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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**TYRONE CHALMERS,**

Petitioner-Applicant

vs.

**STATE OF TENNESSEE,**

Respondent

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

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*To the Honorable Sonia Sotomayor, Associate Justice, and Circuit Justice For the United States Court of Appeals for the Sixth Circuit:* In this capital case, Applicant Tyrone Chalmers respectfully applies for a sixty (60) day extension of time, to and including October 14, 2019, within which to file a petition for writ of certiorari. In support of this application, Tyrone Chalmers states:

1. This is a capital case in which Petitioner has sought the application of *Moore v. Texas*, 581 U.S. \_\_\_\_ (2017) to his Eighth Amendment claim that he is intellectually disabled and ineligible for the death penalty.

2. Mr. Chalmers argued that under *Montgomery v. Louisiana*, 577 U.S. \_\_\_\_ (2014), *Moore v. Texas* applies retroactively to his claim of intellectual disability.

Indeed, in *Montgomery*, this Court stated:

[W]hen the Constitution prohibits a particular form of punishment for a class of persons, an affected prisoner receives a procedure through which he can show that he belongs to the protected class. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 317, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002)(requiring a procedure to determine whether a particular individual with an intellectual disability “fall[s] within the range of [intellectually disabled] offenders about whom there is a national consensus” that execution is impermissible). *Those procedural requirements do not, of course, transform substantive rules into procedural ones.*

*Montgomery*, 577 U.S. at \_\_\_\_ (slip op. at 19) (emphasis supplied).

3. On January 17, 2019, the Tennessee Court of Criminal Appeals denied Mr. Chalmers’ motion to reopen his post-conviction petition and refused to apply *Moore*, concluding that *Moore* does not apply retroactively. *Chalmers v. State*, No.W2018-01650-CCA-R28-PD (C.C.A. 2019). Exhibit 1.

4. Mr. Chalmers sought permission to appeal in the Tennessee Supreme Court, but on May 17, 2019, the Tennessee Supreme Court denied permission to appeal. Exhibit 2.

5. Mr. Chalmers currently has until August 15, 2019 to file a petition for writ of certiorari. *See* U.S.S.Ct.R. 13.1.

6. 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.

7. In light of *Montgomery*, *Moore v. Texas* appears to be a substantive rule of law that should be applied retroactively, and Tennessee courts erroneously concluded otherwise.

8. Thus, in his petition for writ of certiorari, Tyrone Chalmers will present significant issues worthy of this Court's review, including, whether *Moore v. Texas*, 581 U.S. \_\_\_\_ (2017) should apply retroactively in post-conviction proceedings; whether *Montgomery v. Louisiana*, 577 U.S. \_\_ (2016) requires retroactive application of *Moore*; and/or whether this Court, should vacate the judgment below, and remand for application of *Montgomery*, if it were to grant certiorari.

9. In this capital case, Your Honor should therefore grant Tyrone Chalmers a sixty (60) day extension of time, to and including October 14, 2019, within which to file a petition for writ of certiorari. Petitioner requires this additional time to research and prepare his petition on these substantive issues. Mr. Chalmers was represented in the underlying state court litigation by *pro bono* state court counsel. Because of the transition of this litigation from *pro bono* state court counsel to the federal defender, undersigned counsel requires time to review the pleadings in order to present a clear petition to the Court.

10. Opposing counsel does not oppose a thirty (30) day extension. However counsel requires the full sixty (60) days.

11. Your Honor has granted similar applications for extensions of time in other capital cases where, as here, the petitioner has presented significant issues regarding the propriety of the death sentence. *See e.g., Jahi v. Tennessee*, U.S. No. 18A574 (December 3, 2018) (Sotomayor, J.) (granting 60-day extension); *Dellinger v. Tennessee*, U.S. No. 18A440 (October 26, 2018) (Sotomayor, J.) (granting 60-day extension); *see also, Middlebrooks v. Tennessee*, U.S. No. 16A1076 (May 5, 2017) (Kagan, J.) (granting extension for impending petition concerning constitutionality of death penalty); *Zagorski v. Tennessee*, U.S. No. 16A456 (Nov. 4, 2016) (Kagan, J.) (same); *Sims v. Tennessee*, U.S. No. 16A37 (July 25, 2016) (Kagan, J.) (granting extension for impending petition concerning retroactivity of *Hall v. Florida*, 572 U.S. \_\_\_\_ (2014)); *Taylor v. United States*, U.S. No. 16A71 (July 21, 2016) (Kagan, J.) (granting extension in federal capital case);

### CONCLUSION

Your Honor should grant a 60-day extension, up to and including October 14, 2019, within which to file a petition for writ of certiorari.

Respectfully Submitted,

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/s/ Kelley J. Henry

#### CERTIFICATE OF SERVICE

I certify that a copy of this application was served upon counsel for Respondent, Andrew Craig Coulam, Assistant Attorney General, P. O. Box 20207, Nashville, Tennessee 37202 this the 14th day of August, 2019.

/s/ Kelley J. Henry