

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2019

TIMOTHY RICHARDSON, Petitioner

v.

EDWARD THOMAS, Warden
Central Prison, Raleigh, North Carolina, Respondent

**MOTION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI PURSUANT TO
RULE 13(5)**

To the Honorable John Roberts, Chief Justice of the United States Supreme Court and Circuit Justice to the Fourth Circuit:

1. Petitioner, Timothy Richardson, pursuant to Rule 13(5), Rules of the Supreme Court, respectfully seeks a sixty (60) day extension of time within which to file his petition for writ of *certiorari* in this Court. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. This application is submitted more than ten (10) days prior to the scheduled filing date for the Petition. The pertinent dates are:

a. **July 12, 2019:** Issuance of written opinion of United States Court of Appeals for the Fourth Circuit, *Richardson v. Thomas*, No. 18-3, ___ F.3d ___ (2019), vacating the grant of Rule 60(b) relief by the district court. A copy of the opinion is

attached hereto as Exhibit A.

b. July 26, 2019: Petitioner filed a petition for rehearing or rehearing *en banc* pursuant to Rule 34 and 40 of the Federal Rules of Appellate Procedure.

c. August 9, 2019: Issuance of written order denying rehearing and rehearing *en banc*. A copy of the order is attached hereto as Exhibit B.

d. October 28, 2019: Deadline for seeking extension of time within which to file a petition for writ of *certiorari* in the United States Supreme Court.

e. November 7, 2019: Expiration of time for filing a petition for writ of *certiorari* in the United States Supreme Court, unless extended.

2. This is a complex capital case in which Timothy Richardson was convicted of first-degree murder and sentenced to death. *See State v. Richardson*, 346 N.C. 520, 488 S.E.2d 148 (1997) (affirming convictions and sentence of death); *Richardson v. North Carolina*, 522 U.S. 1056 (1998) (denying writ of *certiorari*). Petitioner's efforts to obtain post-conviction relief have thus far been unsuccessful. *See Richardson v. Branker*, 668 F.3d 128 (4th Cir. 2012) (upholding in part and reversing in part district court order granting sentencing relief); *Richardson v. Thomas*, 718 Fed. App. 192 (4th Cir. 2018); *Richardson v. Thomas*, No. 18-3, ___ F.3d ___ (4th Cir. 2019) (vacating district court's order granting relief under Rule 60(b)).

3. In August, undersigned counsel Kenneth Rose represented Tilmon Golphin as co-counsel in *State v. Golphin*, No. 441A98-4, in litigation under the North Carolina Racial Justice Act in the North Carolina Supreme Court. Over the last two months and currently, Mr. Rose and undersigned counsel Stanley Hammer

have drafted pleadings and are preparing for oral argument, tentatively scheduled for the week of December 10, 2019, in support of Richardson's *Application for Authorization to File a Successive Petition* in *In Re: Timothy Richardson*. Consequently, Mr. Rose and Mr. Hammer will be unable to focus sufficient attention to the *certiorari* petition in order to meet the current deadline.

4. Counsel for Petitioner intend to ask this Court to grant review on the question whether the Fourth Circuit, in an interlocutory appeal pursuant to 28 U.S.C. 1292, erred when it reversed the District Court's grant of a motion for relief from judgment pursuant to Rule 60(b)(6), and remanded with an order to dismiss the motion. Counsel will further seek to show that there is a split in the circuit courts in determining whether and when a change in a substantive statute or decisional law amounts to an extraordinary circumstance warranting relief from a habeas judgment. *See e.g., Crutsinger v. Davis*, 588 U.S. ___, Dkt. 19-5755 (2019) (Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari and noting circuit split).

5. Opposing Counsel, Special Deputy Attorney General Jonathan Babb, has no objection to this motion.

For the foregoing reasons, the Petitioner, who is indigent and incarcerated in Central Prison, Raleigh, North Carolina, respectfully prays that this Court grant an extension of sixty (60) days to and including January 6, 2020, within which to file his petition for writ of *certiorari*.

Respectfully submitted, this the 18th day of October, 2019.

/s/ Kenneth J. Rose
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CERTIFICATE OF SERVICE

I, Kenneth J. Rose, certify that I have this day served the foregoing Motion for Extension of Time to file Petition for Writ of Certiorari by first-class mail, postage prepaid, addressed to Jonathan P. Babb, Special Deputy Attorney General, N.C. Department of Justice, P.O. Box 629, Raleigh, N.C. 27602.

This the 18th day of October, 2019.

/s/ Kenneth J. Rose
Kenneth J. Rose