

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

LOUIS MITCHELL, JR., *Petitioner*

v.

STATE OF CALIFORNIA, *Respondent.*

APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF CALIFORNIA
(DEATH PENALTY CASE)

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OCTOBER TERM, 2019

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v.
STATE OF CALIFORNIA, Respondent.

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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Petitioner, Louis Mitchell, Jr., requests a 60-day extension of time to and including January 27, 2020, to file his petition for a writ of certiorari in this court. The jurisdiction of this court is invoked under 28 U.S.C. section 1257(a).

On June 24, 2019, the Supreme Court of California issued its original opinion on petitioner's automatic appeal from a sentence of death. *People v. Mitchell*, 7 Cal.5th 561 (2019) (*Mitchell*). A copy of the final opinion is attached as Appendix A. Petitioner filed a timely petition for rehearing, which was denied by order on August 28, 2019, attached as Appendix B. Thus, the time to petition for a writ of certiorari in this Court expires on November 26, 2019. This application for an extension of time of 60 days, to and

including January 27, 2020, in which to file the petition is being filed more than 10 days before that date.

This capital case raises various important federal constitutional issues. Relevant here is the state supreme court decision that California's death penalty statute does not violate *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Ring v. Arizona*, 536 U.S. 584 (2002), nor the Fifth, Sixth and Fourteenth Amendments, by not requiring a jury to find the existence of each aggravating factor unanimously and beyond a reasonable doubt and by not requiring a jury to find unanimously and beyond a reasonable doubt that the factors in aggravation outweigh the factors in mitigation. Petitioner's counsel believes these questions are substantial, require careful scrutiny and resolution, and will meet the criteria for a discretionary grant of review under Supreme Court Rule 10.

An extension of time to file a petition for a writ of certiorari is justified because the important issue described above warrants careful scrutiny and resolution. Preparation of a petition that is appropriate in presentation and scope requires extensive research, in part to compare the California Supreme Court's approach with *Hurst v. Florida*, 136 S.Ct. 616 (2016). Consequently, a substantial amount of time is required to research and draft the petition competently.

Furthermore, petitioner's counsel is assigned to other capital appeals and has had to devote a substantial amount of her time to meeting time-sensitive responsibilities in

those other cases since the state supreme court's decision in this case became final. Petitioner's counsel has made researching and drafting the petition for a writ of certiorari a high priority in her work schedule and is currently working to complete the petition while meeting her other case-related responsibilities.

Petitioner's counsel has made this case the highest priority in her work schedule and is currently working to complete the petition for a writ of certiorari by its current deadline of November 26, 2019. Despite her best efforts, she has been unable to do so and respectfully request an extension of 60 days, to and including January 27, 2020, in which to file the petition for writ of certiorari on petitioner's behalf.

Accordingly, petitioner respectfully requests that an order be entered extending his time to petition for a writ of certiorari by 60 days, to and including January 27, 2020.

Dated: November 14, 2019

Respectfully submitted,

MARY K. McCOMB
STATE PUBLIC DEFENDER
FOR THE STATE OF CALIFORNIA

/s/ Elias Batchelder

ELIAS BATCHELDER
Senior Deputy State Public Defender