

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

FRED FURNISH

Petitioner,

v.

DEEDRA HART, WARDEN,

Respondent.

**APPLICATION TO THE HONORABLE JUSTICE ELENA KAGAN
FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT
CERTIORARI TO THE SUPREME COURT OF KENTUCKY**

CAPITAL CASE

**APPLICATION TO THE HONORABLE
ASSOCIATE JUSTICE ELENA KAGAN
AS CIRCUIT JUSTICE**

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January 17, 2020

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

Petitioner, Fred Furnish, respectfully applies to this Court for an order extending the time in which to file his petition for writ of certiorari from January 31, 2020 until March 31, 2020, a period of sixty (60) days. Furnish is filing this Application at least ten days before the present due date. See S.Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. §1257. In support of this Application, Petitioner states as follows:

1. Mr. Furnish is incarcerated under conviction of murder for which he was sentenced to death. On June 13, 2019, the Supreme Court of Kentucky issued an opinion in Case No. 2018-SC-000126, wherein the Court affirmed the judgment of the Kenton Circuit Court in Case No. 98-CR-00384. See opinion attached herein as Attachment 1. Mr. Furnish sought rehearing, which was granted by the Supreme Court of Kentucky. See Order granting Petition for Rehearing attached hereto as Attachment 2. On October 31, 2019, the Supreme Court of Kentucky substituted a modified opinion for the original opinion rendered on June 13, 2019, although the modified opinion did not affect the holding. See opinion, attached herein as Attachment 3.

2. Mr. Furnish now seeks a writ of certiorari for the Supreme Court of Kentucky with respect to its decision rendered on October 31, 2019 as referenced above. This Court's jurisdiction to grant the same arises pursuant to 28 U.S. C. § 1257 (a).

3. According to Supreme Court Rule 13.3, a petition for writ of certiorari is due on or before January 31, 2020. See Supreme Court Rule 13.3 ("the time to file the petition for a writ of certiorari . . . runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment"). However, the time granted by Supreme Court Rule 13 will be insufficient to allow Petitioner's counsel to do justice to the issues at hand, which are of vast import. Therefore, Petitioner seeks an extension of sixty (60) days in which to file his petition for a writ of certiorari. See Supreme Court Rule 13.5 ("[A] Justice may extend the time to file a petition for writ of

certiorari for a period not exceeding 60 days”).

4. In accordance with Supreme Court Rule 13.5, this Application is submitted at least ten (10) days prior to the present due date. Further, the requested extension is made in good faith and not for the purposes of delay. Indeed, the requested extension is made because of the vital importance associated with the issues at hand – the right to a fair and reliable sentence.¹ This Court has repeatedly emphasized that “our duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case.” *Burger v. Kemp*, 483 U.S. 776, 785 (1987). It is respectfully submitted that counsel’s duty to present all authorized claims of constitutional error with painstaking care is of equal import. Thus, it is important that counsel be granted additional time to research the constitutional issues at hand so that counsel may prepare Mr. Furnish’s petition with the care and accuracy demanded of such cases.

5. Obligations on behalf of clients of both counsel, including clients who have been sentenced to death, have precluded counsel from being able to direct adequate time and attention to the preparation of a petition for writ of certiorari on Petitioner’s behalf. Therefore, in light of counsel’s current obligations and the importance of the constitutional issues that will be presented in this capital case, counsel submit that a sixty (60) day extension is necessary and appropriate in order to effectively prepare the petition for certiorari on Mr. Furnish’s behalf.

Wherefore, in the interest of justice and for good cause shown, counsel for Mr.

Furnish respectfully request that this Court extend the current January 31, 2020 deadline until March 31, 2020.

Respectfully submitted,

/s/ Dennis J. Burke
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CERTIFICATE OF SERVICE

I, Dennis J. Burke, a member of the Bar of this Court, hereby certify that on January 17, 2020, a copy of this Application for Extension of Time to File a Petition for a Writ of Certiorari in the above entitled case was mailed, first class postage prepaid, to, Jesse Robbins, Assistant Kentucky Attorney General, 1024 Capital Center Drive, Frankfort, KY, 40601. I further certify that all parties required to be served have been served.

/s/ Dennis J. Burke
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