

No. _____

In the Supreme Court of the United States

RAHEEM JOHNSON,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

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

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November 1, 2019

Counsel for Petitioner

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

Petitioner Raheem Johnson is a prisoner serving a life sentence for a crime he committed as a juvenile. He respectfully requests, under Rule 13.5 of the Rules of this Court, an extension of sixty days, to and including January 13, 2020, within which to file a petition for a writ of certiorari to review the order of the Supreme Court of Virginia denying Johnson's appeal of the dismissal of his petition for a writ of habeas corpus. The state Supreme Court's order denying his appeal was entered on August 16, 2019. A copy of the order is attached.

Unless extended, the time for filing a petition for a writ of certiorari will expire on November 14, 2019. Johnson proceeded pro se in his state habeas proceedings, and undersigned counsel entered into an attorney-client relationship with him on October 16, 2019. The extension is essential for counsel to meet and confer with Petitioner, to review the record of the case, and to conduct the research and drafting necessary to prepare the petition. Respondent will not be prejudiced by the extension.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire.

This case presents an important question regarding whether an indigent defendant seeking access to a mental health expert to assist in the sentencing phase of his defense is denied due process where a state court requires the defendant to show a "particularized need" for such assistance in addition to satisfying the three threshold criteria established in *Ake v. Oklahoma*, 470 U.S. 68, 83 (1985). In the proceedings below, the Supreme Court of Virginia held that the trial court's denial of Petitioner's request for

a mental health expert to present evidence about Johnson's brain development for purposes of sentencing was appropriate, not because Petitioner failed to satisfy the *Ake* criteria, but because he failed to show, in addition, a particularized need for such assistance. *Johnson v. Commonwealth*, 292 Va. 772, 775 (2016).

After this Court, in *McWilliams v. Dunn*, 137 S. Ct. 1790, 1801 (2017), affirmed that *Ake* established the only criteria an indigent defendant seeking mental health assistance must meet, Petitioner filed a petition for a writ of habeas corpus in Virginia state court challenging the trial court's denial of Petitioner's request for a mental health expert at sentencing. The state court denied relief, and the Virginia Supreme Court summarily denied Petitioner's appeal, holding that it found no reversible error by the state court.

Wherefore, Petitioner respectfully requests that an order be entered extending the time to petition for certiorari to and including January 13, 2020.

Respectfully submitted,

November 1, 2019

/s/ Elliott Schulder
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CERTIFICATE OF SERVICE

I, Elliott Schulder, counsel for Raheem Johnson, hereby certify that on this 1st day of November, 2019, I caused three copies of the Application for an Extension of Time to File a Petition for a Writ of Certiorari to be served by overnight delivery on the following counsel:

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I further certify that all parties required to be served have been served.

/s/ Elliott Schulder
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