

No. ____

In the Supreme Court of the United States

MICHELE BUCKNER, WARDEN,
SOUTH CENTRAL CORRECTIONAL CENTER,
Petitioner,

v.

ROBERT W. ALLEN
Respondent.

APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE MISSOURI COURT OF
APPEALS, SOUTHERN DISTRICT

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May 24, 2019

To the Honorable Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eighth Circuit:

Petitioner Warden Michele Buckner under Supreme Court Rule 13.5 requests an additional month in which to file a petition in this Court seeking certiorari to Missouri Court of Appeals, Southern District, to and including Wednesday, July 3, 2019.

I. Jurisdiction. The judgment of the Missouri Court of Appeals, Southern District was entered on November 27, 2018, No. SD35655, and an order denying rehearing was entered on December 14, 2018; the Missouri Supreme Court denied transfer on March 5, 2019, No. SC97610; and the Missouri Court of Appeals, Southern District issued its mandate on March 7, 2019. As a result, the current due date for Petitioners' petition for certiorari in this Court is Monday, June 3, 2019. This application is being filed 10 days before that date. Petitioner has not before now sought any extension of time from this Court to file this petition.

Copies of the Missouri Court of Appeals' opinion and order denying rehearing are attached as Appendices A and B, respectively. A copy of the Missouri Supreme Court order denying transfer is attached as Appendix C. This Court has jurisdiction under 28 U.S.C. § 1257.

II. Reasons to Grant the Application. This case is about whether the Eighth Amendment of the U.S. Constitution prohibits a state from requiring a

juvenile homicide offender to serve fifty years in prison without parole. Below, the Missouri Court of Appeals granted habeas relief to the respondent, Robert W. Allen, holding that a mandatory sentence for a juvenile offender of fifty years in prison violates the Eighth Amendment's prohibition on cruel and unusual punishment.

In 1984, at age sixteen, Mr. Allen brutally robbed and murdered an elderly couple for their social security checks. *State v. Allen*, 710 S.W. 2d 912, 913 (Mo. App. W.D. 1986). He and an accomplice cut the telephone wires to the victims' house and forced their way in. *Id.* at 914. Mr. Allen clubbed the female victim three times with a night stick and his accomplice clubbed the male victim twice in the head with a knife butt. *Id.* They then tied the victims up, laid the victims on their stomachs, and killed them by stabbing them in the back of the neck. *Id.* The pair then stole \$140 each. *Id.*

A jury convicted Mr. Allen of capital murder. At the time, capital murder was punishable only by death or a sentence of life in prison without parole for 50 years. Mo. Rev. Stat. § 565.008.1. Because the jury could not agree upon the death penalty, Mr. Allen received a mandatory sentence of life in prison without parole for 50 years. *Allen*, 710 S.W.2d at 916. He also received two consecutive terms of life imprisonment with parole for first-degree murder (felony murder) and armed criminal action for the same course of events. This sentence was affirmed on appeal. *Id.* at 914.

Since then, this Court held that not only does the Eighth Amendment prohibit the death penalty for juvenile offenders, *Roper v. Simmons*, 543 U.S. 551 (2005); but also it prohibits a mandatory sentence of life in prison without parole for a juvenile homicide offender, *Miller v. Alabama*, 567 U.S. 460 (2012), and any sentence of life in prison without parole for a juvenile nonhomicide offender, *Graham v. Florida*, 560 U.S. 48 (2010).

But this Court has never interpreted the Eighth Amendment to preclude a mandatory sentence of fifty years in prison for a juvenile homicide offender. Still, the Missouri Court of Appeals held that this sentence is unconstitutional for any juvenile because it is the “functional equivalent” of a sentence of life without parole. *In re Allen v. Norman*, slip op. S.D. 35655 at *3-*6 (Mo. App. S.D. Nov. 27, 2018). It remanded for resentencing, either for a discretionary sentence of fifty years, or to reduce the conviction to second-degree murder, which has a minimum sentence of only ten years. *Id.* at *7.

The court thus expanded the Eighth Amendment and this Court’s precedents to—with no basis in the Constitution—require the State to give a heinous murderer early parole eligibility.

The petitioner warden requests additional time to petition for review because this case raises several significant issues to brief. This case has also now been transferred to the Solicitor General of the Missouri Attorney General's Office to represent the State's interests in this Court. But the

Solicitor General has been heavily engaged in the press of business in this Court as well as the other federal state courts, and asks additional time to research and draft the petition

For these reasons, the warden requests that an order be entered extending their time to petition for certiorari here by 30 days, to and including July 3, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, counsel for Petitioner and a member of the Bar of this Court, hereby certify that a copy of this application for extension of time to petition for writ of certiorari here was mailed, first-class postage prepaid, to counsel for the respondent.

/s/ D. John Sauer

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