

CAPITAL CASE

App. No. ____

In the Supreme Court of the United States

CRAIG M. WOOD,
Petitioner,

v.

STATE OF MISSOURI
Respondent.

**APPLICATION TO EXTEND TIME TO FILE PETITION FOR A WRIT OF
CERTIORARI FROM DECEMBER 2, 2019 TO JANUARY 3, 2020**

To the Honorable Justice Gorsuch:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30, petitioner Craig M. Wood respectfully requests that the time to file a petition for a writ of certiorari in this case be extended for 32 days to and including January 3, 2020. The Supreme Court of Missouri rendered its opinion on July 16, 2019. *See App. A, infra.* It denied a timely motion for rehearing on September 3, 2019. *See App. B, infra.* Absent an extension of time, the petition would be due on December 2, 2019. Petitioner is filing this application more than ten days before that date. *See Sup. Ct. R. 13.5.* This Court has jurisdiction under 28 U.S.C. § 1257 to review this case.

BACKGROUND

This case presents an important question about the right to a unanimous jury verdict at the penalty phase of a capital case. Missouri employs an unusual sentencing scheme that permits a judge to impose the penalty of death if a jury

deadlocks on the issue of punishment. As relevant here, Missouri's statute provides that at the sentencing phase in a capital case, the trier of fact shall declare the punishment as life without the possibility of parole (and not death):

- (1) If the trier finds by a preponderance of the evidence that the defendant is intellectually disabled; or
- (2) If the trier does not find beyond a reasonable doubt at least one of the statutory aggravating circumstances set out in subsection 2 of section 565.032; or
- (3) If the trier concludes that there is evidence in mitigation of punishment, including but not limited to evidence supporting the statutory mitigating circumstances listed in subsection 3 of section 565.032, which is sufficient to outweigh the evidence in aggravation of punishment found by the trier; or
- (4) If the trier decides under all of the circumstances not to assess and declare the punishment at death. If the trier is a jury it shall be so instructed.

If the trier assesses and declares the punishment at death it shall, in its findings or verdict, set out in writing the aggravating circumstance or circumstances listed in subsection 2 of section 565.032 which it found beyond a reasonable doubt. If the trier is a jury it shall be instructed before the case is submitted that if it is unable to decide or agree upon the punishment the court shall assess and declare the punishment at life imprisonment without eligibility for probation, parole, or release except by act of the governor or death. The court shall follow the same procedure as set out in this section whenever it is required to determine punishment for murder in the first degree.

Mo. Ann. Stat. § 565.030(4). The key language provides that if the jury "is unable to decide or agree upon the punishment," then the task of choosing either death or life without parole falls to the court, which "shall follow the same procedure" as the jury.

Ibid.

In this case, after petitioner was convicted of first-degree murder, the jury found that aggravating circumstances were present. It also stated it did not unanimously find that the mitigating evidence outweighed the aggravating evidence.

However, the jury deadlocked as to whether to impose the death penalty. Under the statutory scheme, the question was thus taken away from the jury and given to the trial judge. The trial judge addressed the matter orally (*see* App. C, *infra*), and likewise determined that aggravating circumstances were present, and further determined that the mitigating evidence did not outweigh the aggravating circumstances and declined to exercise mercy, sentencing petitioner to death. In making this decision, the trial court stated that it “does accept and agree[] with the factual findings of the jury . . . Specifically, this Court finds beyond a reasonable doubt the State did prove six statutory aggravating circumstances.” App. C at 4166. The court then “further [found] the facts and circumstances in mitigation of punishment were not sufficient to outweigh facts and circumstances in aggravation of punishment.” *Ibid*. The court then determined that it was “required to consider both life imprisonment, without the possibility of probation or parole, and death as possible punishments for the defendant.” *Id.* at 4166-67. The court found, “after considering the totality of the evidence presented in both the guilt and penalty phases of the trial, the factual findings of the jury, and following the procedures set out in the Missouri statute,” that a sentence of death was warranted because, in the court’s view, this was “an extreme case.” *Id.* at 4167-68.

Petitioner had challenged the constitutionality of Missouri’s procedure in pre-trial and post-trial motions. Specifically, petitioner argued that by permitting the judge to impose a sentence of death when the jury could not agree on one, Missouri’s statute rendered the jury’s verdict effectively advisory. Petitioner argued that this

violated both the Sixth Amendment right to have punishment determined by a jury, and the Eighth Amendment right to be free from cruel and unusual punishment because Missouri's approach is an outlier from a consensus requiring unanimous jury findings to support a death sentence. Petitioner also argued that Missouri's aggravating circumstances do not provide sufficient guidance to courts to narrow the category of death-eligible inmates, as required by the Eighth Amendment. Petitioner raised these arguments, together with other evidentiary issues, in an appeal to the Supreme Court of Missouri.

The state supreme court affirmed the sentence of death. The court held that the Constitution only requires the jury (as opposed to the judge) to find the presence of aggravating circumstances. Once the jury makes that finding, the court held, the judge can impose the sentence of death. Specifically, the court held that “[a]fter the jury found the existence of multiple aggravating circumstances beyond a reasonable doubt, the determination of whether [petitioner’s] personal circumstances mitigated the brutality of his crime was a discretionary judgment call that neither the state nor federal constitution entrusts exclusively to the jury.” App. A at 28. The court noted, in a footnote at the end of that holding, that two state supreme courts—in Delaware and Florida—had concluded otherwise. *See id.* at 28 n.12 (citing *Rauf v. State*, 145 A.3d 430 (Del. 2016) (en banc) (per curiam), and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016) (per curiam)). But the Missouri court split with that authority, stating definitively that “[t]hese cases are not binding, and both are wrongly decided.” *Ibid.* The court also rejected petitioner’s Eighth Amendment arguments.

The Supreme Court of Missouri denied a timely petition for rehearing on September 3, 2019. *See* App. B.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a petition for a writ of certiorari should be extended for 32 days, to January 3, for several reasons.

First, petitioner only recently (last week) retained undersigned counsel for the filing of a petition for a writ of certiorari before this Court. This case involves at least three potential questions under the federal Constitution. Additional time is necessary for counsel to review the record in the case as well as the decisions of other state courts of last resort in order to prepare a clear and concise petition for the Court's review.

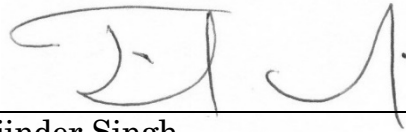
Second, no prejudice would result from the extension. Whether the deadline to file the petition is extended or not, the petition will be ruled upon this Term and, if the petition is granted, the case would almost certainly be argued next Term.

Third, the petition is likely to be granted. At a minimum, the Sixth Amendment question in this case squarely implicates a conflict among state courts of last resort about capital defendants' right to have the factual issues underlying their sentences determined by a jury.

CONCLUSION

For the foregoing reasons, the time to file a petition for a writ of certiorari should be extended for 32 days to and including January 3, 2020.

Respectfully submitted,



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