

No. _____

In the Supreme Court of the United States

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GREG SKIPPER, WARDEN, PETITIONER

v.

CURTIS JEROME BYRD

MOTION TO EXTEND TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit

Pursuant to Supreme Court Rules 30.2 and 13.5, Warden Greg Skipper respectfully seeks a 30-day extension of time, until February 5, 2020, in which to file a petition for a writ of certiorari in *Byrd v. Skipper*, No. 2:15-cv-13528 (6th Circuit).

1. Curtis Byrd filed a habeas corpus petition alleging that he was being held in violation of his Sixth Amendment right to effective assistance of counsel on his conviction for first-degree felony murder, assault with intent to rob while armed, and felony-firearm.

In his petition, Byrd raised both an ineffective-assistance-of-trial-counsel claim and an ineffective-assistance of appellate-counsel claim.

2. The district court initially dismissed all but one of Byrd's habeas claims—his ineffective-assistance claim. After an evidentiary hearing, the district court denied habeas on that claim as well.

3. Byrd appealed the denial of habeas only on the ineffective-assistance claim to the Sixth Circuit, which reversed the district court's denial of habeas in a 2-1 decision.

4. Consistent with Supreme Court Rule 10, the State of Michigan plans to file a petition for a writ of certiorari because this case presents the substantial question of whether the decision below conflicts with the relevant decisions of the United States Supreme Court. Rule 10(c).

5. The decision in *Byrd* conflicts with the Supreme Court's decisions in *Missouri v. Frye*, 566 U.S. 134 (2012) and *Lafler v. Cooper*, 566 U.S. 156 (2012).

Lafler and *Frye* define the scope of the Sixth Amendment right to counsel with respect to plea bargains.

6. The decision below also creates a circuit split. Rule 10(a) Notably, now-Justice Gorsuch explained while on the 10th Circuit that it would be a "novel reading" of *Lafler* and *Frye* to determine that trial counsel was deficient for failing to request a favorable guilty plea when no plea had been offered. *United States v. Rendon-Martinez*, 497 F. App'x 848, 849 (10th Cir. 2012) (Gorsuch, J.).

7. The State of Michigan plans to raise the following significant question in its petition for a writ of certiorari:

Does the Sixth Amendment right to effective assistance of counsel include the right to a plea offer that was never made?

8. On November 4, 2019, the Sixth Circuit ordered that the mandate be stayed to allow Appellee Greg Skipper time to file a petition for a writ of certiorari.

9. Pursuant to Rule 13.5, good cause exists for an extension. The due date, 90 days from the issuance of the mandate, is January 6, 2020, which falls directly after the holidays and thus, after a number of days where state offices are closed. That timing, combined with the press of business in the office, makes the January 6, deadline difficult.

10. Pursuant to Rule 30.2, this extension is being sought more than 10 days before the specified final filing date of January 6, as computed under Supreme Court Rules.

In sum, Michigan requests that the Court extend the time in which to file a petition for writ of certiorari until February 5, 2020.

Respectfully submitted,

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