

Capital Case

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JAMES DWIGHT PAVATT,

Petitioner/Applicant,

v.

TOMMY SHARP, Interim Warden,
Oklahoma State Penitentiary,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

**PETITIONER'S APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR A WRIT OF CERTIORARI**

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ATTORNEYS FOR JAMES DWIGHT PAVATT

September 6, 2019

* Counsel of Record

**PETITIONER’S APPLICATION FOR EXTENSION OF
TIME TO FILE PETITION FOR A WRIT OF CERTIORARI**

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

In accordance with Rules 13.5, 22, 30.2, and 30.3 of the Rules of the Supreme Court of the United States, and for the reasons set forth herein, Petitioner/Applicant, James Dwight Pavatt, respectfully applies to this Court for an order extending the time in which to file his petition for a writ of certiorari from September 25, 2019, until November 25, 2019, a period of sixty (60) days. In support of this Application, Petitioner shows the Court as follows:

BACKGROUND

Mr. Pavatt is incarcerated under a conviction of First Degree Murder for which he has been sentenced to death. On July 2, 2018, the United States Court of Appeals for the Tenth Circuit issued an amended *nunc pro tunc* opinion in Case No. 14-6117, wherein the circuit court affirmed in part and denied in part the original judgment entered by the United States District Court for the Western District of Oklahoma in Case No. CIV-08-470-R. *See* Opinion attached hereto as Attachment 1. Respondent sought rehearing, and the Tenth Circuit Court of Appeals granted en banc rehearing on October 2, 2018. *See* Order attached hereto as Attachment 2. On June 27, 2019, the United States Court of Appeals for the Tenth Circuit issued a published opinion in Case No. 14-6117, wherein the circuit court, en banc, vacated the prior panel opinion, affirmed the original judgment entered by the United States District Court for the Western District of Oklahoma, and denied Mr. Pavatt’s request for additional COA. *See* Opinion and Judgment, attached hereto as Attachment 3.

ARGUMENT AND AUTHORITIES

Petitioner now seeks a writ of certiorari to the United States Court of Appeals for the Tenth Circuit with respect to its decision rendered on June 27, 2019, as referenced above. This Court's jurisdiction to grant the same arises pursuant to 28 U.S.C. §1254(1).

According to Supreme Court Rule 13.3, a petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit is due on or before September 25, 2019. *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”).

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.*

¹ No execution date has been set. Thus, an extension of time will not create an unreasonable delay in the administration of justice.

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 or greater import. Thus, it is important that counsel be granted additional time to research the constitutional issues at hand so that counsel may prepare Mr. Pavatt's petition with the care and accuracy demanded of such cases.

Mr. Pavatt's counsel, Sarah M. Jernigan and Patti P. Ghezzi, are Assistant Federal Public Defenders with the Capital Habeas Unit of the Office of the Federal Public Defender for the Western District of Oklahoma. The division's exclusive responsibility is to represent clients who have been sentenced to death in the state of Oklahoma and who have exhausted all of their state appeals. Both counsel are presently lead or co-counsel for the federal representation of multiple death row inmates including Mr. Pavatt. Obligations on behalf of many of these clients have precluded counsel from being able to direct their full time and attention to the preparation of a petition of a writ of certiorari on Petitioner's behalf. Therefore, even if counsel exercise due diligence and give priority to preparing the petition, it will not be possible to file the petition on time without compromising cases.

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 efficiently and effectively prepare the petition for certiorari on Mr. Pavatt's behalf.

WHEREFORE, in the interest of justice and for good cause shown, counsel submit that a reasonable extension of time should be granted to complete Mr. Pavatt's petition. Counsel respectfully request this Court extend the current September 25, 2019 deadline until November 25, 2019.

Respectfully submitted,

s/ Sarah M. Jernigan

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