

No. \_\_\_\_\_

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**IN THE SUPREME COURT OF THE UNITED STATES**

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GARY R. TOMEY, II,

*Petitioner,*

v.

MARK S. INCH,

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

*Respondent.*

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**ON PETITION FOR WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT  
COURT OF APPEALS**

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

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Counsel for the Petitioner

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

### **Introduction**

Pursuant to this Court's Rule 13.5, the Petitioner, Gary R. Tomey, II, respectfully requests a sixty-day extension of time within which to file a petition for a writ of certiorari in this Court, to and including December 23, 2019.

### **Jurisdiction**

The opinion of the Eleventh Circuit Court of Appeals affirming the Petitioner's conviction and sentence was entered on July 26, 2019. Unless extended, the time within which to file a petition for a writ of certiorari would expire on October 24, 2019.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). A copy of the opinion of the Eleventh Circuit Court of Appeals is included in the appendix to this motion.

### **Argument**

The issue in this case is whether the court of appeals erred by denying the claims raised on direct appeal: 1) whether the district court erred by denying the Petitioner's motion for a judgment of acquittal, 2) whether the district court erred providing a jury instruction that amounted to a constructive amendment and/or material variance of the indictment, and 3) whether the district court erred in improperly considering the Petitioner's "lack of remorse" during the sentencing hearing.

Unfortunately undersigned counsel's schedule requires him to seek an extension of time in this case. In particular, during the next three months, undersigned counsel will be attending five oral arguments before Florida appellate courts, three postconviction evidentiary hearings before Florida circuit courts, one juvenile resentencing hearing, and two committee meetings.<sup>1</sup>

Additionally, since the order of the Eleventh Circuit Court of Appeals affirming the Petitioner's conviction and sentence was entered, undersigned counsel was out of his office for two separate weeks traveling with his family, undersigned counsel lectured at a continuing legal education seminar, and undersigned counsel participated two postconviction evidentiary hearings before Florida circuit courts and one oral argument before a Florida appellate court.

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<sup>1</sup> Undersigned counsel will appear at the juvenile resentencing hearing on November 1, 2019, in *State v. Andrews*, case number 2005-CF-2555, pending before the Florida Second Judicial Circuit Court (Leon County). Undersigned counsel will also appear at the following oral arguments: 1) September 12, 2019, in *Jaboin v. State*, case number 1D18-0308, pending before the Florida First District Court of Appeal; 2) September 18, 2019, in *Traffanstead v. State*, case number 1D18-0874, pending before the Florida First District Court of Appeal; 3) October 15, 2019, in consolidated cases *State v. Kluttz* and *State v. Petagine*, case numbers 1D18-2086 and 1D18-2215, pending before the Florida First District Court of Appeal; 4) November 5, 2019, *Coicou v. State*, case number 2D17-3544, pending before the Florida Second District Court of Appeal; and, 5) November 12, 2019, *Levin v. State*, case number 5D18-0234, pending before the Florida Fifth District Court of Appeal. Finally, undersigned counsel will be appearing at the following postconviction evidentiary hearings: 1) October 4, 2019, in *State v. Tipton*, case number 2013-CF-15413, pending before the Florida Ninth Judicial Circuit Court (Orange County); 2) October 29, 2019, in *State v. Brown*, case number 2014-CF-8858, pending before the Florida Ninth Judicial Circuit Court (Orange County); and, 3) November 13, 2019, in *State v. Tolliver*, case numbers 2012-CF-3824 and 2012-CF-4012, pending before the Florida Fifth Judicial Circuit Court (Marion County).

Therefore, the Petitioner requests an extension of sixty days to file the petition for a writ of certiorari. No party will be prejudiced by the granting of a sixty-day extension in this case.

Accordingly, the Petitioner respectfully requests that an order be entered extending the time to petition for writ of certiorari by sixty days.

Respectfully submitted,

/s/ Michael Ufferman  
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Counsel for the Petitioner

## CERTIFICATE OF SERVICE

I, Michael Ufferman, a member of the Bar of this Court, hereby certify that on the 17th day of September, 2019, a copy of this Application For Extension of Time To File A Petition For A Writ Of Certiorari in the above-entitled case was mailed, first class postage prepaid, to the United States Attorney's Office, 111 North Adams Street, Fourth Floor, Tallahassee, Florida 32301 (counsel for the Respondent herein). I further certify that all parties required to be served have been served.

/s/ Michael Ufferman  
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