

No. _____

IN THE
Supreme Court of the United States

JEFFREY CLARK,

PETITIONER,

v.

STATE OF LOUISIANA,

RESPONDENT.

ON PETITION TO THE LOUISIANA SUPREME COURT

APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE

G. BEN COHEN*
BLYTHE TAPLIN
1024 ELYSIAN FIELDS
NEW ORLEANS, LA 70116
(504) 529-5955
bcohen@defendla.org

* *Counsel of Record*

**Application for Extension of Time
In Which to File a
*Petition for a Writ of Certiorari***

To: The Honorable Justice Samuel A. Alito, Jr., Circuit Justice for the Fifth Circuit, which includes the State of Louisiana.

Applicant, Jeffrey Clark, respectfully requests an extension of 60 days in which to file his petition for writ of certiorari challenging the decisions of the Louisiana Supreme Court, *State v. Clark*, 2019 La. Lexis 1618 (6/28/2019) rehearing denied *State v. Clark*, 2019 La. LEXIS 1932 (La., Sept. 6, 2019) on remand from this Court in *Clark v. Louisiana*, 138 S. Ct. 2671, 201 L. Ed. 2d 1066, 2018 U.S. LEXIS 3953 (U.S., June 25, 2018) seeking certiorari from *State v. Clark*, 220 So. 3d 583, 2016 La. LEXIS 2512 (La., Dec. 19, 2016). Petitioner invokes this Court's jurisdiction to grant the Petition for a Writ of Certiorari to the Louisiana Supreme Court on the basis of 28 U.S.C. § 1257.

In support of this application, counsel states as follows:

1. Mr. Clark is indigent, was appointed counsel at trial, and has been represented on appeal throughout as an indigent person.
2. Petitioner's conviction and death sentence was initially affirmed by the Louisiana Supreme Court on December 12, 2016. See *State v. Clark*, 2012-0508 (La. 12/19/16), 220 So. 3d 583. Counsel raised four issues in the petition for certiorari including:

4. Whether the Louisiana Supreme Court's rule -- that an indigent defendant must accept his trial counsel's decision to concede his guilt of second degree murder over his express objections or represent himself -- vitiates the voluntariness of petitioner's waiver of counsel?

State v. Clark, Pet. for Certiorari, 16-9541.

3. This Court, on June 25, 2018, issued an opinion granting certiorari, vacating the decision below, and remanding the case:

On petition for writ of certiorari to the Supreme Court of Louisiana. Motion of petitioner for leave to proceed in forma pauperis and petition for writ of certiorari granted. Judgment vacated, and case remanded to the Supreme Court of Louisiana for further consideration in light of *McCoy v. Louisiana*, 584 U.S. ___, 138 S. Ct. 1500, 200 L. Ed. 2d 821 (2018).

Clark v. Louisiana, 138 S. Ct. 2671 (2018).

4. Argument on issue was considered by the Louisiana Supreme Court on March 26, 2019. Counsel argued that the *Farettta* colloquy engaged in by the District Court was constitutionally invalid, because the district court was under the view of law then prevailing in Louisiana – that it was counsel not the client's decision whether to waive culpability and concede guilt.

5. The Louisiana Supreme Court rendered its opinion on June 28, 2019. See Appendix A, Pet. App. 1a-8a, Opinion of the Louisiana Supreme Court in *State v. Clark*, (La. 6/28/2019) ___ So 2d. ___, 2019 La. Lexis 1618.

6. The Louisiana Supreme Court resolved the case against petitioner by holding observing that this Court's decision in *McCoy v. Louisiana* did not change the analysis of the *Farettta* colloquy:

We previously approved of this extensive *Farella* colloquy in *State v. Clark*, 12-0508, pp. 62–63 (La. 12/19/16), 220 So.3d 583, 637–639, and the United States Supreme Court’s decision in *McCoy v. Louisiana*, 584 U.S. —, 138 S.Ct. 1500, — L.Ed.2d — (2018), does not render it deficient even in hindsight.

State v. Clark, Appendix A, pet. app. at 8a. It appears from initial review that the Louisiana Supreme Court failed to follow the directives of this Court on remand. Additional time is necessary to determine whether other courts have conducted the analysis foregone by the Louisiana Supreme Court.

7. While the Opinion was a *per curiam*, it was joined by Justice Guidry who had resigned his position prior to the issuance of the opinion.

8. Rehearing was sought based upon, *inter alia*, the Court’s reliance on an opinion signed by a Justice who had resigned his position and taken a position on the federal bench, which under state law prohibited him from participating in state court determinations.

9. Rehearing was denied on September 6, 2019. *See Appendix B, Pet. App. 10a*, Louisiana Supreme Court decision Denying Rehearing in *State v. Clark*, 2019 La. LEXIS 1932 (La., Sept. 6, 2019).

10. Counsel must also assess the continued validity of the question in his initial petition:

Whether the Louisiana Supreme Court erred in upholding petitioner’s death sentence, when the jury made only one of the two statutory required jury findings beyond a reasonable doubt? *Clark v. Louisiana*, 16-9541, Pet. for Certiorari, at i (1).

11. Given the ascension of Louisiana Supreme Court Justice Guidry to the Eastern District of Louisiana prior to the issuance of the opinion in this case, counsel

must also assesses the ripeness of claims under *Yovino v. Rizo*, 139 S. Ct. 706 (2019) and *Williams v. Pennsylvania*, 136 S. Ct. 1899 (2016).

12. Counsel has contacted counsel for Respondents, who indicates that she has no opposition to the request for additional time.

13. For these reasons, the applicant respectfully requests the entry of an order extending his time to file for a writ of certiorari until February 4, 2020.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully Submitted,



G. Ben Cohen*
Blythe L. Taplin
THE PROMISE OF JUSTICE INITIATIVE
1024 ELYSIAN FIELDS
NEW ORLEANS, LA. 70117
504-529-5955
bcohen@defendla.org

*COUNSEL OF RECORD

Dated: November 6, 2019