

No.

In The

Supreme Court of the United States

J'Veil Outing
Applicant

v.

Connecticut Commissioner of Corrections
Respondent

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

To the Honorable Ruth Bader Ginsburg
Associate Justice of the United States Supreme Court
and Circuit Justice for the Second Circuit

Lisa J. Steele
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Attorney for J'Veil Outing

To the Honorable Ruth Bader Ginsburg, Associate Justice of the United States Supreme Court and Circuit Justice for the Second Circuit:

Applicant Defendant, J'Veil Outing ("Outing") respectfully requests an extension of time to file a petition for writ of certiorari. Sup. Ct. R. 13.5. The current deadline for Outing to file his petition is Tuesday, December 10, 2019, which is ninety (90) days from September 12, 2019, the date when the Connecticut Supreme Court denied Outing's Petition for Certification. For good cause set forth herein, Outing asks that this deadline be extended by forty-two (42) days so that the new deadline would be Friday, January 31, 2020.

BACKGROUND

This case arises from the June 23, 2005, murder of Kevin Wright in New Haven, Connecticut. Four days after the shooting, two alleged eyewitnesses identified Outing as the culprit in a non-blind, simultaneously presented photographic array.¹ Outing was arrested and charged with the murder. He was convicted by a jury after six days of deliberations and was sentenced to 50 years incarceration.

In 2010, his conviction was affirmed by the Connecticut Supreme Court. *State v. Outing*, 298 Conn. 34, 3 A.3d 1 (2010) (*Outing I*).

Outing filed a state petition for habeas corpus asserting, *inter alia*, that trial counsel had provided ineffective assistance of counsel. See *Strickland v. Washington*, 466 U.S. 668, 684-686 (1984). The habeas court found that trial counsel made a reasonable tactical decisions and denied

¹Three months later, in September, 2005, the Connecticut Supreme Court decided *State v. Ledbetter*, 275 Conn. 534, 881 A.2d 290 (2005) which created a cautionary jury instruction to be given if police did not give witnesses certain admonishments before they were presented with an identification procedure. Within a month, the Connecticut State's Attorney's Office promulgated identification forms incorporating those admonishments to Connecticut's police departments. Outing did not receive the benefit of the instructions to the witnesses in his case.

Outing's habeas petition. The Connecticut Appellate Court agreed. *Outing v. Commissioner*, 190 Conn. App. 510, 211 A.3d 1053 (2019) (*Outing II*). The Connecticut Supreme Court denied certification.

This was a close case. The jury deliberated for six days before convicting Outing. As noted above, Outing's case unfortunately was decided two years before a landmark Connecticut decision, *State v. Guilbert*, 306 Conn. 218, 49 A.3d 705 (2012), upending decades of case law disfavoring eyewitness identification expert testimony.

Outing was deprived of his federal constitutional right to due process and the assistance of counsel by his trial attorney's failures to preserve an appellate issue and to investigate and present alibi witnesses.

OPINIONS BELOW

The order of Connecticut Superior Court denying Outing's state habeas petition is reproduced at Appendix A. The Opinion of the Connecticut Appellate Court is reproduced at Appendix B. The Order of the Connecticut Supreme Court denying certification is reproduced at Appendix C.

JURISDICTION

The Connecticut Appellate Court entered judgment on June 11, 2019. On September 11, 2019, the Connecticut Supreme Court denied a timely filed petition for certification. This Court will have jurisdiction over any timely filed petition for certiorari in this case under 28 U.S.C. § 1257(a). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for writ of certiorari is due on December 10, 2019. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for said petition.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution of the United States, amendment VI provides:

In all criminal prosecutions, the accused shall enjoy the right to . . . have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Constitution of the United States, amendment XIV, section 1, provides:

No State shall . . . deprive any person of life, liberty, or property, without due process of law.

REASONS EXTENSION IS JUSTIFIED

Supreme Court Rule 13.5 provides that “An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified.” Sup. Ct. R. 13.5. The specific reasons why an extension of time is justified are as follows:

1. The undersigned was first assigned to this case on or about November 20, 2019, replacing the assigned attorney who represented Outing in the Connecticut habeas appeal. Counsel had oral argument in the Connecticut Appellate Court in another case on November 21, 2019. After that argument, counsel immediately turned to gathering the underlying habeas transcripts and pleadings, and the habeas appellate briefs and pleadings in order to prepare this petition. Counsel received the last of the habeas transcripts from predecessor counsel on November 26th. Counsel has written to her client, but not yet met him in person.

2. The undersigned has a small practice dedicated to indigent criminal appeals in Massachusetts and Connecticut, with limited access to Westlaw and other legal databases from her office. The local law library will be closed and/or have shortened hours from November 27th to November 29th, restricting the undersigned’s ability to access databases such as Westlaw and

Lexis to prepare this petition.

3. In light of the upcoming Thanksgiving holiday, counsel will not have full use of the few remaining days before the deadline for this petition for research and drafting.

4. The undersigned has a small practice and is the only attorney in her office admitted to this Court's bar. This case will receive priority until the petition is drafted; however, counsel has pre-existing obligations to other clients including a long-scheduled evidentiary hearing on December 11th which she must prepare for and attend.

In light of the upcoming December holidays, an extension of time until January 31st will give counsel time to research, draft, and file the petition in this matter.

CONCLUSION

For the foregoing reasons and good cause shown, Outing respectfully requests that this Court grant this application for an extension of time up to and including January 31, 2020, to file a petition for writ of certiorari in this case.

/s/ _____
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CERTIFICATE OF SERVICE

Pursuant to Sup. Ct. R. 29.5(b), I certify that I have been appointed to represent Mr. Outing in this matter by the Connecticut Public Defender's Legal Services Unit. I further certify, that on November 27, 2019, I served the foregoing Application, pursuant to Rules 29.3 and 29.4(a), on counsel for the respondent, by depositing a copy of the same, first class, postage prepaid, in the United State mails, addressed to:

James A. Killen, Esq.
Office of the Chief State's Attorney
Appellate Bureau
300 Corporate Place
Rocky Hill, CT 06067

Pursuant to Rule 29.5, all parties required to be served have been served.

November 27, 2019

/s/
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