

No. _____

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

SAMUEL HOWARD,

Applicant,

v.

STATE OF NEVADA

Respondent.

**On Writ of Certiorari to the
Supreme Court of the State of Nevada**

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

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***Counsel of Record**

**To the Honorable Elena Kagan, Associate Justice of the United States
Supreme Court and Circuit Justice for the United States Court of Appeals for
the Ninth Circuit:**

Applicant Samuel Howard, through undersigned counsel and pursuant to Supreme Court Rules 13.5 and 30, moves for a 60-day extension of time in which to file his petition for writ of certiorari review. A certiorari petition is now due on or before December 19, 2019. Sixty days from December 19, 2019 would be February 17, 2020. February 17, 2020 is Washington’s Birthday, which is a legal public holiday. *See* 5 U.S.C. § 6103(a). Therefore, a 60-day extension would make the petition due by February 18, 2020. *See* Sup. Ct. R. 30.1

1. In the proceedings below, the Nevada Supreme Court issued its decision on September 20, 2019. *See* Ex. 1. This Court has jurisdiction to review the Nevada Supreme Court’s decision under 28 U.S.C. § 1257.

2. The instant application is timely. Supreme Court Rule 13 provides that a petition for writ of certiorari to review a judgment must be filed within 90 days from the date of entry of the judgment or order sought to be reviewed. Sup. Ct. R. 13.1. Ninety days from September 20, 2019—when the Nevada Supreme Court issued its opinion—is December 19, 2019. Applications for extension of time must be filed “at least 10 days before the specified final filing date as computed under these Rules[.]” Sup. Ct. Rule 30.2. This application is timely

because it is sent to the Clerk through the United States Postal Service by first-class mail, postage prepaid, bearing a non-commercial meter postmark showing that it was mailed before December 8, 2019. Sup. Ct. Rule 29.2.

3. Undersigned counsel's work obligations prevent him from adequately preparing the petition for certiorari by the current deadline.

4. Since the Nevada Supreme Court issued its decision below, undersigned counsel has had the following commitments to his clients, all of whom are under sentences of death.

5. On September 25, 2019, counsel filed a motion to alter or amend judgment in *Pizzuto v. State*, Idaho Cty. Dist. Ct., No. CV 03-34748, along with a 20-page memorandum in support. Counsel filed a 21-page reply in support of that motion on November 14, 2019. On December 10, 2019, counsel will argue the motion in the Nez Perce County Courthouse, a proceeding for which he has been preparing for and which will take place in a location that is an approximately five-hour drive from his office.

6. On November 22, 2019, counsel filed a 40-page reply brief in *Hairston v. State*, Idaho Sup. Ct., No. 46665.

7. On December 2, 2019, counsel filed a 25-page response to a motion to dismiss in *Howard v. Gittere*, Clark Cty. Dist. Ct., No. 81C053867. Counsel will

fly to Las Vegas to present oral argument on the motion at a hearing on February 7, 2020.

8. As co-counsel, the undersigned contributed to and revised the petition for rehearing en banc in *Pizzuto v. Blades*, 9th Cir., No. 16-36082, which was filed on November 27, 2019.

9. In addition to those obligations, counsel has continuing duties to oversee investigations and conduct legal research in his other cases, all of which are capital.

10. Finally, counsel took pre-planned vacations from November 14–18 and November 27–30, 2019, and has a further pre-planned vacation scheduled for January 18–25, 2020.

11. The certiorari petition in this case will raise a substantial constitutional challenge to a death sentence implicating the complicated area of law related to Sixth Amendment questions surrounding which matters must be found by a jury in capital proceedings, a subject that is quickly evolving and has produced many opinions from courts around the country. As such, it will take considerable time to adequately research and draft the petition.

12. In light of the foregoing, an extension is warranted to allow counsel sufficient time to prepare and present to the Court the certiorari petition.

Accordingly, Mr. Howard respectfully requests that the Court grant him an additional 60 days in which to file his petition for writ of certiorari.

Respectfully submitted this 5th day of December 2019.

/s/ Jonah J. Horwitz

Jonah J. Horwitz

EXHIBIT 1

448 P.3d 567 (Table)

Unpublished Disposition

This is an unpublished disposition. See Nevada Rules of Appellate Procedure, Rule 36(c) before citing. Supreme Court of Nevada.

Samuel HOWARD, Appellant,

v.

The STATE of Nevada, Respondent.

No. 73223

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FILED SEPTEMBER 20, 2019

Attorneys and Law Firms

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ORDER OF AFFIRMANCE

*1 This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant filed his petition on October 5, 2016, more than thirty years after the remittitur issued on appeal from the judgment of conviction. See *Howard v. State*, 102 Nev. 572, 729 P.2d 1341 (1986). The petition was therefore untimely filed. See *NRS 34.726(1)*. Moreover, appellant acknowledges that he previously sought postconviction relief. The petition was therefore successive to the extent it raised claims that

were previously litigated and resolved on their merits, and it constituted an abuse of the writ to the extent it raised new claims that could have been raised earlier. See *NRS 34.810(2)*. Accordingly, the petition was procedurally barred absent a demonstration of good cause and actual prejudice, *NRS 34.726(1)*; *NRS 34.810(3)*, or a showing that the procedural bars should be excused to prevent a fundamental miscarriage of justice, *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

Appellant argues that he demonstrated good cause and prejudice sufficient to excuse the procedural bars because *Hurst v. Florida*, 136 S. Ct. 616 (2016), set forth a new retroactive rule that prohibits the reweighing of aggravating and mitigating circumstances when an aggravating circumstance is stricken by a reviewing court. We disagree. See *Castillo v. State*, 135 Nev., Adv. Op. 16, 442 P.3d 558 (2019) (rejecting the argument that *Hurst* announced new law regarding appellate reweighing).

Appellant also argues that the district court abused its discretion by denying his motion for leave to amend his petition to add an additional claim based on *Hurst*. We disagree. See *NRS 34.750(5)*; *State v. Powell* 122 Nev. 751, 758, 138 P.3d 453, 458 (2006) (recognizing that district courts are vested with broad discretion regarding supplemental pleadings in postconviction cases). We note that appellant concedes the merits of this claim are tied to his interpretation of *Hurst*, which we have rejected.

Having concluded that no relief is warranted, we

ORDER the judgment the district court AFFIRMED.

All Citations

448 P.3d 567 (Table), 2019 WL 4619525

Footnotes

- ¹ There are multiple pending motions in this case, filed by both parties, requesting that this court strike documents filed by the other party and/or rebuke the other party's attorney. We decline to take action on those motions. We do, however, remind counsel for both parties that using this court as a forum for airing personal and/or professional grievances is highly inappropriate. We caution counsel that similar conduct in the future may result in the imposition of sanctions.