

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

ERIC BARRASS,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

APPLICATION FOR EXTENTION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE
OF THE SUPREME COURT OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT

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INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

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SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

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**PETITIONER'S APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

Pursuant to Rules 13.5, 22, and 30.3 of the Rules of the Supreme Court of the United States, Petitioner Eric Barrass respectfully requests a sixty-day extension of time, to and including November 4, 2019, within which to file a petition for a writ of certiorari from the judgment of the United States Court of Appeals for the Eleventh Circuit. Mr. Barrass has not previously sought an extension of time.

Basis for Jurisdiction

The district court had jurisdiction of this case pursuant to 28 U.S.C. § 2254(a) because Mr. Barrass, a person in custody pursuant to the judgment of a court of the State of Florida, filed a petition for a writ of habeas corpus in the United States District Court for the Southern District of Florida claiming that he was being held in

custody in violation of the Constitution of the United States. On March 13, 2018, the district court denied Mr. Barrass's 28 U.S.C. § 2254 habeas corpus petition, disposing of all the claims between the parties to this cause.

Mr. Barrass timely appealed the dismissal of his habeas corpus petition pursuant to 28 U.S.C. §§ 1291 and 2253. On March 7, 2019, the United States Court of Appeals for the Eleventh Circuit affirmed the district court's decision. Mr. Barrass timely filed a petition for rehearing and rehearing *en banc*, which was denied on May 8, 2019.

Mr. Barrass is filing this Application at least ten days before the filing date for a petition for writ of certiorari, which is August 6, 2019. The jurisdiction of the Court will be invoked under 28 U.S.C. § 1254(1).

Judgment to be Reviewed and Opinions Below

A copy of the Eleventh Circuit's opinion affirming the district court's denial of Mr. Barrass's habeas corpus petition is attached as Appendix A-1. The Eleventh Circuit's order denying panel rehearing and rehearing *en banc* is attached as Appendix A-2.

Reasons for Granting an Extension

Mr. Barrass respectfully requests an additional sixty days in which to file his petition for writ of certiorari. Mr. Barrass is serving a 25-year sentence after a jury convicted him of Florida attempted second degree murder in the shooting of Timothy Cummings. Mr. Barrass and three friends, including Christopher Travis, got involved in a street brawl with Cummings and others in August 2006. The brawl

ended when Cummings got shot in the back. Mr. Barrass and his friends fled, but Mr. Barrass soon returned and confessed to shooting Cummings to law enforcement officers at the scene. Although police found a firearm in Mr. Barrass's car, no eyewitness ever saw him shoot a gun, and no gunshot residue was found on his hands.

At about the same time that Mr. Barrass was being arrested, Travis was confessing to at least four friends that he was the shooter, and within two weeks of the shooting gave a sworn, recorded statement to a defense investigator again confessing to being the person who shot Cummings. Travis then fled to California, violating his probation, and was ultimately extradited back to Florida. Pretrial, Travis invoked his Fifth Amendment privilege when the prosecutor threatened him with prosecution for shooting Cummings. The trial court sustained the State's objection to admission of Travis's pre-trial confessions, finding that they were inadmissible hearsay under state law because he stated that he shot Cummings to protect Mr. Barrass. Mr. Barrass testified at trial that he falsely confessed to the shooting in a misguided attempt to keep Travis, who was on probation, from having to go back to jail. The state appellate court affirmed in an unexplained *per curiam* decision.

The Eleventh Circuit affirmed the district court's denial of Mr. Barrass's § 2254 petition. Without mentioning this Court's recent decision in *Wilson v. Sellers*, 584 U.S. ___, 138 S. Ct. 1188 (2018), the court of appeals did not "look through" the state appellate court's unexplained affirmance to the reasoned decision of the trial

court. Instead, it relied instead on pre-*Wilson* circuit case law involving a *reasoned* state appellate court decision to conclude that the Florida courts did not overlook Mr. Barrass's *Chambers* claim. As a result of that decision, the court of appeals afforded deference under 28 U.S.C. § 2254(d) to the state court's rejection of that claim, rather than reviewing the claim *de novo*.

In *Wilson*, the Court overruled the Eleventh Circuit's *en banc* decision rejecting the "look through" doctrine. The Court has since granted the petition, vacated and remanded for reconsideration in light of *Wilson* in an Eleventh Circuit decision where the court of appeals ignored *Wilson*. See *Diez v. Jones*, 139 S. Ct. 138 (2018). Here, in light of the gravity of Mr. Barrass's lengthy sentence, the constitutional questions at issue, and the Eleventh Circuit's unwillingness to apply *Wilson* here, this case presents compelling grounds for a *certiorari* petition challenging the Eleventh Circuit's disposition of Mr. Barrass's appeal.

The press of undersigned counsel's other work, however, necessitates the request for an extension of time. Undersigned counsel was recently tapped to be the point person in the Southern District of Florida for advising Assistant Federal Public Defenders and counsel appointed under the Criminal Justice Act regarding the Court's recent decisions in *United States v. Davis*, 588 U.S. ___, 139 S. Ct. 2319 (2019) and *Rehaif v. United States*, 588 U.S. ___, 139 S. Ct. 2191 (2019). This duty involves helping set office policy, preparing sample pleadings, and advising counsel regarding the effect of these decisions on individual clients, and has required great deal of counsel's attention in addition to her regular caseload.

Undersigned counsel is also at present preparing the reply brief *Telly Kavantzas v. State of Florida*, 11th Cir. No. 17-15753, a 28 U.S.C. § 2254 appeal, which is due on July 24, 2019. Undersigned counsel is also currently preparing an amended 28 U.S.C. § 2254 petition in *Ponton v. Florida Dept. of Corr.*, S.D. Fla. Case No. 16-20059-Civ-Williams/Reid, which due on August 5, 2017. The Eleventh Circuit granted leave to amend Mr. Ponton's *pro se* petition challenging his 1981 convictions, and preparation of the petition has required counsel to review fifteen relevant prior federal proceedings filed by Mr. Ponton *pro se* in the district court – the first of which was filed nearly 30 years ago – as well as dozens of relevant state trial and postconviction proceedings.

Undersigned counsel is also preparing a status report that is due on August 2, 2019, in *Huntley Thompson v. Florida Dep't of Corr.*, S.D. Fla. Case No. 14-20471-CIV-Cooke, another 28 U.S.C. § 2254 habeas proceeding. For the past 27 years, Mr. Thompson has been serving a life sentence for a brutal home invasion/rape for which he has consistently asserted his innocence. Following the Eleventh Circuit's grant of a second or successive § 2254 habeas petition, the district court has granted leave to conduct DNA testing to demonstrate Mr. Thompson's innocence.

Mr. Barrass's certiorari petition is currently due on August 6, 2019. A sixty-day continuance would make the petition fall due on November 4, 2019. S. Ct. R. 30.1. This request is not for purposes of delay. Rather, undersigned counsel believes that additional time is needed for the careful preparation of the

petition for writ of certiorari in this matter. No party will be prejudiced by the grant of a sixty-day extension of time.

WHEREFORE, Petitioner respectfully asks this Honorable Court to grant a sixty-day extension of time within which to file a Petition for Writ of Certiorari, to and including November 4, 2018.

Respectfully submitted,

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