

No. _____

In the
Supreme Court of the United States

SHAWN ROGERS,

v.

STATE OF FLORIDA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA**

DIRECTED 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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February 26, 2018

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR
A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA**

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

Petitioner Shawn Rogers, respectfully requests, pursuant to Rule 13(5) of the Rules of this Court, for an extension of time of 44 days, to and including Friday, April 24, 2020, for the filing of a petition for a writ of certiorari to review the decision of the Florida Supreme Court dated September 5, 2019 (Exhibit 1), on which a timely motion for rehearing was denied on December 12, 2019 (Exhibit 2). The jurisdiction of this Court is based on 28 U.S.C. § 1257.

1. The date within which a petition for a writ of certiorari would be due, if not extended, is March 11, 2020. This application is being filed more than 10 days before that date.

2. Petitioner was charged with first-degree murder, and the State sought death. During the first-phase trial, petitioner was found guilty as charged.

During the second-phase trial, the State argued multiple aggravating factors existed; they were entitled to great weight; and they outweighed any mitigating circumstances. In response, petitioner argued the mitigating circumstances outweighed the aggravating factors.

The court subsequently instructed the jury that, to find an aggravating factor, the jury had to be convinced beyond a reasonable doubt that it existed. The court also

instructed the jury that, if it found an aggravating factor, it had to engage in a weighing process after making additional findings. Those additional findings included (1) whether the aggravating factors were sufficient to justify imposing the death penalty, and (2) whether those factors outweighed the mitigating circumstances. But the court did not inform the jury that, to make those additional findings, it had to reach a particular subjective state of certitude, such as beyond a reasonable doubt.

In its verdict, the jury found various aggravating factors and mitigating circumstances. It further found the aggravating factors were sufficient to warrant a death sentence and outweighed the mitigating circumstances. The jury also determined Petitioner should be sentenced to death. And the court later imposed a sentence of death.

On appeal before the Florida Supreme Court, petitioner argued his death sentence should be vacated because the trial court failed to instruct the jury to determine beyond a reasonable doubt (1) whether the aggravating factors were sufficient to justify imposing the death penalty, and (2) whether those factors outweighed the mitigating circumstances. More specifically, petitioner argued that, considering the operation and effect of Florida's capital sentencing scheme, those determinations must be made beyond a reasonable doubt because, under the Due Process Clause and the Sixth Amendment, they are the functional equivalents of elements.

In that context, petitioner highlighted a crucial distinction between Florida's capital sentencing scheme and the Arizona capital sentencing scheme at issue in *Ring*

v. Arizona, 536 U.S. 584 (2002). Further, petitioner contended that, even if the determinations at issue are not purely factual and involve normative judgment, they are subject to the constitutional requirement of proof beyond a reasonable doubt. Finally, petitioner asserted the trial court's failure to provide the necessary instruction amounted to fundamental error.

The Florida Supreme Court affirmed petitioner's death sentence. It held that determinations as to whether the aggravating factors are sufficient and outweigh the mitigating circumstances do not have to be made beyond a reasonable doubt. In support of that holding, the Florida Supreme Court reasoned those determinations "are not elements of the capital felony of first-degree murder." Instead, according to the Florida Supreme Court, those determinations are simply "required of a jury: (1) *before* the court can impose the death penalty for first-degree murder, and (2) *only after* a conviction or adjudication of guilt for first-degree murder has occurred."

3. Petitioner's Counsel of Record has been unable to complete the petition for a writ of certiorari in the present case because of filing deadlines in other capital cases. More specifically, since the Florida Supreme Court issued its denial of petitioner's motion for rehearing, petitioner's Counsel of Record has filed briefs in *Rocky Beamon v. State of Florida* (SC19-436) and *Scottie Allen v. State of Florida* (SC19-1313). Petitioner's Counsel of Record has also filed a motion for rehearing in *Rodney Newberry v. State of Florida* (SC18-1133). Further, in *Robert Craft v. State of Florida* (SC19-953), petitioner's Counsel of

Record is responsible for a brief that is currently due on March 2, 2020. Finally, petitioner's Counsel of Record is currently preparing for a March 4, 2020, oral argument in *Beamon v. State*. All of those referenced cases are capital direct appeals currently pending in the Florida Supreme Court.

4. This case presents substantial issues of law, among which are:

(1) whether, under the Due Process Clause and the Sixth Amendment, determinations—as to whether the aggravating factors are sufficient to justify imposing the death penalty, and whether those factors outweigh the mitigating circumstances—are the functional equivalents of elements;

(2) whether, in that context, there is a constitutionally significant distinction between those determinations and a determination as to whether “there are no mitigating circumstances sufficiently substantial to call for leniency,” Ariz. Rev. Stat. Ann. § 13-703(F) (West 2001), quoted in *Ring*, 536 U.S. at 593; and

(3) whether, even if criminal elements and their functional equivalents are not purely factual and involve normative judgment, they are subject to the constitutional requirement of proof beyond a reasonable doubt.

For the foregoing reasons, petitioner hereby requests that an extension of time to and including April 24, 2020, be granted within which petitioner may file a petition for a writ of certiorari.

Respectfully submitted,

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