
IN THE SUPREME COURT OF THE UNITED STATES

October Term 2021

JAMES E. BARBER

Applicant/Petitioner,

v.

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,

Respondent.

**Application for Extension of Time Within Which
to File a Petition For a Writ of Certiorari to
the United States Supreme Court**

**APPLICATION TO THE HONORABLE
CLARENCE THOMAS AS CIRCUIT JUSTICE**

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November 19, 2021

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APPLICATION FOR EXTENSION OF TIME

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

Pursuant to Rule 13.5 of the Rules of this Court, Applicant/Petitioner James E. Barber prays for a 60-day extension of time to file his petition for a writ of certiorari in this Court up to and including February 5, 2022. Respondent consents to this request.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Barber v. Comm'r, Ala. Dep't of Corr.*, 861 Fed. Appx. 328 (11th Cir. 2021), a copy of which is attached as Exhibit A.

JURISDICTION

On April 21, 2014, the Circuit Court of Madison County, Alabama denied Mr. Barber's petition for post-conviction relief. See ECF Nos. 15-58 at 37-80, 15-59 at 1-24. On April 10, 2015, the Alabama Court of Criminal Appeals affirmed the decision on appeal, see ECF No. 15-68 at 2-27, and the Alabama Supreme Court subsequently denied Mr. Barber's petition for a writ of certiorari, see *id.* at 138.

On March 8, 2019, the United States District Court for the Northern District of Alabama denied Mr. Barber's habeas petition. See *Barber v. Dunn*, 2019 WL 1098486 (N.D. Ala. Mar. 8, 2019). On June 25, 2021, the United States Court of Appeals for the Eleventh Circuit denied Mr. Barber's appeal, see *Barber v. Comm'r, Ala. Dep't of Corr.*, 861 Fed. Appx. 328 (11th Cir. 2021), and on September 8, 2021, it denied Mr. Barber's request for rehearing en banc in an unreported order, a copy of which is attached as Exhibit B.

This Court will have jurisdiction over any timely filed petition for a writ of certiorari in this case pursuant to 28 U.S.C. § 1257(a). The current deadline for filing such a petition is December 7, 2021. In accordance with Rule 13.5, Mr. Barber now files this application more than 10 days in advance of that date.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant/Petitioner James E. Barber respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Eleventh Circuit in this case, to and including February 5, 2020. An extension is warranted because of the importance of the issues presented and undersigned counsels' need for additional time to prepare a petition that will assist this Court in deciding whether to grant certiorari.

1. Mr. Barber is an inmate under a sentence of death in Alabama. During the penalty phase of Mr. Barber's trial, trial counsel failed to investigate and present any evidence regarding Mr. Barber's personal and family history of mental health issues and his exposure to multiple abusive and criminal role models as a child. Trial counsel also failed to adequately investigate and present evidence regarding the extent and severity of Mr. Barber's struggles with substance abuse.

2. Mr. Barber intends to file a petition for a writ of certiorari challenging the Eleventh Circuit's ruling that there was no reasonable probability that a jury would have recommended a different sentence, even though (1) the jury never heard any of the powerful mitigation evidence presented during postconviction proceedings, yet (2) one juror nevertheless voted in favor of a life sentence. As Mr.

Barber intends to explain in the petition for certiorari, moreover, the decision below conflicts with other authorities on important questions of federal law.

3. An extension of time is warranted because Mr. Barber's counsel, Jana D. Wozniak, is currently on parental leave. In addition, pre-existing professional commitments will inhibit Mr. Barber's other counsel from preparing a petition for a writ of certiorari by the current deadline of December 7, 2021. In particular, over the next month, Josh Fougere, the counsel of record and other supervising partner on this case, has lead responsibility for drafting briefs in *Novozymes North America, Inc. v. Danisco US Inc.*, No. 21-02184 (Fed. Cir.), and *Brady v. Bayer Corp.*, No. G060319 (Cal. Ct. App.), and for presenting oral argument in *Andrea Electronics Corporation v. Apple Inc.*, No. 21-01248 (Fed. Cir.) on December 8, 2021. Likewise, over the next month, Benjamin R. Brunner, the most senior associate on this case, has lead responsibility for drafting summary judgment briefs in *Raders v. Price*, LACV081205 (Iowa Dist. Ct.), and taking and defending a half dozen depositions in *Hobart v. RSM*, LACV095449 (Iowa Dist Ct.).

4. Under the circumstances, an extension of time for Mr. Barber to file a petition for a writ of certiorari is warranted given that this case involves the imposition of the death penalty and presents other exceptionally important constitutional issues. Mr. Barber therefore respectfully asks for an order granting his counsel the additional time needed to adequately prepare the petition.

5. Respondent consents to this request for a 60-day extension of time to file Mr. Barber's petition for a writ of certiorari.

Wherefore, Mr. Barber respectfully requests an order extending his time to file a petition for a writ of certiorari to and including February 5, 2022.

Respectfully Submitted,

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