

OCTOBER TERM, 2021

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CASE NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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JOSEPH ELLIOTT,

Petitioner,

v.

SECRETARY PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL.,

Respondents.

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**UNOPPOSED MOTION FOR EXTENSION OF TIME  
TO FILE PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

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PETITIONER, Joseph Elliott, through undersigned counsel, respectfully moves for an extension of forty-five (45) days to prepare and file his Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit. In support of this unopposed request, Petitioner respectfully submits:

1. The history of Petitioner's case is long and complex. Petitioner was convicted of involuntary deviate sexual intercourse, rape, and first-degree murder on October 28, 1994, in the Court of Common Pleas, Philadelphia County. *Commonwealth v. Elliott*, No. CP-51-CR-0910911-1994 (Ribner, J.) (*Elliott-1*). On October 28, 1994, after a brief penalty hearing, the jury sentenced Petitioner to death. The Pennsylvania Supreme Court affirmed Petitioner's convictions and death sentence on August 20, 1997. *Commonwealth v. Elliott*, 700 A.2d 1243 (Pa. 1997) (*Elliott-2*), *cert denied*, 524 U.S. 955 (1998).

2. On June 4, 1999, Petitioner filed a counseled amended petition for post-conviction relief under Pennsylvania's Post Conviction Relief Act (PCRA). On September 22, 2000, the PCRA court orally ordered an evidentiary hearing on Petitioner's claim that he was denied the effective assistance of counsel at his capital sentencing. While that hearing was pending, this Court decided *Atkins v. Virginia*, 536 U.S. 304 (2002) (finding the death penalty unconstitutional for individuals with intellectual disabilities). On June 8, 2003, Petitioner amended his PCRA petition to include an *Atkins* claim. Subsequent to the filing of the *Atkins* supplement, questions regarding Petitioner's competency to proceed in PCRA proceedings arose. Petitioner's case was continued for several years as a result of these competency questions. In 2008, all parties agreed that Petitioner was at that point competent to proceed. On February 26, 2010, the Commonwealth agreed that Petitioner was entitled to relief on his claim of ineffective assistance of counsel at the penalty phase and Petitioner agreed to withdraw his *Atkins* claim.

3. On May 28, 2010, the PCRA court granted Petitioner a new trial due to ineffective assistance of counsel for: 1) failing to meet with Petitioner prior to trial, and 2) failing to challenge testimony from the medical examiner. On November 21, 2013, the Pennsylvania Supreme Court reversed the PCRA court's grant of a new trial. *Commonwealth v. Elliott*, 80 A.3d 415, 450-51 (Pa. 2013) (*Elliott-4*), *cert. denied*, 135 S. Ct. 50 (2014). Petitioner was ultimately resentenced to life imprisonment on May 1, 2015.

4. On April 29, 2016, Petitioner filed a Petition for a Writ of Habeas Corpus in the United States District Court for the Eastern District of Pennsylvania, claiming that trial counsel was ineffective for failing to meet with him and that his Confrontation Clause rights were violated by out-of-court statements made by medical examiner personnel. On June 15, 2020, Magistrate Judge Timothy R. Rice issued a Report and Recommendation (R&R) that Petitioner's habeas

petition be denied, and the District Court adopted the R&R nine months later. *Elliott v. Wetzel*, No. 16-cv-2076, 2020 WL 8919201 (E.D. Pa. June 15, 2020), *report and recommendation adopted sub nom. Elliott v. Wetzel*, No. 16-cv-2076, 2021 WL 1061189 (E.D. Pa. Mar. 19, 2021). Petitioner filed an Application for a Certificate of Appealability with the United States Court of Appeals for the Third Circuit, which was denied. *See* Exhibit A. Petitioner's Petition for Rehearing En Banc was denied on October 25, 2021. *See* Exhibit B.

5. Petitioner, through undersigned counsel, wishes to file a Petition for Writ of Certiorari to seek this Court's review of the Third Circuit's judgment. Petitioner's certiorari petition is currently due on January 23, 2022. In accordance with this Court's rules, this request for an extension of time is made at least ten (10) days in advance of the current due date.

4. Petitioner's formerly capital case presents complex legal issues and involves more than 20 years of post-conviction proceedings. Substantial time is required to review the record and consider the issues that may be relevant to a petition for certiorari. Furthermore, counsel is a member of a federal defender services office responsible for numerous capital cases that have competing deadlines in various federal and state courts in the upcoming weeks. In particular, counsel is drafting a petition for certiorari in *Balentine v. Lumpkin*, No. 21A185, due January 28, 2022, and is involved in multiple depositions over the course of January in a capital habeas case being litigated in the Southern District of Ohio. Absent an extension, counsel will be prevented from devoting adequate time to the Petition here.

5. Under these circumstances, counsel respectfully requests that the Court grant this Motion and extend the time in which to file the Petition for Writ of Certiorari by forty-five (45) days, until March 9, 2022.

7. Petitioner's counsel has conferred with counsel for the Respondents, Federal Litigation Unit Supervisor for the Philadelphia District Attorney's Office Matthew Stiegler, who has indicated that the Respondents do not oppose this Motion.

WHEREFORE, Petitioner prays that the Court allow a forty-five (45) day extension for the preparation and filing of this Petition for Writ of Certiorari.

Respectfully submitted,

/s/ Stuart Lev

Stuart Lev\*

*Counsel of Record*

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Counsel for Petitioner, Joseph Elliott

\* member of the bar of this Court

Dated: January 7, 2022

## **CERTIFICATE OF SERVICE**

I, Stuart Lev, hereby certify that on this date, I served the foregoing upon the following persons by first class mail, postage prepaid:

Matthew Stiegler  
Supervisor, Federal Litigation Unit  
Philadelphia District Attorney's Office  
Three South Penn Square  
Philadelphia, PA 19107

/s/ Stuart Lev  
Stuart Lev

Dated: January 7, 2022