No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

DOMINIQUE SWOPES,

Petitioner,

V.

THE STATE OF OHIO

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Ohio

APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI

ERIKA CUNLIFFE*
JOHN T. MARTIN
LINDA HRICKO
310 Lakeside Avenue, Suite 200
Cleveland, OH 44113
(216) 443-7583
ecunliffe@cuyahogacounty.us

Counsel for Petitioner
Dominique Swopes
*Counsel of Record

To the Honorable Justice Brett M. Kavanaugh, Associate Justice of the

Supreme Court and Circuit Justice for the United States Court of Appeals for the

Sixth Circuit.

Petitioner Dominique Swopes asks for an extension of time in which to file a

petition for writ of certiorari. The Petition is currently due on December 13, 2021.

Petitioner requests a 60-day extension, until February 11, 2022. The judgment of the

Ohio Supreme Court denying Mr. Swopes' request for leave to appeal the decision of

the intermediate court of appeals (the Eighth District Court of Appeals of Ohio) was

entered on September 14, 2021 (the judgment was entered when the Ohio Supreme

Court denied a timely motion for reconsideration of the court's original denial of leave

to appeal which had been entered on July 6, 2021). Attached are copies of the

intermediate Court of Appeals decision, the decision of the Court of Appeals denying

reconsideration, and the Ohio Supreme Court's summary entries of July 6, 2021 and

September 14, 2021, respectively. This is a death penalty case currently awaiting

trial in the Cuyahoga County, Ohio, Court of Common Pleas.

The underlying decision of the Eighth District Court of Appeals is in the nature

of an order dismissing an interlocutory appeal taken by Mr. Swopes of a trial court

order that is allowing the prosecution in a capital case to consume evidence through

multiple iterations of DNA testing without providing the defense an opportunity to

perform testing of its own. The issue before this Court is whether due process under

the Fourteenth Amendment is denied a defendant who is unable to take an

interlocutory appeal of a trial court's decision that will completely consume the

evidence when it will be impossible after trial to allow for defense testing due to the complete consumption of the evidence. Integral to the due process consideration is an Ohio Rule of Criminal Procedure that guarantees capital defendants "full and complete" access to the evidence in a capital case.

Good cause exists for this requested extension. Undersigned counsel are engaged in the litigation of numerous other matters in the State courts of Ohio that require this request for additional time to effectively pursue the certiorari petition in this case.

Moreover, extraordinary circumstances exist to justify the filing of this motion less than ten days before the 90-day deadline for filing petitions for certiorari are required. See Rule 13 (motions for extension of time should be filed at least ten days before petition would be due, absent extraordinary circumstances). When the Ohio Supreme Court declined to hear the case, Mr. Swopes sought a writ of mandamus in the Eighth District Court of Appeals on September 28, 2021. Had that writ been granted, a petition for certiorari would have been unnecessary. It was only on November 29, 2021 that the relator trial judge replied to the complaint for a writ of mandamus and set forth his position that the writ action should be dismissed. It is possible that the writ action will be decided by the Eighth District Court of Appeals within the next 60 days and that the issue which needs to be presented to this Court will become moot (*i.e.* that the defense will be permitted to test the evidence).

For these reasons, Dominique Swopes requests a 60-day extension of time in which to file his petition for a writ of certiorari.

Respectfully submitted,

Erika Cunliffe

ERIKA CUNLIFFE*
JOHN T. MARTIN
LINDA HRICKO
310 Lakeside Avenue, Suite 200
Cleveland, OH 44113
(216) 443-7583
ecunliffe@cuyahogacounty.us

Counsel for Petitioner
Dominique Swopes
*Counsel of Record