

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2021

No. 21- _____

THOMAS ALEXANDER PORTER,

Petitioner,

v.

RICHARD E. WHITE, WARDEN,
Red Onion State Prison,

Respondent.

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APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the Fourth Circuit:

Pursuant to Supreme Court of the United States Rules 22 and 30.4, Petitioner Thomas Alexander Porter prays that an order be entered extending the time for filing a petition for a writ of certiorari—currently due May 10, 2022—for a period of sixty (60) days to and including July 9, 2022. This application is submitted more than ten days prior to the scheduled filing date for the petition. In support of this Application, Mr. Porter states the following:

Mr. Porter was convicted and sentenced to death by a jury in state court in Virginia for the killing of a law enforcement officer.¹ Mr. Porter has been found indigent, and provided appointed counsel at every stage of proceedings in state and federal court in this case. Counsel in the proceedings below included undersigned *pro bono* counsel.

¹ By legislation enacted on July 1, 2021, the death penalty was abolished in state courts in Virginia, and Mr. Porter's sentence was commuted to life without parole.

Mr. Porter's convictions and sentence were affirmed on appeal. *See Porter v. Commonwealth*, 661 S.E.2d 415 (Va. 2008). A petition for writ of habeas corpus was dismissed by the state court without an evidentiary hearing or discovery of any kind. *Porter v. Warden*, 722 S.E.2d 534 (Va. 2012) (per curiam).

Among other claims presented in federal proceedings pursuant to 28 U.S.C. § 2254, Mr. Porter asserted two claims. The first alleged a violation of *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548 (1984), during voir dire stemming from the failure of a juror to disclose: that multiple family members were law enforcement officers, including his brother who served in a jurisdiction adjacent to where the crime occurred; that multiple family members, including the juror's son, had been arrested for criminal behavior; and that multiple family members, including another brother who lived across the street from the juror, had been victims of violent crimes. The second claim alleged actual bias of the juror.²

The federal court dismissed these claims as a matter of law without an evidentiary hearing or discovery upon initial consideration, *Porter v. Davis*, No. 3:12-cv-550-JRS, 2014 WL 4182677 (E.D. Va. Aug. 21, 2014), and dismissed them again when the case was remanded by the United States Court of Appeals for the Fourth Circuit, *Porter v. Zook*, No. 3:12-cv-550, 2016 WL 1688765 (E.D. Va. Apr. 25, 2016). After the second dismissal, the Court of Appeals remanded the case again, ordering that an evidentiary hearing and further discovery be provided on the juror misconduct and bias claims. *Porter v. Zook*, 898 F.3d 408 (4th Cir. 2018). The district court subsequently held an evidentiary hearing on the claims, denied relief, and denied a certificate of appealability. *Porter v. Gilmore*, 479 F. Supp. 3d 252 (E.D. Va. 2020).

² Other than the fact that his brother was in law enforcement, all the other information the juror failed to disclose information about family members relevant to voir dire was discovered only after the second remand from the Court of Appeals.

After a notice of appeal was filed, the Court of Appeals granted Mr. Porter a certificate of appealability on both juror claims. On January 12, 2022, the Court of Appeals denied Mr. Porter's claims. *Porter v. White*, 23 F.4th 322 (4th Cir. 2022). On February 9, 2022, the Court denied rehearing and rehearing en banc. *Porter v. White*, 2022 LEXIS U.S. App. 3587 (4th Cir. 2022). On February 17, 2022, the Court issued its mandate.

Mr. Porter intends to file a petition for writ of certiorari pursuant to 28 U.S.C. § 1254. At present, his petition is due May 10, 2022. Mr. Porter requests an extension of sixty days pursuant to Rule 30.3., making his petition due on or before July 9, 2022. The additional time is needed for appointed and *pro bono* counsel to adequately evaluate and prepare bases for this Court's review, including the lower court's merger of the showing required for *McDonough* and "actual bias" claims, making it necessary for petitioners to establish "actual bias" in order to obtain relief under *McDonough*.

This extension of time is requested because:

(a) This case involves a conviction for a capital crime and the adequacy of voir dire for selection of a capital sentencing jury and warrants especially thorough research and careful drafting so as to properly present Petitioner's federal constitutional claims to this Court, including a comprehensive and accurate survey of the practices of other jurisdictions as appropriate to this case.

(b) Petitioner's counsel includes counsel representing Petitioner *pro bono*, who is employed full-time in private practice and must find the time to research and draft this petition outside that required by responsibilities related to his practice and firm.

WHEREFORE, Petitioner requests an order extending the time for filing his petition for a writ of certiorari to and including July 9, 2022.

Respectfully submitted,

/s/

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Certificate of Service

I hereby certify that on April 19, 2022, the foregoing Application for Extension of Time was filed via the Court's Electronic Filing System which provides a copy of the materials to:

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