

IN THE  
**Supreme Court of the United States**

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LEE E. STEPHENS, JR.,

*Applicant,*

*v.*

STEPHEN T. MOYER, *et al.*,

*Respondents.*

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**APPLICATION FOR EXTENSION OF TIME WITHIN WHICH  
TO FILE A PETITION FOR A 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 Rule 13.5, Applicant Lee Stephens, Jr. requests a 60-day extension of time, to and including September 22, 2023, within which to file a petition for a writ of certiorari in this case. The Fourth Circuit issued its order denying Stephens's certificate of appealability and entered judgment in this matter on December 16, 2022. *See* App. A. It denied Stephens's timely petition for panel rehearing and rehearing en banc on April 25, 2023. *See* App. B. Absent an extension of time, Stephens's petition for certiorari would be due on or before July 24, 2023. This application complies with Rules 13.5 and 30.2 because it is being filed ten days or more before the petition is due. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

1. Stephens was convicted of first-degree murder and sentenced to life with the possibility of parole in 1999 in Maryland state court, and then convicted of a second first-degree murder in 2012 and sentenced to life without the possibility of parole, also in Maryland state court. In seeking the death penalty for the second conviction, the State relied heavily on Stephens's 1999 conviction. The jury, however, declined to impose the death penalty and instead sentenced Stephens to life without the possibility of parole.

2. But in July 2013, the State agreed to vacate Stephens' 1999 conviction in exchange for an *Alford* plea to the first-degree murder charge and a sentence of time served. The State did so after it came to light that the 1999 conviction was constitutionally defective—the State's ballistics expert had falsified his credentials and the arresting police office had a substantial disciplinary file that was material and disclosable under *Brady v. Maryland*, 373 U.S. 83 (1963), but never disclosed. In part because Stephens's 2006 sentence was predicated on the unconstitutionally obtained 1999 conviction, Stephens sought postconviction relief on the 2006 conviction in Maryland state court. But the postconviction court denied relief.

3. On February 16, 2018, Stephens filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the District of Maryland. The district court denied the petition, reasoning in part that Stephens's 2013 *Alford* plea to the earlier murder charge somehow validated the 2012 sentence with respect to the later murder charge and conviction. Stephens timely filed a notice of appeal. A panel of the United States Court of Appeals for the Fourth Circuit issued a one-page per curiam order denying Stephens a Certificate of Appealability, without

explaining their reasoning or addressing any of Stephens's arguments. *See* App. A. It then denied Stephens's timely petition for panel rehearing and rehearing en banc on April 25, 2023. *See* App. B.

4. This Court's review is warranted because, *inter alia*, the court of appeals' decision conflicts with this Court's precedents requiring resentencing when a jury imposes a sentence on the basis of a previous unconstitutional conviction, *e.g.*, *Townsend v. Burke*, 334 U.S. 736, 741 (1948); *Johnson v. Mississippi*, 486 U.S. 578, 586 (1988).

5. Stephens respectfully requests a 60-day extension of time to file a petition for certiorari, to and including September 22, 2023. There is good cause for this extension to allow Stephens's counsel to determine whether to file a certiorari petition and to coordinate preparing on any such petition with Stephens. Stephens remains incarcerated in Oklahoma State Penitentiary and has limited access to written and telephonic channels of communication, making communications with him difficult and time consuming. There is also good cause for this extension because one of Stephens's counsel, Isley Gostin, is currently on parental leave and will remain on through July. Isley Gostin is the only lawyer from WilmerHale LLP who has represented Stephens since his state post-conviction hearing.

For the foregoing reasons, Stephens respectfully requests that the time for filing a petition for a writ of certiorari in this case be extended by 60 days, to and including September 22, 2023.

June 7, 2023

Respectfully submitted,

/s/ Isley M. Gostin

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# **APPENDIX A**

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 20-7776**

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LEE E. STEPHENS, JR.,

Petitioner - Appellant,

v.

STEPHEN T. MOYER, Maryland Secretary of the Public Safety & Correctional Services; DAYENA CORCORAN, Maryland Commissioner of Correction; BRIAN E. FROSH, Maryland Attorney General; MIKE CARPENTER; TERRY ROYAL, Warden of the Oklahoma State Penitentiary,

Respondents - Appellees.

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Appeal from the United States District Court for the District of Maryland, at Baltimore.  
Richard D. Bennett, Senior District Judge. (1:18-cv-00493-RDB)

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Submitted: August 5, 2022

Decided: December 16, 2022

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Before HARRIS and RUSHING, Circuit Judges, and MOTZ, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Monte S. Frenkel, Isley Markman Gostin, Derek Allen Paterson Woodman,  
WILMERHALE LLP, Washington, D.C., for Appellant.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lee E. Stephens, Jr., seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Stephens has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*DISMISSED*

# **APPENDIX B**



FILED: April 25, 2023

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 20-7776  
(1:18-cv-00493-RDB)

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LEE E. STEPHENS, JR.

Petitioner - Appellant

v.

STEPHEN T. MOYER, Maryland Secretary of the Public Safety &amp; Correctional Services; DAYENA CORCORAN, Maryland Commissioner of Correction; BRIAN E. FROSH, Maryland Attorney General; MIKE CARPENTER; TERRY ROYAL, Warden of the Oklahoma State Penitentiary

Respondents - Appellees

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O R D E R

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The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under [Fed. R. App. P. 35](#) on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Harris, Judge Rushing, and Senior Judge Motz.

For the Court

/s/ Patricia S. Connor, Clerk

**CERTIFICATE OF SERVICE**

I, Isley M. Gostin, a member of the bar of this Court, hereby certify that, on this 7th day of June, 2023, all parties required to be served have been served copies of the foregoing in this matter by overnight courier and electronic mail to the addresses below.

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