

No. _____

In the
Supreme Court of the United States

Rodney Marshall,

Petitioner,

v.

Brian Williams, et al.

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

**Petitioner's Application to Extend Time to File Petition for
Writ of Certiorari**

Rene Valladares
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To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Petitioner Rodney Marshall respectfully requests that the time to file a Petition for Writ of Certiorari in this matter be extended for sixty (60) days, to and including, October 21, 2022. The Ninth Circuit Court of Appeals issued an order denying a certificate of appealability on May 24, 2022. *See* App. A. Petitioner's original due date for filing a Petition for Writ of Certiorari is August 22, 2022. Petitioner is filing this Application at least ten days before that date. *See* S. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1257(a).

BACKGROUND

Mr. Marshall was convicted of four separate robberies that occurred over a span of three years. He was sentenced as a habitual offender to four, consecutive terms of 10 years to life imprisonment. The instant appeal comes to this Court from the denial of Mr. Marshall's request for a certificate of appealability from the Ninth Circuit Court of Appeals. *See* App. A.

REASONS FOR GRANTING THE EXTENSION

The time for filing a Petition for Certiorari should be extended for 60 days for the following reasons:

1. Undersigned counsel has been unable to complete the Petition for Writ of Certiorari, despite her diligent efforts to do so, due to her extensive caseload and deadlines in other matters over last 90 days. For example, on May 26, 2022, counsel filed an Application for Certificate of Appealability with the Ninth Circuit in *Dryden v. Johnson*, case no. 22-15590. On May 27, 2022, counsel filed a Response to Motion to Suspend Briefing Schedule in *Taukitoku v. Olsen*, case no. 3:16-cv-00762-HDM-CSD. On June 2, 2022, counsel filed a Petition for Writ of Habeas Corpus (Post-Conviction) in *Christy v. Hutchings*, case no. A-22-853463-W. On June 3, 2022,

counsel filed an Unopposed Motion for Stay and Abeyance in *Christy v. Hutchings*, case no. 2:21-cv-00132-APG-BNW. On July 14, 2022, counsel filed a Reply to Answer to First Amended Petition for Writ of Habeas Corpus in *Wright v. Williams*, case no. 2:18-cv-02136-RCJ-VCF. On July 27, 2022, counsel filed a Reply in Support of Post-Conviction Petition Challenging Computation of Time in *Wright v. Russell*, case no. 22 EW 00016 1B. And on July 28, 2022, counsel filed a Second Amended Petition for Writ of Habeas Corpus in *Gonzales v. Johnson*, case no. 2:21-cv-02055-GMN-DJA.

2. Additionally, undersigned counsel was out of the office from June 12–17 while attending the National Association of Criminal Defense Lawyer’s National Forensics College at the Cardozo School of Law. Counsel was also out of the office on previously planned leave from June 27–29 and August 3–9.

3. Counsel is requesting an additional 60 days in light of her upcoming schedule. Counsel has eight filing deadlines over the next month including two reply briefs to the Ninth Circuit Court of Appeals, one of which has already been granted an extension of time. (*Chao v. Neven*, case no. 21-16803, reply brief due August 31, 2022, and *Fields v. Baker*, case no. 20-17342, reply brief due September 14, 2022, and that deadline has already been extended once.) Counsel also has several upcoming district court filings due that have already been extended multiple times.

4. Mr. Marshall’s case raises substantial constitutional issues that merit the consideration of this Court. This case concerns whether joinder of offenses can result in an unfair trial so as deny a defendant his Fifth Amendment right to due process. Here, multiple robberies occurring over a span of three years were joined together for a single trial. Despite one of the victims testifying that Mr. Marshall was *not* the person who robbed him, Mr. Marshall was convicted because the State improperly used evidence of the stronger cases to bolster its evidence in the weaker ones.

5. Undersigned counsel contacted counsel for the Warden, Senior Deputy Attorney General Charles Finlayson, who represented that he does not oppose this request.

6. This application for an extension of time is not sought for the purposes of delay, but only to ensure that Mr. Marshall receives competent representation in this matter.

Dated August 11, 2022

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ C.B. Kirschner

C.B. Kirschner
Assistant Federal Public Defender

EXHIBIT A

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 24 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RODNEY MARSHALL,

Petitioner-Appellant,

v.

BRIAN WILLIAMS, Warden; ATTORNEY
GENERAL FOR THE STATE OF
NEVADA,

Respondents-Appellees.

No. 21-16921

D.C. No. 2:18-cv-00075-JAD-DJA
District of Nevada,
Las Vegas

ORDER

Before: RAWLINSON and NGUYEN, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.