

No. 22-_____

IN THE
Supreme Court of the United States

VIRGIL DELANO PRESNELL,

Petitioner,

v.

ANTOINE CALDWELL, Warden,
Georgia Diagnostic Prison,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO
FILE PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF GEORGIA**

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TO THE HONORABLE CLARENCE THOMAS,
Associate Justice of the Supreme Court of the United
States, and Circuit Justice for the Supreme Court of
Georgia:

The Petitioner, VIRGIL DELANO PRESNELL,
through undersigned counsel and pursuant to 28 U.S.C. §
2101 and Supreme Court Rules 13.5 and 30.2, respectfully
requests an extension of time of sixty (60) days to file his
Petition for Writ of Certiorari in this Court. Mr. Presnell

will seek review of the decision of the Supreme Court of Georgia entered on June 1, 2022. Mr. Presnell invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1254. His time to file a Petition for Writ of Certiorari will expire on August 30, 2022. Mr. Presnell makes this application for an extension more than ten (10) days before the petition's original due date. This is his first request for an extension of time. For cause, counsel shows and states as follows:

1. Virgil Delano Presnell, Jr. was sentenced to death in Cobb County, Georgia on August 26, 1976. The United States District Court for the Northern District of Georgia vacated his death sentence during federal habeas corpus proceedings in 1990. *Presnell v. Zant*, Case No. 1-85-CV-02934-RLV (N.D. Ga. July 11, 1990). The Superior Court of Cobb County held a resentencing proceeding, and Mr. Presnell was resentenced to death on March 16, 1999. He pursued all available state and federal remedies for relief from that sentence. His appeals concluded with this Court's denial of his Petition for Writ of Certiorari on October 4, 2021.

2. On April 27, 2022, the State of Georgia sought a warrant for Mr. Presnell's execution. Because the State obtained the execution warrant in violation of a contract, the Fulton County Superior Court enjoined the State from carrying out Mr. Presnell's execution. *See Federal Defender Program, Inc. and Virgil D. Presnell, Jr. v. State of Georgia, et. al.*, Fulton County Case No. 2022CV364429, Order Granting Plaintiff's Motion for an Interlocutory Injunction and Temporary Restraining Order (May 17, 2022). The State appealed the injunction to the Supreme Court of Georgia; the appeal remains pending. *See State of Georgia*

v. Federal Defender Program, Supreme Court of Georgia Case No. S22A1099.

3. On May 16, 2022, Mr. Presnell filed a petition for writ of habeas corpus in the Superior Court of Butts County. He argued that his execution would not comport with the Eighth Amendment because his cognitive deficits render him ineligible for execution. *See Atkins v. Virginia*, 536 U.S. 304 (2002). The court denied his petition on May 17, 2022. He asked the Supreme Court of Georgia for a certificate of probable cause to appeal the superior court's decision. The court denied his request on June 1, 2022.

4. Counsel for Mr. Presnell asks the Court to extend the original deadline for filing his Petition for Writ of Certiorari for several reasons. First, counsel requires additional time to consult with medical and legal specialists regarding the cert-worthiness of the constitutional question presented by Mr. Presnell's case. Second, counsel's attention has been occupied by other complex litigation. She has been working diligently on the continuing litigation regarding the State's contractual violation in Mr. Presnell's case in the Supreme Court of Georgia. *See supra*. She also recently filed a 141-page opening brief in another capital case in the Eleventh Circuit Court of Appeals. *See Humphreys v. Warden, Georgia Diagnostic and Classification Prison*, Eleventh Circuit Court of Appeals Case No. 21-10387-P. Finally, undersigned counsel has faced ongoing challenges as a result of the COVID-19 pandemic since the conclusion of Mr. Presnell's state court litigation in the instant case, including a quarantine period for counsel and her young children.

CONCLUSION

Mr. Presnell asks this Court to extend the time to file the Petition for Writ of Certiorari by sixty (60) days, until and including Monday, October 31, 2022.

Respectfully submitted,

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