

CAPITAL CASE

No. 21A_____

In the Supreme Court of the United States

JONATHAN D. CARR, APPLICANT

v.

STATE OF KANSAS

**APPLICATION DIRECTED TO THE HONORABLE NEIL M. GORSUCH
FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT
OF CERTIORARI TO THE KANSAS SUPREME COURT**

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APPLICATION FOR EXTENSION OF TIME

To the Honorable Neil M. Gorsuch, Associate Justice of the United States and Circuit Justice for the Tenth Circuit:

1. Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, 30, and 33.2, Applicant Jonathan D. Carr respectfully requests a 60-day extension of time, up to and including Monday, October 3, 2022, to file a petition for a writ of certiorari. The Kansas Supreme Court issued its opinion and entered judgment on January 21, 2022. A copy of that opinion is attached as Appendix A. Mr. Carr moved the Kansas Supreme Court for rehearing of its decision, but it denied his motion on May 4, 2022. A copy of the order denying Mr. Carr's motion is attached as Appendix B. Currently, a petition would be due August 2, 2022. This application to extend that time has been filed more than 10 days before the petition's present filing deadline. This Court has jurisdiction under 28 U.S.C. § 1257(a) to review the decision of the Kansas Supreme Court.

2. In the decision to be reviewed, the Kansas Supreme Court addressed the whether the Sixth Amendment guarantees an individual facing a potential death sentence the right to confront adverse witnesses throughout a capital trial's sentencing phase and wrongly concluded that it does not. That question is worthy of this Court's review and has generated a split of authority amongst lower state and federal courts. *Compare, e.g., United States v. Mills*, 446 F. Supp. 2d 1115 (C.D. Cal. 2006) (finding Confrontation Clause applies throughout capital sentencing); *United States v. Concepcion Sablan*, 555 F. Supp. 2d 1205 (D. Col. 2007) (same); *with United States v.*

Fields, 483 F.3d 313 (5th Cir. 2007) (holding Confrontation Clause does not apply in “selection” phase of capital sentencing proceeding).

3. Mr. Carr has good cause to seek an extension of time. The Kansas Supreme Court issued its decision regarding the Confrontation Clause’s applicability to capital sentencing in multiple parts, as a result of the complicated procedural posture of his case. Specifically, Mr. Carr’s case has twice been decided by the Kansas Supreme Court, and has been heard by this Court on a different issue. The Kansas Supreme Court first ruled in part in Mr. Carr’s favor, affirming his convictions, but reversing his death sentence on July 25, 2014. The Court granted the State’s petition for certiorari and reversed the Kansas Supreme Court, resulting in a January 20, 2016, decision. The decision from which the present petition for writ of certiorari directly follows was then issued on January 21, 2022. Importantly, the issue presented by this petition for writ of certiorari was also discussed more explicitly in the companion cases of Mr. Carr’s brother, Reginald, which issued on the same dates. See, *State v. Reginald D. Carr, Jr.*, 502 P.3d 546 (Kan. 2022); *State v. Reginald D. Carr, Jr.*, 331 P.3d 544 (Kan. 2014).

Due to its piecemeal nature, Mr. Carr’s case now presents complicated legal questions that require additional research and analysis. This is particularly true because Mr. Carr’s legal team has entirely changed since Mr. Carr’s appeal began, with new counsel only joining in October 2021.

Moreover, according to the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (2003), Guideline 4.1, a capital

defense team “should consist of no fewer than two attorneys qualified in accordance with Guideline 5.1.” Since the issuance of the denial of the motion for rehearing in this case, Mr. Carr has not had a consistent two-attorney team. One of his attorneys was out of work pursuant to the Family Medical Leave Act from March 13, 2022, until June 6, 2022, and was unable to attend to Mr. Carr’s case. During that attorney’s transition back to work, his other attorney contracted COVID-19, and was likewise unable to attend to the case as a result of illness. Both attorneys’ necessary leave resulted in delaying the preparation of Mr. Carr’s petition for certiorari and represent good cause for granting this extension.

In addition, counsel have been and will be occupied with briefing deadlines in other matters:

- June 7, 2022: A reply brief in *Taylor Arnett et al., v. Kansas*, No. 21-1126 (U.S.);
- July 13, 2022: A capital merits brief in *State v. Kimberly Younger*, No. 124,601 (Kan.);
- July 18, 2022: A supplemental brief in *State v. Brennan Trass*, No. 122,713 (Kan.); and,
- August 1, 2022: A response brief in *State v. Brennan Trass*, No. 122,713 (Kan.);

Mr. Carr respectfully submits that the press of business additionally constitutes independent good cause for an extension of time to file his petition for a writ of certiorari.

4. Undersigned counsel has contacted counsel for the respondent, the Kansas Attorney General’s Office, and they have indicated that they have no objection to this request for a 60-day extension.

CONCLUSION

For the foregoing reasons, Mr. Carr respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari by 60 days, up to and including October 3, 2022.

Dated: July 11, 2022

Respectfully submitted,

/s/ Clayton J. Perkins

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