

No. 22A-___

In the Supreme Court of the United States

DEANGELO MONTEZ MOODY,

Applicant,

v.

MIKE PARRIS, WARDEN,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

TO THE HONORABLE BRETT KAVANAUGH, ASSOCIATE JUSTICE AND
CIRCUIT JUSTICE FOR THE SIXTH CIRCUIT:

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicant DeAngelo Montez Moody respectfully requests a 60-day extension of time, to and including January 27, 2023, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit. Unless extended, the time to file a petition for a writ of certiorari will expire on November 28, 2022. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). Copies of the Sixth Circuit's opinion are attached.

1. This appeal from the denial of a petition for writ of habeas corpus under 28 U.S.C. § 2254 arises from Moody's attorney's failure to seek to interview a key witness who, had he been interviewed, would have provided potentially exculpatory evidence about Moody's lack of involvement in the underlying crime.

2. As described by the Sixth Circuit, on April 29, 2009, Moody was riding in a car with Ortego Thomas, Quontez Caldwell, Martez Matthews, and another person. Slip op. at 1-2. At the time of the shooting, Moody, Thomas, and Caldwell were in the backseat; Matthews and the fifth person sat in the front seats. *Ibid.* The car drove past someone recognized by Thomas. *Id.* at 2. Thomas then exclaimed, “There go somebody we beefin’ with.” *Ibid.* The driver turned the car around, and bullets emanated from the car, missing their intended target and killing a bystander in her home. *Ibid.*

3. Moody was charged with first-degree murder and employment of a firearm in commission of a felony in connection with the fatal shooting of bystander. Slip op. at 2. Of the four people in the car, the driver was never identified, Caldwell testified against Moody in exchange for immunity, Matthews was tried and convicted alongside Moody, and Thomas was a co-defendant who severed his case from Moody’s before trial and ultimately pled guilty. *Ibid.* It is Thomas who Moody’s counsel never sought to interview. *Id.* at 4. After a jury trial, Moody was found not guilty of employment of a firearm in commission of a felony but convicted of first-degree murder. *Id.* at 3. The trial court subsequently sentenced Moody to life. *Id.* at 1.

4. Moody petitioned for post-conviction relief in state court for, among other reasons, ineffective assistance of counsel based on his attorney’s failure to interview or call Thomas. Slip op. at 3-4. The post-conviction trial court found for Moody and ordered a new trial, but this decision was reversed by the Tennessee Court of Criminal Appeals (TCCA). *Id.* at 4. The Tennessee Supreme Court denied review

of the TCCA's decision. *Ibid.* Moody filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 raising several claims, including ineffective assistance of counsel. *Id.* at 5. The district court denied the petition, concluded that the TCCA's decision did not unreasonably apply federal law, and found that Moody's attorney's decision did not prejudice Moody. *Ibid.*

5. The Sixth Circuit affirmed, concluding that Moody did not demonstrate that the TCCA unreasonably applied the two-part test this Court prescribed in *Strickland v. Washington*, 466 U.S. 668, 681, 691 (1984), slip op. at 12-13, nor that Thomas's possible testimony created a substantial likelihood of a different sentence, slip op. at 16-17. In reaching these conclusions, the Sixth Circuit interpreted this Court's case law and the requirement that Moody rely on "clearly established Federal law, as determined by the Supreme Court of the United States" to prohibit it from considering Sixth Circuit precedential guidance on what constitutes "an unreasonable application" of the clearly established law. *Id.* at 10 n.6, 11 n.7.

6. Although Moody is still evaluating the questions to be presented in his petition for a writ of certiorari, Moody presently anticipates potentially raising two questions for this Court's consideration. The first is whether it is clearly established federal law as determined by this Court that a criminal defense attorney bears an independent duty to interview a witness regardless of whether that attorney would decide to call a witness at trial. The Sixth Circuit held that Moody's attorney's "decision to keep Thomas off the witness stand meant that he had no duty to interview him." Slip op. at 12.

7. The petition for certiorari may also demonstrate that review is warranted on the question whether the Antiterrorism and Effective Death Penalty Act of 1996 prohibits a circuit court from considering its own precedent to evaluate whether a state court's determination is an unreasonable application of clearly established law. In this case, the Sixth Circuit held that it could consider only the cases of the Supreme Court because "[t]he decisions of the lower courts are only relevant in determining 'whether a legal principle had been clearly established,' but they do not by themselves establish federal law." Slip op. at 7.

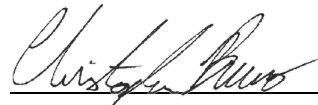
8. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Undersigned counsel is representing Mr. Moody pro bono while balancing responsibilities on numerous complex litigation matters. Specifically, undersigned counsel has, and has had, several other matters with proximate due dates requiring significant attention, including the following: preparation for and participation at trial in a complex patent infringement lawsuit, *Bausch Health Ir. Ltd. v. Padagis Isr. Pharms. Ltd.*, No. 20-5426-SRC-CLW (D.N.J. filed May 1, 2020), trial on October 4-7, 2022; preparation of expert reports and for expert depositions in a complex patent infringement action, *Astellas Pharms. Inc. v. Sandoz Inc.*, No. 20-1589 (D. Del. filed Nov. 24, 2020), reports due in October and November, 2022 with depositions taking place in November and December 2022; initial discovery in two complex patent infringement actions, *Bausch Health Ir. Ltd. v. Taro Pharms. U.S.A., Inc.*, No. 22-4670 (D.N.J. filed July 21, 2022); *Bausch Health Ir. Ltd. v. Padagis Isr. Pharms. Ltd.*, No. 22-4248 (D.N.J. filed June 24, 2022); and participation in a complex

regulatory challenge on behalf of a pharmaceutical company, submission due December 12, 2022.

For the foregoing reasons, the application for a 60-day extension of time, to and including January 27, 2023, within which to file a petition for a writ of certiorari in this case should be granted.

November 18, 2022

Respectfully submitted.



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