

No. 22-_____

IN THE
SUPREME COURT OF THE UNITED STATES

No. 22-

MICHAEL FIELDS

Petitioner

v.

COMMONWEALTH OF KENTUCKY

Respondent

APPLICATION TO THE HONORABLE JUSTICE ELENA KAGAN FOR A SIXTY (60) DAY EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

To the Honorable Justice Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit, Greetings:

Petitioner, through counsel, respectfully requests that this Court grant him a sixty (60) day extension, to and including September 25, 2022 in which to file a Petition for a Writ of Certiorari to the Supreme Court of Kentucky, pursuant to Supreme Court Rules 13.5 and 30.3. The Petition for Certiorari is presently due to be filed on July 27, 2022, and this application is being filed within the 10-day window required by Rules 13.5 and 30.3 as July 17, 2022 fell on a Sunday. As noted below, good cause exists for granting the extension.

Background: Petitioner, Michael Fields, is a Kentucky defendant who was charged in Scott Indictment No. 10-CR-190 with multiple counts of possession of

matter portraying a sexual performance by a minor pursuant to KRS 531.335. The prosecution of Petitioner was based on his use of LimeWire, which at the time was a file-sharing program which allowed a user to download 1,000s of files of all types, sometimes 100s at a time. While he knew some files contained adult pornography, he maintained he did not know some files contained child pornography. The proof came down to circumstantial evidence in the form of expert testimony from the prosecution that four files contained a prefix which meant the files had been “opened.” Petitioner’s proposed computer expert was ruled unqualified by the trial court.

Following his conviction on November 30, 2017, he filed a direct appeal pursuant to Kentucky Constitution Section 115 challenging his convictions and ten year sentence for four counts of possession of matter portraying a sexual performance by a minor pursuant to KRS 531.335. The Kentucky Court of Appeals affirmed his convictions on August 16, 2019. Petition for Rehearing was filed on September 4, 2019 and was denied on October 15, 2019. The Supreme Court of Kentucky granted Petitioner’s Motion for Discretionary Review and again affirmed his convictions on October 28, 2021. The court denied Petitioner’s Petition for Rehearing on April 28, 2022.

Jurisdiction: This Court has jurisdiction under 28 U.S.C. §1257(a).

Issues to be Presented: This case presents the following possible issues: Whether the state court’s ruling on sufficiency of the evidence was contrary to *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) and whether the Petitioner’s right to present a defense under the Fourteenth Amendment was violated when his sole expert was excluded by the trial court.

Request for Extension: The undersigned certifies that she is not seeking this

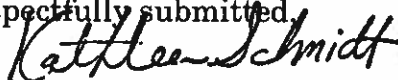
extension for hindrance or delay, but to ensure that the issues are properly presented to the Court. Undersigned counsel Kathleen K. Schmidt is the Appeals Branch Manager at the Kentucky Department of Public Advocacy (DPA), Kentucky's statewide public defender agency.

DPA was appointed by the trial court to represent Petitioner on June 23, 2022. This left counsel a mere 25 days until today's date to become familiar with this case after 12 years of litigation. Counsel needs additional time to assess and research possible issues for a petition for certiorari to this Court.

Counsel is responsible for supervising 21 employees, who provide representation for more than 300 clients on direct appeal. Since being appointed to represent Petitioner, counsel has worked on or filed multiple pleadings, including a reply brief in the Supreme Court of Kentucky and a brief due in the Supreme Court of Kentucky on July 21, 2022.

The undersigned believes that a sixty (60) day extension of time is the minimum needed to ensure that the issues are properly framed and presented for this Court's review. Accordingly, for the reasons expressed above, Petitioner respectfully requests that this Court grant him a sixty (60) day extension, to and including September 25, 2022 in which to file the Petition for Certiorari.

Respectfully submitted,



Kathleen K. Schmidt
Appeals Branch Manager
Department of Public Advocacy
5 Mill Creek Park
Frankfort, KY 40601
(502) 564-8006

(502) 695-6769 (fax)
kathleen.schmidt@ky.gov

Counsel for Petitioner
