

Application No  
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IN THE  
SUPREME COURT OF THE UNITED STATES

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Emem Ufot Udoh,  
*Applicant/Petitioner,*

vs.

State of Minnesota,  
*Respondent.*

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On Application for an Extension of Time Within  
Which to File a Petition for a Writ of Certiorari to the  
Supreme Court of the State of Minnesota Court In A22-0481

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**APPLICATION TO THE HONORABLE BRETT KAVANUAGH  
AS CIRCUIT JUSTICE**

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ATTORNEY(S) FOR RESPONDENT

PRO SE PETITIONER

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## **INTRODUCTION**

To the Honorable Brett Kavanaugh, as Circuit Justice for the States within Eighth Circuit Jurisdiction. Pursuant to Rule 13.5 of the Rules of this Court, Petitioner/Applicant Emem Ufot Udoh respectfully requests that the time to file his Petition for Writ of Certiorari in this matter be extended for 60 days.

## **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The Minnesota Court of Appeals issued its opinion on September 12, 2022. (Appendix ("App.") A). The Supreme Court of the State of Minnesota denied further review on November 23, 2022 (App. B). The judgment and order for which review is sought is *State v. Udoh*, Appellate case No. A22-0481 (November 23, 2022).

## **JURISDICTION**

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1257. Absent an extension of time, the Petition for Writ of Certiorari would be due on February 20, 2023. See Rules 13.1, 13.3, and 30.1 of the Rules of this Court. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition for a writ of certiorari. See S. Ct. R. 13.5. This Court would have jurisdiction over the lower court decision under 28 U.S.C. § 1257. Respondent takes no position on Applicant's request.

## **REASONS FOR GRANTING AN EXTENSION OF TIME**

Applicant respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari seeking review of the lower court decisions (Minnesota

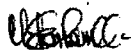
Court of Appeals and Supreme Court of the State of Minnesota) in this case, for the following reasons:

1. This case presents an issue of importance to a Petitioner's constitutional right of access to courts under the Fourteenth Amendment during the COVID-19 pandemic in light of the restrictions imposed to mitigate the spread of the COVID-19 virus.
2. Applicant has requested that Eton Labs, Inc assist in the preparation and printing of his petition. An extension of time would permit Applicant the time necessary to complete a cogent and well-researched petition for certiorari.
3. It will take considerable time for Eton Labs, Inc to obtain the substantial record of Applicant's case. In addition, Applicant has other litigation deadlines in the weeks leading up to and immediately following the current deadline. Applicant would not usually ask for a 60-day extension request, but does so in order to allow Eton Labs, Inc adequate time to obtain legal research materials and relevant case laws for applicant to meaningfully and adequately complete a well-reasoned petition.
4. The extension of time is also necessary because of Applicant's limited access to the law library to conduct legal research and, also to available printing facilities to print the petition. A 60-day extension would allow Petitioner the necessary amount of time to effectively obtain legal research materials and relevant case laws to complete this petition for certiorari.

**CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests that the time to file the Petition for a Writ of Certiorari in this matter be extended 60 days.

Respectfully submitted,  
EMEM UFOT UDOH  
*Pro Se* Litigant  
By: /s/ Emem U. Udoh  
EMEM U. UDOH

Respectfully Submitted,  
  
Emem U. Udoh


P. O. Box 290264  
Brooklyn Center, Minnesota 55429

Dated: January 11, 2023

**CERTIFICATE OF COMPLIANCE**

I, **Emem Ufot Udoh**, hereby certify that the above **Application for an Extension of Time** complies with the applicable rules of this Court. I further certify that according to the **2013 Microsoft Word**, the word processing program used to produce this **Application for an Extension of Time**, that it contains **550** words and is **4** pages long. The undersigned declare under penalty of perjury that the foregoing statement is true and correct.

Respectfully submitted,  
EMEM UFOT UDOH  
*Pro Se* Litigant  
By: /s/ Emem U. Udoh  
EMEM U. UDOH

Respectfully Submitted,  
  
Emem U. Udoh

P. O. Box 290264  
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Dated: January 11, 2023

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On Application for an Extension of Time to File Petition for a Writ of Certiorari to the  
Minnesota Court of Appeals In A22-0481

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**APPENDIX**

**A:** Decision of the Minnesota Court of Appeals Dated September 12, 2022

**B:** Decision of the Minnesota Supreme Court Dated November 23, 2022

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ATTORNEY(S) FOR RESPONDENT

PRO SE PETITIONER

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0481**

Emem Ufot Udoh, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed September 12, 2022  
Affirmed  
Smith, John, Judge\***

Hennepin County District Court  
File No. 27-CR-13-8979

Emem Ufot Udoh, Faribault, Minnesota (pro se appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County  
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Bryan, Judge; and Smith,  
John, Judge.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

**NONPRECEDENTIAL OPINION****SMITH, JOHN**, Judge

We affirm because the issue raised by appellant was not cognizable under Minnesota Statutes chapter 590, and as such, the district court did not abuse its discretion in denying appellant's third petition for postconviction relief.

**FACTS**

Appellant Emem Ufot Udoh was convicted and sentenced to prison in 2014 for first- and second-degree criminal sexual conduct for sexually abusing his two stepdaughters. Since that time, Udoh has challenged his convictions in a direct appeal and two separate petitions for postconviction relief. In the direct appeal, this court reversed one conviction for second-degree criminal sexual conduct based on a violation of Minn. Stat. § 609.04, subd. 1 (2012), but affirmed the remaining two convictions and sentences. *State v. Udoh*, No. A14-2181, 2016 WL 687328, at \*4 (Minn. App. Feb. 22, 2016), *rev. denied* (Minn. Apr. 27, 2016).

Udoh thereafter filed two petitions for postconviction relief in 2018. The district court denied the first petition on its merits and dismissed the second petition as untimely and procedurally barred. Udoh appealed from the denial of his first petition for postconviction relief, but the appeal was dismissed after his repeated failures to file a timely brief. *State v. Udoh*, No. A19-1129 (Minn. App. Mar. 23, 2020) (order op.).

Udoh filed a third petition for postconviction relief in district court in January 2022, arguing that the Minnesota Department of Corrections violated his constitutional right of access to the courts by limiting his ability to adequately access the correctional facility's



law-library resources due to the COVID-19 pandemic. These restrictions, he argued, were responsible for his inability to file a timely brief in appeal A19-1129. He therefore requested that the district court vacate the two orders resolving the claims raised in his first postconviction petition and reissue those orders to provide him with a renewed opportunity to appeal and obtain this court's review of his claims. Also contained in this petition was a request for the release of his passport, which had previously been seized from him.

The district court issued an order granting in part and denying in part Udoh's third postconviction petition. The district court concluded that appellant's claim regarding a violation of his right of access to the courts was outside the scope of those permitted to be raised in a petition for postconviction relief and that, in any event, Udoh had failed to demonstrate that the correctional facility had violated his right of access to the courts. The district court did, however, conclude that Udoh was entitled to the release of his passport.

### DECISION

This court reviews a district court's order denying postconviction relief for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012): "The district court will not be reversed unless it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Hannon v. State*, 957 N.W.2d 425, 432 (Minn. 2021) (quotation omitted). Whether the postconviction remedy is available to a given defendant presents a question of law we review de novo. *See Johnston v. State*, 955 N.W.2d 908, 910-12 (Minn. 2021) (determining that postconviction relief is not available to a defendant who receives, and successfully completes, a stay of adjudication).

In his brief to this court, Udoh renews his claim that his constitutional right of access to the courts was infringed upon by the Department of Corrections, which unjustly prevented him from filing a timely brief in A19-1129. Udoh requests, as alternative forms of relief, that this court either (1) reinstate appeal A19-1129 and permit him to file a brief on the merits, (2) conclude that the Department of Corrections violated his constitutional right of access to the courts, or (3) remand for an evidentiary hearing on the question of the violation of his right of access to the courts. In response, the state argues that the district court did not err in denying Udoh's third petition for postconviction relief because his claims are not cognizable under the plain language of the postconviction statute. We agree.

Udoh sought relief from the district court pursuant to Minnesota Statutes chapter 590, which permits a criminal defendant to commence a proceeding in district court to assert two types of claims—either that:

- (1) the conviction obtained or the sentence or other disposition made violated the person's rights under the Constitution or laws of the United States or of the state; or
- (2) scientific evidence not available at trial, obtained pursuant to a motion granted under subdivision 1a, establishes the petitioner's actual innocence[.]

Minn. Stat. § 590.01, subd. 1 (2020). Udoh's claim in his postconviction petition falls into neither of these prescribed categories. His assignment of error was entirely unrelated to either his conviction or his sentence, and it did not concern newly available scientific evidence. He argued instead that the Department of Corrections—a state agency that is not a party to the underlying criminal prosecution—violated his right of access to the courts, which in turn deprived him of his ability to file a timely brief in a prior appeal. Because

this claim is not of the sort permitted to be raised in a petition for postconviction relief, the district court did not abuse its discretion in denying Udoh's request for relief in this regard. And because we conclude that Udoh's claim of error was not properly raised in a petition for postconviction relief, we decline to reach the merits of that argument.

**Affirmed.**

**FILED**

November 23, 2022

**OFFICE OF  
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

A22-0481

Emem Ufot Udoh,

Petitioner,

vs.

State of Minnesota,

Respondent.

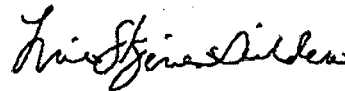
**O R D E R**

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Emem Ufot Udoh for further review  
be, and the same is, denied.

Dated: November 23, 2022

BY THE COURT:



Lorie S. Gildea  
Chief Justice

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**CERTIFICATE OF SERVICE**

Petitioner/Applicant, **Emem Ufot Udoh**, hereby certify that on **January 11, 2023**, I caused the following documents:

1. **Application for an Extension of Time**;
2. **Appendix**

to be served upon the Clerk of the United States Supreme Court, by U.S. mail properly addressed to One First Street NE, Washington, DC 20543. Petitioner/Applicant further certify that a copy of the above **Application for an Extension of Time and Appendix** was served by email and by U.S. mail to Respondent, properly addressed to:

**KEITH ELLISON**  
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445 MINNESOTA STREET  
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ST. PAUL, MN 55111

**MARY MORIATY**  
HENNEPIN COUNTY ATTORNEY  
HENNEPIN GOVERNMENT CENTER  
300 SOUTH SIXTH STREET  
MINNEAPOLIS, MN 55489

in accordance with the applicable U.S. Supreme Court rule:

The undersigned declare under penalty of perjury that the foregoing statement is true  
and correct.

Respectfully submitted,  
EMEM UFOT UDOH  
*Pro Se* Litigant

By: /s/ Emem U. Udoh  
EMEM U. UDOH

Respectfully Submitted,



Emem U. Udoh

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Dated: January 11, 2023