

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Willie J. Manning,
Applicant,

v.

State of Mississippi,
Respondents.

**APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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January 25, 2023

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To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States and
Circuit Justice for the Fifth Circuit:

1. Pursuant to this Court's Rules 13.5, 22, and 30.3, and with the consent of Respondent, Applicant Willie Manning respectfully requests a 30-day extension of time to file a petition for a writ of certiorari to review the judgment of the Supreme Court of Mississippi in this case. This case involves an important question of federal constitutional law upon which the Mississippi Supreme Court has failed to uphold: the failure to provide a constitutional procedure that affords a death-row inmate access to biological evidence for adequate DNA testing.

2. Manning requests this extension because his Counsel of Record, David Voisin, and co-counsel, Krissy C. Nobile, who will represent Manning before this Court, are currently researching this issue and handling a number of other substantial competing obligations. Counsel has numerous filing deadlines and other professional commitments which would otherwise prevent the sort of comprehensive

analysis that aids this Court in determining whether to grant certiorari.

3. Counsel has not previously sought an extension of time from this Court. The Mississippi Supreme Court denied rehearing on November 10, 2022. The time for filing a petition would therefore expire on February 8, 2023 absent an extension. Consistent with Rule 13.5, this application has been filed at least 10 days before that date. This Court has jurisdiction over this case under 28 U.S.C. § 1257.

4. Although this is a capital case, no execution date has been set, and the Mississippi Supreme Court has stayed its mandate to permit Applicant Manning to seek certiorari.

5. By way of background, the Mississippi Supreme Court, on direct appeal, affirmed Manning's capital murder conviction and resulting death sentence for the 1992 murders of Tiffany Miller and Jon Steckler. Manning then unsuccessfully sought relief in state post-conviction and federal habeas corpus proceedings. The Mississippi Supreme Court then set an execution date.

6. Manning next filed a successive state court petition, seeking authorization to submit biological evidence for DNA testing. The state supreme court stayed his execution and granted leave to proceed in the trial court with his request for DNA testing and fingerprint comparison within sixty days of that court's mandate. During that litigation, Manning filed additional claims challenging hair and ballistics evidence based on conclusions shared by the FBI regarding flaws with that type of evidence.

7. The initial lab selected by the parties pursuant to the procedures set by

the trial court was unable to develop mitochondrial DNA profiles on hairs found inside the victim's car and used against Manning at trial because the samples were too small and degraded. Manning thus asked the Circuit Court to allow him to transfer the hairs to a different lab with a much greater success rate of developing DNA profiles from small, degraded samples.

8. The trial court denied the request. The Mississippi Supreme Court affirmed the trial court's decision on appeal to disallow the additional and needed DNA testing—despite Applicant Manning noting that denying his request to have a lab with the capacity to undertake the necessary testing would deny his right to due process. Indeed, when Manning first agreed to a lab, he could not have known how suitable the evidence would be for the development of DNA evidence. The Mississippi Supreme Court's ruling places all petitioners in the untenable position of having to guess what the most suitable lab will be on the front end—with no ability to make necessary changes.

9. This case presents an important issue involving due process rights and having a meaningful opportunity to examine DNA evidence. Manning intends to file a petition for certiorari asking this Court to hold that the Mississippi Supreme Court's denial of Manning's request to properly test DNA evidence violated both his due process rights and this Court's precedents. Manning has always asserted his innocence, and he needs additional DNA testing to challenge his conviction. Further, Manning's petition will satisfy the Court's criteria for certiorari because it concerns an important question of federal constitutional law.

10. Counsel respectfully requests additional time to file the petition for certiorari because counsel have a number of other substantial competing commitments, including:

- Preparing a Reply Brief in *Bennett v. State*, No. 2021-CA-01313-SCT (capital case).
- Ongoing briefing in a successive state post-conviction petition in *Jordan v. State*, No. 2022-DR-01243-SCT (capital case).
- Preparing a successive petition in *Lisa Jo Chamberlin v. State*, 2022-DR-00546-SCT (capital case).
- Extensive travel and investigation in other active cases, including a multitude of capital cases.
- Litigating matters related to legal representation in *Davis v. Lumpkin*, No. 3:21-cv-02333 (N.D. Tex.) (capital case).
- Preparing for clemency and other litigation following a Texas court's setting of an execution date of March 29, 2023 for Anibal Canales.

11. Counsel for Respondent consented to the requested extension.

For these reasons, Counsel respectfully requests that the time to file a petition for a writ of certiorari be extended to and including March 10, 2023.

Respectfully submitted,

/s/ David Voisin

DAVID VOISIN

Counsel of Record

KRISSY C. NOBILE

Counsel for Applicant Willie Manning

January 26, 2023

CERTIFICATE OF SERVICE

I certify I filed the foregoing using the Court's electronic filing system, and via email, which caused a copy to be delivered to the following:

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This the 26th day of January, 2023.

/s/ David P. Voisin

COUNSEL FOR APPELLANT