

No. 21A_____

IN THE
Supreme Court of the United States

JACK LEON BLYTHE,

Petitioner,

vs.

DAVID SHINN, ET. AL.,

Respondent.

**APPLICATION FOR SECOND EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

THERON M HALL III
Counsel of Record
50 W. Vaughn Avenue, Suite 204
Gilbert, AZ 85234
(602) 222-6699
lawyer@theronhall.com
Attorney for Petitioner Blythe

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MAY 16 2023

**OFFICE OF THE CLERK
SUPREME COURT, U.S.**

APPLICATION

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

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), applicant Jack Blythe respectfully asks for a 60-day extension of time, to and including July 11, 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 Ninth Circuit in this matter.

1. United States Court of Appeals for the Ninth Circuit entered judgment on December 29, 2022. *See Blythe v. Shinn*, 2022 WL 17984466. Given health conditions of current counsel for Mr. Blythe, an extension was granted until May 12, 2023 to file a petition for a writ of certiorari. This application is not being filed more than ten days before the petition is currently due, as a result of exceptional circumstances. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. Petitioner Jack Leon Blythe was convicted at trial of three counts of Arizona's child molestation law under A.R.S. §§ 13-1410 and 13-1407(E). He was sentenced to 84 years of prison on May 6, 2015. Mr. Blythe filed an appeal and on March 31, 2016 the Arizona Court of Appeals affirmed Mr. Blythe's convictions and sentences. He then petitioned the Arizona Supreme Court for further review, which was denied.

3. After the unsuccessful direct appeal, Mr. Blythe sought post-conviction relief in the Mohave County, Arizona Superior Court, which was his first opportunity under Arizona procedure to raise a claim of ineffective assistance of counsel. Mr. Blythe's prior appointed counsel filed notice with the Superior Court that they could not find a

colorable claim to raise; and Mr. Blythe was instructed that he could file a pro se petition. Mr. Blythe filed an initial pro se petition for post-conviction relief in July of 2017. On October 30, 2017, Blythe filed a motion arguing a burden shift related to sexual intent caused by A.R.S. Section §§ 13-1410 and 1407(E). He argued that Arizona's child molestation law did not require the state to prove that a defendant acted with sexual intent; rather, the state only had to prove that a defendant knowingly touched the private parts of a child under the age of fifteen. To avoid conviction, Arizona law required that the defendant prove his lack of sexual intent, thus shifting the burden to the defendant. In July of 2018, Mr. Blythe filed a supplemental petition for post-conviction relief. The Superior Court denied post-conviction relief on August 28, 2018. On October 15, 2018, Blythe filed a petition with the Arizona Court of Appeal seeking review of the denial of his post-conviction challenge. The Arizona Court of Appeals initially affirmed the Superior Court's ruling; however, on November 14, 2018, it reinstated the appeal of the post-conviction relief. On September 3, 2019, the Superior Court dismissed all pending petitions or supplement petitions for post-conviction relief.

4. In July of 2019, Blythe initiated a habeas proceeding with the Arizona District Court. On October 23, 2020, the district court issued an order stating that all grounds were either dismissed with prejudice or denied. Blythe filed a notice of appeal to the Ninth Circuit on November 13, 2020. The Ninth Circuit granted a certificate of appealability on the question of "[w]hether sections 13-1410 and 13-1407(E) of the Arizona Revised Statutes, as applied in this case, violate the U.S. Constitution's guarantee of due process of law." The court later appointed counsel to assist Mr. Blythe, and CJA attorney Theron M Hall III was assigned to handle it. The Ninth Circuit rejected Blythe's

arguments and affirmed the denial of the habeas petition on December 29, 2022. *See Blythe v. Shinn*, 2022 WL 17984466.

5. CJA Attorney Theron M Hall III was assigned to represent Mr. Blythe on appeal, including certiorari proceedings in this Court. *See* 9th Cir. R. 4-1(e). Mr. Hall had planned to have the petition for a writ of certiorari finalized by today; however, over the course of the last two months, Mr. Hall has experienced a serious medical issue that has required two trips to the emergency room, hospitalization and the continued use of medication. In particular, tumors have been found on counsel's spine which have caused extreme pain and have limited his ability to work. Diagnostic evaluations have been ongoing as well as treatment by medication, physical therapy, etc.

6. Mr. Hall has since come to the opinion that there are no grounds for seeking Supreme court review that are non-frivolous and consistent with the standards for filing a petition. A motion to withdraw as counsel has been filed in the United States Court of Appeals for the Ninth Circuit. Given Mr. Blythe's continued desire to file a petition for a writ of certiorari, new counsel has been requested for Mr. Blythe in the Ninth Circuit.

7. Given the recent and unexpected medical conditions of assigned counsel and the motion to withdraw as counsel, it is respectfully requested that an order be entered extending the time for filing a petition for a writ of certiorari up to and including July 11, 2023.

8. There is no objection to this request by Assistant Attorney General Jim

Nielsen, as confirmed by e-mail.

Respectfully submitted:

May 12, 2023.



s/ Theron M Hall III
THERON M HALL III
Counsel of Record
50 W. Vaughn Avenue, Suite 204
Gilbert, AZ 85234
(602) 222-6699
lawyer@theronhall.com
Attorney for Petitioner Blythe

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CERTIFICATE OF SERVICE

It is hereby certified that all parties required to be served have been served with copies of the **APPLICATION FOR SECOND EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**, via e-mail and first-class mail, postage prepaid, this 12th day of May, 2023.


THERON M HALL III
Counsel of Record
50 W. Vaughn Avenue, Suite 204
Gilbert, AZ 85234
(602) 222-6699
lawyer@theronhall.com
Attorney for Petitioner Blythe