

No. 22-\_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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WILLIE JAMES PYE,

*Petitioner,*

v.

ANTOINE CALDWELL, Warden,  
Georgia Diagnostic and Classification Prison,

*Respondent.*

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**APPLICATION FOR AN EXTENSION OF TIME  
TO FILE PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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TO THE HONORABLE CLARENCE THOMAS,  
Associate Justice of the Supreme Court of the United  
States, and Circuit Justice for the United States Court of  
Appeals for the Eleventh Circuit:

The Petitioner, Willie James Pye, through undersigned  
counsel and pursuant to 28 U.S.C. § 2101(c) and Supreme  
Court Rules 13.5 and 30.2, respectfully requests an  
extension of sixty (60) days to file his Petition for Writ of  
Certiorari in this Court. Mr. Pye will seek review of the

decisions of the United States Court of Appeals for the Eleventh Circuit entered on October 4, 2022 and January 25, 2023.

Mr. Pye invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1254.

Undersigned counsel make this application for an extension more than ten (10) days before the petition's original due date. Because the appeals court denied Mr. Pye's petition for rehearing on March 9, 2023, the time to file a petition for writ of certiorari in this Court will expire on June 7, 2023. This is Mr. Pye's first request for an extension of time.

Mr. Pye is a death-sentenced prisoner in the custody of Respondent Warden Caldwell. A panel of the Eleventh Circuit Court of Appeals granted Mr. Pye habeas relief from his death sentence because his trial counsel's failure to investigate and prepare a defense deprived him of the Sixth Amendment right to counsel, and the Georgia state courts failed to reasonably adjudicate that claim. *Pye v. Warden, Ga. Diagnostic Prison*, 853 Fed. Appx. 548 (11th Cir. 2021) (unpublished) (vacated). Thereafter, however, the Eleventh Circuit granted the Warden's petition for rehearing *en banc*, vacated the panel opinion, and affirmed the district court's denial of habeas relief on Mr. Pye's Sixth Amendment claim. *Pye v. Warden, Ga. Diagnostic Prison*, 50 F.4th 1025 (11th Cir. 2022) (*en banc*). The court returned the case to the panel for an adjudication of Mr. Pye's remaining claims that had not been decided on appeal. *Id.* at 10\*\*.

On January 25, 2023, the now-two-judge panel<sup>1</sup> affirmed the denial of relief on Mr. Pye's claim under *Atkins v. Virginia*, 536 U.S. 304 (2002), that the Eighth Amendment barred his execution because he was intellectually disabled, finding that the Georgia courts' adjudication was not unreasonable. *Pye v. Warden*, 2023 WL 386289 (11th Cir. 2023) (unpublished).

On February 15, 2023, Mr. Pye filed a petition for panel rehearing, noting that one claim upon which he had been provided a Certificate of Appealability nevertheless remained adjudicated by the Court of Appeals. Mr. Pye asked that the court decide the claim, but the petition for rehearing was denied without opinion on March 9, 2023.

Counsel for Mr. Pye now asks this Court to extend the deadline for filing his petition for writ of *certiorari* for two reasons. First, undersigned counsel's considerable workload as attorneys in the Capital Habeas Unit of the Federal Defender Program will prevent them from finalizing the petition in the time allotted.

Second, undersigned counsel requires additional time to continue their consultation with other Supreme Court advocates about the issues to be raised. The Eleventh Circuit's adjudication of Mr. Pye's appeal presents multiple unique questions of constitutional magnitude that must be winnowed:

- The court below failed to adjudicate a claim of error upon which Mr. Pye was granted a Certificate of

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<sup>1</sup> One member of panel, Judge Beverly Martin, had retired, and the case was decided by quorum pursuant to 28 U.S.C. § 46 and 11th Cir. Rule 34-2.

Appealability and upon which he was entitled to relief. Absent action by this Court, he will have no remedy.

- The *en banc* court below announced for the first time an interpretation of this Court’s decision in *Wilson v. Sellers*, 138 S. Ct. 1188 (2018), that renders explicit its now five-year pattern of defying *Wilson*’s holding, is patently irreconcilable with the language and result in *Wilson* itself, and presents a split with the approach taken by the other circuits.
- Similarly, the court below ruled upon the proper interplay between two provisions of AEDPA, §§2254(d)(2) and(e)(1)<sup>2</sup>—a matter of first impression in the Eleventh Circuit—without briefing by either party and in a manner that also diverges from that of other circuits.
- Finally, the instant case demonstrates that the rights of Georgia intellectually-disabled prisoners like Mr. Pye are insufficiently protected when, as here, their claims are reviewed in federal habeas corpus proceedings through the deferential lens of §§ 2254(d) and (e). In this circumstance, Georgia’s beyond-a-reasonable-doubt standard for proving intellectual disability claims operates in concert with the presumption of correctness afforded to state court findings of fact under AEDPA to create an insurmountable barrier to relief, leaving intellectually-disabled Georgia prisoners without a constitutional remedy in the federal courts.

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<sup>2</sup> See Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2254 (1996).

Undersigned counsel must select from among these, and hone the question to be presented to this Court. Thus we respectfully asks for additional time in which to prepare the petition.

### CONCLUSION

Mr. Pye asks this Court to extend the deadline to file the Petition for Writ of Certiorari by sixty (60) days, or until August 7, 2023.<sup>3</sup>

Respectfully Submitted,

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May 10, 2023

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<sup>3</sup> Sixty days from the current June 7 deadline falls on a Sunday, August 6, 2023, making the petition due the following business day, Monday August 7, 2023, pursuant to Supreme Court Rule 30-1.