

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2023

RUSSELL WILLIAM TUCKER
Petitioner,

v.

STATE OF NORTH CAROLINA
Respondent.

**APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE
PETITION FOR WRIT OF CERTIORARI**

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Counsel of Record

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TO THE HONORABLE JOHN G. ROBERTS, CHIEF JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT:

1. Petitioner, Russell William Tucker, pursuant to Supreme Court Rule 13(5), respectfully seeks a forty-five (45) day extension of time within which to file his petition for writ of *certiorari* in this Court. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. This application is submitted more than ten (10) days prior to the scheduled filing date for the Petition. The pertinent dates are:

a. **December 15, 2023:** The Supreme Court of North Carolina denied Petitioner's appeal in *State v. Tucker*, 895 S.E.2d 532 (2023). A copy of the opinion rejecting Petitioner's claim under *Batson v. Kentucky*, 476 U.S. 79 (1986), is attached.

b. March 4, 2024: Deadline for seeking extension of time within which to file a petition for writ of certiorari in the United States Supreme Court.

c. March 14, 2024: Expiration of time for filing a petition for writ of certiorari in the United States Supreme Court, unless extended.

2. The capital offense in this case occurred in 1994, and Petitioner, an African American man, was convicted of first-degree murder in the Superior Court of Forsyth County, North Carolina, in 1996. At trial, Petitioner unsuccessfully challenged the prosecution's strikes of five of five African American potential jurors, and he was sentenced to death by an all-white jury.

3. The Supreme Court of North Carolina affirmed the murder conviction and death sentence. *State v. Tucker*, 490 S.E.2d 559 (1997). This Court denied certiorari. *Tucker v. North Carolina*, 523 U.S. 1061 (1998). Petitioner did not raise a *Batson* claim on direct appeal.

4. Petitioner next filed a motion for post-conviction review in the Superior Court of Forsyth County. His first set of post-conviction attorneys were subsequently removed from the case after it was revealed that one of them had "deliberately sabotaged" his case. *State v. Tucker*, 545 S.E.2d 742, 742 (2000).

5. Petitioner received new post-conviction counsel, who were allowed to file a new motion for post-conviction review. On May 2, 2006, the Superior Court of Forsyth County denied relief and the Supreme Court of North Carolina denied certiorari. *State v. Tucker*, 651 S.E.2d 560 (2007). No *Batson* claim was raised in these state post-conviction proceedings.

6. On February 21, 2008, Mr. Tucker filed a Petition for Writ of Habeas Corpus in the federal district court for the Middle District of North Carolina. That petition was still pending when, on August 5, 2010, Mr. Tucker filed a post-conviction motion seeking relief under a newly-enacted statute in North Carolina, the Racial Justice Act. On March 3, 2021, the federal court placed Petitioner's federal habeas proceedings in abeyance pending resolution of his state court RJA claims. Mr. Tucker's Petition for Writ of Habeas Corpus remains pending.

7. On December 14, 2015, pursuant to *Martinez v. Ryan*, 566 U.S. 1 (2012), the federal court appointed *Martinez* counsel to determine whether any claims had been defaulted in state court due to the ineffectiveness of Petitioner's state post-conviction counsel. *Martinez* counsel's investigation uncovered the trial prosecutors' jury selection notebook, which contained a document titled "Batson Justifications: Articulating Juror Negatives," listing suggested reasons prosecutors could offer when their peremptory strikes were challenged under *Batson*.

8. On the basis of the Batson Justifications document as well as new statistical evidence of jury discrimination uncovered pursuant to the Racial Justice Act, Petitioner on October 30, 2017, amended his pending RJA motion to include a *Batson* claim.

9. On August 24, 2020, the Superior Court of Forsyth County issued an order denying Petitioner's *Batson* claim.

10. On April 16, 2021, the Supreme Court of North Carolina granted a writ of certiorari to review the order denying Petitioner's *Batson* claim and subsequently denied relief for the reasons explained in its December 15, 2023 opinion.

11. As this partial recitation of the procedural history demonstrates, the record in this case and the complexities of the issues are immense.

12. Undersigned counsel Gretchen Engel was appointed to this case on December 11, 2023, and continues to review the voluminous record. Ms. Engel also represents 12 other capital clients in various stages of post-conviction litigation and has spent considerable time over the last several months working on these cases. In addition to her case load, Ms. Engel has extensive administrative responsibilities as the Executive Director of the Center for Death Penalty Litigation. As a result, Ms. Engel will be unable to give sufficient attention to the certiorari petition in the instant case without an extension of time.

13. Undersigned counsel has conferred with counsel for the State, Special Deputy Attorney General Danielle Marquis Elder, and is authorized to represent to this Court that the State of North Carolina has no objection to a 45-day extension of time.

For the foregoing reasons, the Petitioner, who is indigent and incarcerated in Central Prison in Raleigh, North Carolina, respectfully prays that this Court grant an extension of forty-five (45) days within which to file his petition for a writ of certiorari in this matter, to and including **April 29, 2024**.

Respectfully submitted, this the 27th day of February, 2024.



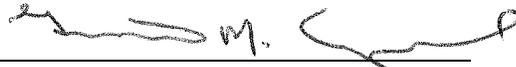
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that a copy of petitioner's Application for Extension of Time in Which to File Petition for Writ of Certiorari has been duly served upon Special Deputy Attorney General Danielle Marquis Elder, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina, 27602, by first-class mail, postage prepaid.

This the 27th day of February, 2024.



Gretchen M. Engel