

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2022

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**JERRY SMITH,**

**Petitioner,**

v.

**STATE OF ALABAMA,**

**Respondent.**

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**Application for an Extension of Time  
to File a Petition for a Writ of Certiorari to the  
Alabama Supreme Court**

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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:**

Pursuant to Rules 13.5 and 30 of the Rules of this Court, Applicant Jerry Smith respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari up to and including Monday, October 23, 2023:

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).
2. On March 14, 2003, the Alabama Supreme Court affirmed Mr. Smith's capital murder conviction, but remanded the case to the trial court for

a new sentencing proceeding. *Ex parte Smith*, 213 So. 3d 214 (2003). (Attached as Exhibit 1.) On May 23, 2003, the Alabama Supreme Court denied his application for rehearing. *Id.* After reversing Mr. Smith's case six times, on September 2, 2022, the Alabama Court of Criminal Appeals ultimately affirmed Mr. Smith's sentence of death. *Smith v. State*, CR-17-1014, 2022 WL 4007496 (Ala. Crim. App. Sept. 2, 2022). (Attached as Exhibit 2.) The Court of Criminal Appeals overruled his application for rehearing on December 9, 2022. (Attached as Exhibit 3.) While the Alabama Supreme Court affirmed Mr. Smith's conviction in 2003, see *supra*, it was not until June 23, 2023, that it denied Mr. Smith's petition for a writ of certiorari seeking review of his penalty phase claims in the case. *Ex parte Smith*, No. SC-2022-1033 (Ala. Jun. 23, 2023). (Attached as Exhibit 4.)

3. Pursuant to Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for a writ of certiorari is due to be filed on or before September 21, 2023. 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.

4. This is a capital case in which the death penalty has been imposed. Mr. Smith is incarcerated at Holman Correctional Facility in Atmore, Alabama. No execution date has been scheduled in this case.

5. Petitioner's case raises meritorious issues regarding the

constitutionality and reliability of his capital conviction and death sentence. As such, there are compelling questions about whether the Alabama Court of Criminal Appeals properly denied Mr. Smith's appeal.

6. Undersigned counsel currently is involved in the appeals of many capital cases: several habeas corpus cases in the federal district courts, postconviction cases in Alabama state courts, and several direct appeals to the Alabama Court of Criminal Appeals and the Alabama Supreme Court. Counsel faces a number of deadlines in these cases in the coming weeks.

7. An additional thirty (30) days is needed to prepare a pleading that adequately apprises this Court of the relevant facts and law in this case.

For these reasons, Mr. Smith respectfully requests an additional thirty (30) days in which to file his petition for writ of certiorari, thereby changing to October 23, 2023, the date on or by which it must be filed.<sup>1</sup>

Respectfully submitted,

s/ Randall Susskind  
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September 7, 2023

*Counsel for Jerry Smith*

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<sup>1</sup>Thirty days following September 21, 2023, is Saturday, October 21, 2023. Pursuant to Rule 30.1 the petition would be due Monday, October 23, 2023.