

In the Supreme Court of the United States

THOMAS DALE FERGUSON

Petitioner,

v.

JEFFERSON F. DUNN, COMMISSIONER OF THE ALABAMA DEPARTMENT OF
CORRECTIONS,

Respondent.

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

Emily S. Pendley
Callie L. Barrow
BURR & FORMAN LLP
420 North 20th Street
Suite 3400
Birmingham, AL 35203
(205) 251-3000

Linda T. Coberly
Counsel of Record
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
(708) 752-2417
lcoberly@winston.com

Amanda L. Groves
Winston & Strawn LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 615-1851
agroves@winston.com

To the Honorable Justice Clarence Thomas, Associate Justice of the United States Supreme Court and Circuit Justice for the Eleventh Circuit:

Petitioner Thomas Dale Ferguson requests an extension of time to file his petition for a writ of certiorari. The United States Court of Appeals for the Eleventh Circuit denied a timely petition for rehearing on August 7, 2023. A copy of that order and the judgment for which Petitioner seeks certiorari review are enclosed. The petition is currently due on December 6, 2023.¹ Petitioner is filing this application more than ten days before that date (*see* S. Ct. R. 13.5) and requests a 30-day extension of time to January 5, 2024. Respondent will not suffer any prejudice from this extension. When counsel previously asked Respondent for consent to an extension to the same date, Respondent did not object.

The petition for certiorari will fall within this Court’s jurisdiction under 28 U.S.C. § 1254(1) and will address two important questions. The first is whether a jury’s eleven-to-one recommendation of a life sentence weighs heavily in favor of a finding of prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984). It has been well established since *Strickland* that a sentence “only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support.” *Id.* at 696.

The second is whether a single raw IQ score (as opposed to a score range) above 70 — regardless of when the IQ test producing that score was administered

¹ Petitioner previously sought and was granted an extension from the original November 6, 2023 deadline.

— is an independently sufficient basis to deny a capital defendant’s claim under *Atkins v. Virginia*, 536 U.S. 304 (2002).

The third is related to the second: whether a capital defendant must prove below-average intellectual and adaptive functioning before age eighteen, at the time of the offense, and at the time he challenges his execution.

Petitioner requests this extension because the attorney primarily responsible for drafting the petition departed his firm unexpectedly and other counsel new to the case must get up to speed in order to complete the petition.

Petitioner therefore respectfully requests an extension of the deadline to file the petition for a writ of certiorari of 30 days, up to and including January 5, 2024.

Respectfully submitted.

By: /s/ Linda T. Coberly

Linda T. Coberly
Counsel of Record
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
(708) 752-2417
lcoberly@winston.com

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LIST OF EXHIBITS

- 1.** Eleventh Circuit Opinion of the Court
- 2.** Eleventh Circuit Order Denying Petition for Rehearing