
In the Supreme Court of the United States

RICKEENA HAMILTON,

Petitioner-Applicant

vs.

STATE OF TENNESSEE,

Respondent.

**UNOPPOSED APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

To The Honorable Brett Kavanaugh, Associate Justice, and Circuit Justice for the United States Court of Appeals for the Sixth Circuit: Pursuant to Supreme Court Rules 13.5 and 22, Applicant Rickeena Hamilton respectfully applies for a forty-five (45) day extension of time, to and including August 31, 2023, within which to file a petition for writ of certiorari. In support of this application, Ms. Hamilton states:

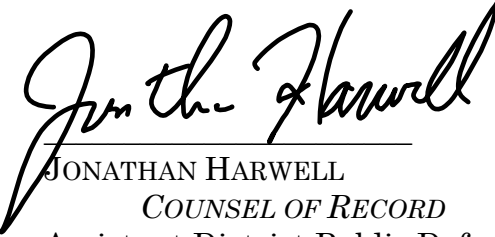
1. This is an appeal from a conviction on a charge of second-degree murder. Without an extension, the petition for writ of certiorari would be due on July 17, 2023. With the requested extension, the petition will be due on August 31, 2023. This application is being filed more than ten days prior to the due date of the petition.

2. Undersigned counsel has contacted opposing counsel, Senior Assistant Attorney General Katherine Redding, who has indicated that the State of Tennessee does not oppose the requested extension.
3. The court's jurisdiction will be based on 28 U.S.C. § 1257.
4. The Tennessee Court of Criminal Appeals issued an opinion in this case on September 28, 2022, affirming Ms. Hamilton's conviction. A copy of that opinion is attached hereto as *Appendix A*. A timely petition to rehear was denied on November 2, 2022. A copy of that *Order* is attached hereto as *Appendix B*. Following an application for discretionary review, including review of the claims discussed herein, the Tennessee Supreme Court issued an order denying further review on April 17, 2023. A copy of the *Order* issued at that time is attached hereto as *Appendix C*.
5. This case raises issues relating to the interrelation between second-degree murder and voluntary manslaughter. Under existing Tennessee precedent, voluntary manslaughter is a lesser-included offense of second-degree murder. Unusually, the greater offense has only two elements (a knowing killing that is unlawful) that are also elements of the lesser offense. Voluntary manslaughter, the lesser offense, has one additional element, that the killing was produced in a state of passion produced by adequate provocation.

6. This unusual structure presents issues of constitutional dimension. In particular, the element distinguishing second-degree murder from voluntary manslaughter (state of passion produced by adequate provocation) must be found by proof beyond a reasonable doubt. Thus, this effectively imposes a duty on the defendant to prove his innocence, and to prove it beyond a reasonable doubt, on the charge of second-degree murder. This inverts the normal, and constitutionally-required, burdens of proof. Further, due to the operation of the sequence-of-consideration instruction (which requires an acquittal on a greater charge prior to consideration of a lesser charge), a jury may logically never reach a verdict of voluntary manslaughter -- either the two elements of second-degree murder will have been proven, in which case the only permissible verdict is second-degree murder, or they will not have been proven, in which case voluntary manslaughter would not have been proven either. The denial of any logical possibility of a verdict on this charge is a violation of due process.
7. These issues involve interpretation or extension of this Court's line of cases involving *Mullaney v. Wilbur*, 421 U.S. 684 (1975), and *Patterson v. New York*, 432 U.S. 197 (1977).
8. These issues were raised to the Tennessee Court of Criminal Appeals and in the Application for Permission to Appeal to the Tennessee Supreme Court.

9. This application is not filed for purposes of delay.
10. Undersigned counsel is an Assistant Public Defender in the Sixth Judicial District. Counsel is the head of the appellate division at the Public Defender's Community Law Office. Counsel is responsible for monitoring the court's appellate caseload and drafting and filing briefs in many of the office's cases. In addition, counsel is involved in a number of serious cases pending in the trial courts.
11. Counsel has had numerous pending deadlines and has filed numerous briefs in the appellate courts of Tennessee over the last three months. Further, counsel has litigated motions in the criminal courts of Knox County. Finally, counsel has been traveling with family.
12. For these reasons, counsel has been unable to draft and finalize a petition for writ of certiorari within the ninety-day limit provided by law. A forty-five day extension will be adequate for that purpose.

Wherefore, the Applicant respectfully requests that an order be entered extending the time for filing a petition for writ of certiorari to and including August 31, 2023. A *Certificate of Service* is enclosed herewith.



JONATHAN HARWELL

COUNSEL OF RECORD

Assistant District Public Defender

Knox County Public Defender's

Community Law Office

1101 Liberty Street

Knoxville, TN 37919

Phone: (865) 594-6120

July 6, 2023