No. _____

IN THE
Supreme Court of the United States

TREMANE WOOD,
Petitioner,

vs.

CHRISTE QUICK, WARDEN, OKLAHOMA STATE PENITENTIARY,
Respondent.

ON APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

**** CAPITAL CASE ****

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE BRETT M. KAVANAUGH[1], CIRCUIT JUSTICE FOR THE TENTH CIRCUIT:

Pursuant to Supreme Court Rules 13.5, 30.2 and 30.3, Petitioner Tremane Wood respectfully requests a 45-day extension of time in which to file his Petition for Writ of Certiorari. The current due date is February 5, 2024, and this Application is being filed thirteen days in advance of that date. The requested extension would make

[1] Justice Gorsuch is recused from the instant matter.

the Petition due on March 21, 2024. Respondent's counsel, Assistant Oklahoma Attorney General Joshua Lockett, has informed undersigned counsel that he has no objection to this requested 45-day extension.

Mr. Wood seeks review of the Tenth Circuit's Order in *Wood v. Quick*, No. 23-6134 (10th Cir. Nov. 6, 2023) (App. 1) dismissing for lack of appellate jurisdiction under 28 U.S.C. § 1291 Mr. Wood's timely appeal of the district court's decision that his Motion for Relief from Judgment Pursuant to Federal Rule of Civil Procedure 60(b)(6) (hereafter "Rule 60(b)" Motion) was not a "true" Rule 60(b) Motion, but rather an unauthorized second-or-successive habeas petition (App. 2).

Mr. Wood argued below (App. 3) that the Tenth Circuit has appellate jurisdiction under 28 U.S.C. § 1291 to review the district court's decision that his Rule 60(b) Motion was "not a true Rule 60(b) motion" (App. 2 at 6–7), because that decision terminated the litigation on the merits of Mr. Wood's Rule 60(b) Motion in the district court, rendering it final and appealable under a straightforward reading of 28 U.S.C. § 1291 and this Court's precedent. *See* 28 U.S.C. § 1291 ("The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United State[] . . ."); *Catlin v. United States*, 324 U.S. 229, 233 (1945) ("A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.").

The Tenth Circuit disagreed, concluding that because the district court decided in the same order, first, that Mr. Wood's Rule 60(b) Motion was "not a true Rule 60(b)

motion" (App. 2 at 6–7), and, then, on that basis, transferred it to the Tenth Circuit under 28 U.S.C. § 1631 for adjudication as a second-or-successive petition under 28 U.S.C. § 2244(b)[2], it lacked appellate jurisdiction over the district court's threshold Rule 60(b) determination (App. 1 at 1–2 (Tenth Circuit concluding that "this court lacks jurisdiction to review, via this appeal, the district court's conclusion that Wood's Rule 60 motion was an unauthorized second or successive § 2254 petition[]")).

REASONS FOR THE REQUESTED EXTENSION OF TIME

Mr. Wood seeks this Court's review of the Tenth Circuit's decision that it lacks appellate jurisdiction under 28 U.S.C. § 1291 to review the district court's decision that Mr. Wood's Rule 60(b) Motion was "not a true Rule 60(b) motion" (App. 2 at 6–7), simply because, later in the same order, the district court also transferred the matter to the Tenth Circuit under 28 U.S.C. § 1631 for adjudication as a second-or-successive habeas application requiring authorization under 28 U.S.C. § 2244(b) (App. 2 at 7). The 28 U.S.C. § 1631 transfer procedure that the Tenth Circuit has adopted for district courts adjudicating Rule 60(b) Motions in federal habeas cases renders the Tenth Circuit an outlier among lower federal courts tasked with adjudicating Rule 60(b) motions in habeas cases. *See Spitznas v. Boone*, 464 F.3d

[2] That transferred case is captioned *In re: Tremane Wood*, No. 23-6129 (10th Cir.). There, Mr. Wood argued in a Motion for Remand that the district court erred in construing his Rule 60(b) Motion as "not a true Rule 60(b) motion" under this Court's decision in *Gonzalez v. Crosby*, 545 U.S. 524 (2005), and asked the Tenth Circuit to remand his case to the district court for adjudication of the merits of his Rule 60(b) Motion. (App. 4.)

1213, 1217 (10th Cir. 2006) (directing that where, in a habeas case, a "district court concludes that the [Rule 60(b)] motion is actually a second or successive petition, it should refer the matter to this court for authorization under § 2244(b)(3)[]" (citing 28 U.S.C. § 1631)).

The Tenth Circuit's procedure, together with its decision below that it lacks appellate jurisdiction over the district court's Rule 60(b) decision because it adopted that procedure in Mr. Wood's case, also has serious implications for the availability of appellate review of district court Rule 60(b) determinations in federal habeas cases arising out of the Tenth Circuit: If, on transfer from the district court, the Tenth Circuit denies a Motion for Remand because it concludes that a Rule 60(b) motion is an unauthorized second-or-successive petition that fails to meet 28 U.S.C. § 2244(b)(2)'s requirements[3], then, unless the Tenth Circuit also has jurisdiction under 28 U.S.C. § 1291 to review the district court's threshold Rule 60(b) determination by way of appeal, a habeas petitioner like Mr. Wood may be forever barred from seeking

[3] This is precisely what the Tenth Circuit recently concluded in Mr. Wood's transferred case, *In re: Tremane Wood*, on January 8, 2024. (App. 5.) Mr. Wood's petition for rehearing and request for en banc consideration is pending before the Tenth Circuit which will determine whether it has jurisdiction to consider that petition under 28 U.S.C. § 2244(b)(3)(E) ("The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari."). The instant request for a 45-day extension of time to seek certiorari in *Wood v. Quick* will permit the Tenth Circuit to answer this important jurisdictional question in *In re: Tremane Wood*, which may inform the question(s) to be presented to this Court on certiorari review.

rehearing or certiorari review of that decision under 28 U.S.C. § 2244(b)(3)(E). Such a result would implicitly engraft onto the habeas statute a jurisdictional bar on Rule 60(b) motions in habeas cases that cannot be squared with the text of the Anti-terrorism and Effective Death Penalty Act ("AEDPA"), with Congress's intent, or with this Court's decision in *Gonzalez* where it held that "AEDPA did not expressly circumscribe the operation of Rule 60(b)" whereas "[b]y contrast, AEDPA directly amended other provisions of the Federal Rules." 545 U.S. at 529.

To date, undersigned counsel has been unable to afford Mr. Wood's Petition for Writ of Certiorari the attention that it requires. Since the Tenth Circuit's November 6, 2023 Order declining jurisdiction over Mr. Wood's appeal of the district court's Rule 60(b) decision, counsel for Mr. Wood have had competing case-related obligations. After receiving federal court authorization to represent an Arizona death-sentenced client in successor state postconviction proceedings following this Court's decision in *Cruz v. Arizona*, 598 U.S. 17 (2023), Ms. Bass has been preparing a successor state postconviction application in *State v. Tucker*, No. CR-1999-015293 (Maricopa Cnty. Super. Ct.), which will be filed on February 11, 2024. In another Arizona capital case, Ms. Bass filed a motion to temporarily stay federal habeas proceedings on December 18, 2023, *see* Motion for Temporary Stay, *Chappell v. Thornell*, No. CV-15-00478-PHX-SPL (D. Ariz. Dec. 18, 2023), and will be filing a supporting reply on January 30, 2024. Additionally, on December 13, 2023 this Court granted the State of Arizona's petition for writ of certiorari in *Thornell v. Jones*, No. 22-982 (U.S. Dec. 13,

2023) where Ms. Bass is co-counsel for Respondent Danny Lee Jones. The preparation for merits briefing and identification of potential amici in Mr. Jones's case has required a significant amount of Ms. Bass's time and attention since December 13, 2023.

Mr. Hilzendeger and Ms. Rose, meanwhile, have had their own case-related commitments that have prevented them from assisting with the petition for certiorari in this matter. Mr. Hilzendeger had a January 14, 2024 filing deadline in *Spain v. State*, No. PC-2023-1004 (Okla. Crim. App.) and, over the last several months, has been preparing for oral arguments in *Muldrow v. Attorney General*, No. 22-15222 (9th Cir.), *Sosnowicz v. Thornell*, No. 22-16019 (9th Cir.), *Lewis v. Shinn*, No. 22-16481 (9th Cir.) all previously scheduled to occur in early-February 2024.[4] Ms. Rose has been working on a petition for postconviction DNA testing in *Kiles v. Thornell*, No. CV-17-04092-PHX-GMS (D. Ariz.) which the federal district court authorized her to file in state court. She has also been working on a Reply in Support of a Petition for Writ of Habeas Corpus—due February 20, 2024—in *Fitzgerald v. Thornell*, No. CV-19-PHX-MTL. Finally, Ms. Rose will be filing a response to an Order to Show Cause in *Cruz v. Arizona*, No. 21-99005 (9th Cir.), on February 23, 2024.

As a result of the foregoing, counsel for Mr. Wood have been unable to devote

[4] The Ninth Circuit recently canceled the oral arguments in *Muldrow* and *Sosnowicz*, submitting those cases on the pleadings, but Mr. Hilzendeger nonetheless was required to devote time to their oral argument preparation.

the time that adequately preparing Mr. Wood's Petition for Writ of Certiorari requires, which establishes good cause for the instant request. *See* Sup. Ct. R. 13.5.

CONCLUSION

For the foregoing reasons Mr. Wood respectfully asks the Court to extend the time for filing a Petition for Writ of Certiorari up to and including March 21, 2024.

Respectfully submitted: January 23, 2024.

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