
In the Supreme Court of the United States

LUIS ALEXIS BRICENO,

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 Luis Alexis Briceno, respectfully applies for a forty-five (45) day extension of time, to and including April 1, 2024, within which to file a petition for writ of certiorari. In support of this application, Mr. Briceno states:

1. This is an appeal from a conviction on a charge of driving under the influence, second offense. Without an extension, the petition for writ of certiorari would be due on February 15, 2024. With the requested extension, the petition will be due on April 1, 2024. This application is being filed within ten days of the due date of the petition.

2. Undersigned counsel has contacted opposing counsel, Senior Assistant Attorney General Katherine Redding, who stated 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 July 11, 2023. The Court affirmed Mr. Briceno's conviction. A copy of that opinion is attached to this application as *Appendix A*. Following an application for discretionary review, including review of the claims discussed herein, the Tennessee Supreme Court issued an order denying further review on November 17, 2023. A copy of the Court's Order is attached hereto as *Appendix B*.
5. This case raises issues about the due process afforded to indigent defendants in Tennessee who are denied funding for constitutionally necessary expert assistance at trial. In Mr. Briceno's case, the trial court issued an order that Mr. Briceno had demonstrated a constitutional need for a psychological expert and that, due to his indigency, the State must provide funding for that expert assistance. However, the agency that disburses funding – the Tennessee Administrative Office of the Courts ("AOC")– refused to provide the money based on its own determination – contrary to the trial court's – that the funding was not constitutionally necessary.

6. The AOC is the administrative branch of the Tennessee Supreme Court, and its authority to overrule the trial court is not clear under Tennessee law. Beyond this, the AOC did not explain its reasoning to Mr. Briceno, there are no publicly-available standards governing the AOC's review, and though there is a procedure for Mr. Briceno to administratively "appeal" the administrator's decision, that "appeal" is not governed by any public standards or procedures, nor does an aggrieved defendant have input in the appeal other than requesting its initiation. Further complicating the black-box nature of the appeal is that when Mr. Briceno asked to have the decision appealed, it inexplicably did not occur, even after he continued to pursue it while motion for new trial proceedings were pending.
7. These issues were raised to the Tennessee Court of Criminal Appeals and in the Application for Permission to Appeal to the Tennessee Supreme Court.
8. Rather than address the issues, the Tennessee Court of Criminal Appeals held that Mr. Briceno waived the issue by failing to request a continuance of trial to allow the "appeal" process to conclude or to take other steps to obtain funding. *Appendix A*, at p. 9-11. This waiver ruling is despite the fact that the AOC *never* completed the funding appeal, even after Mr. Briceno continued to try to obtain the funding post-trial so he might present the expert witness at the motion for new trial

hearing. *See* Tenn. Sup. Ct. R. 13, Section 5(a)(1) (stating that a defendant is entitled to constitutionally necessary expert services “in the trial and direct appeal” of all cases where a defendant is entitled to appointed counsel). The Tennessee Supreme Court denied review.

9. These issues involve interpretation or extension of this Court’s decisions in *Ake v. Oklahoma*, 470 U.S. 68 (1985) and *McWilliams v. Dunn*, 582 U.S. 183 (2017).
10. This application is not filed for the purposes of delay.
11. Counsel is a solo practitioner in Knox County, Tennessee. In November, 2023, counsel was elected to serve as Municipal Court Judge for the City of Knoxville and assumed that position on December 16, 2023. This judicial position is considered part-time, and counsel is permitted to continue to practice law. While the deadline to file Mr. Briceno’s petition has been pending, counsel has had trial court deadlines and submitted briefing in the Tennessee appellate courts, but has also been navigating the obligations of assuming the office of the Municipal Court. In addition to these work-related obligations, counsel also contracted COVID-19 in January 2024.
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 April 1, 2024. A *Certificate of Service* is enclosed herewith.



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