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**In The
SUPREME COURT OF THE UNITED STATES
October Term 2024**

Wilfred H.,
Applicant,
v.
State of West Virginia,
Respondent.

**Application for Extension of Time Within Which
to File a Petition for a Writ of Certiorari to the
West Virginia Supreme Court of Appeals**

**APPLICATION TO THE HONORABLE
JOHN G. ROBERTS, JR. AS CIRCUIT JUSTICE**

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April 8, 2024

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APPLICATION FOR AN EXTENSION OF TIME

Under this Court's Rule 13.5, Applicant Wilfred H. respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari, to and including May 24, 2024.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Wilfred H. v. Ames*, No. 22-0506 (W. Va. Jan. 25, 2024) (attached as Exhibit 1).

JURISDICTION

This Court will have jurisdiction over any timely petition under 28 U.S.C. § 1257. The West Virginia Supreme Court of Appeals issued its judgment on January 25, 2024. Thus, a petition to this Court is currently due by April 24, 2024. In accordance with Rule 13.5, this application is being filed more than 10 days before that date.

REASONS JUSTIFYING AN EXTENSION OF TIME

1. This case involves an important question of constitutional law that implicates a circuit split: Does a state violate due process or double jeopardy principles when it charges and convicts a defendant on multiple, totally identical counts in an indictment? The indictment below contained three identically worded counts of first-degree sexual assault. Ex. 1 at 1. The indictment provided, and the jury was told, only that these counts described three instances of the same conduct across a roughly two-and-a-half-year period. Neither the evidence nor a stipulated bill of particulars tied any charge to any particular date or event. The West

Virginia Supreme Court of Appeals upheld Applicant’s convictions on all three counts, reasoning that the indictment “substantially follow[ed]” the language of the charged offense, “identified the victim ... ; described the sexual offenses at issue; ... and set out a time period for the offenses.” *Id.* at 5.

This decision warrants review because it conflicts directly with other federal and state appellate decisions, including the Sixth Circuit’s influential ruling in *Valentine v. Konteh*, 395 F.3d 626 (6th Cir. 2005). *Valentine* held that a forty-count indictment containing twenty identical counts of child rape and twenty identical counts of felonious sexual penetration of a minor across a ten-month period violated the defendant’s due process rights and “likely subjected” him to double jeopardy at trial. *Id.* at 632. Indictments are constitutionally sufficient if they (1) contain the elements of the charged offense, (2) give the defendant adequate notice of the charges, and (3) protect the defendant against double jeopardy. *Id.* at 630–31 (citing *Russell v. United States*, 369 U.S. 749, 763-65 (1962)). The *Valentine* indictment violated the second and third requirements because it failed to link the multiple “carbon-copy” counts to identifiable offenses. *Id.* at 636; see also *United States v. Panzavecchia*, 421 F.2d 440, 441–42 (5th Cir. 1970) (rejecting an indictment with three identical counts under *Russell*).

Some state high courts likewise find constitutional problems with carbon-copy indictments if a bill of particulars fails to furnish specific factual allegations to distinguish the counts. See *Dunn v. Maze*, 485 S.W.3d 735 (Ky. 2016). Carbon-copy indictments prevent courts and defendants from understanding “what factual

incidents were presented and decided by” the jury. *Id.* at 748 (quoting *Valentine*, 395 F.3d at 626). And such indictments pose a “two-fold” due process problem: they fail to provide defendants with adequate notice of their charges and fail to protect them against double jeopardy in the future. *Id.* (citing *Valentine*, 395 F.3d at 631-32, 634–35); see also *Luttrell v. State*, 97 A.3d 70, 76–78 (Del. 2014) (reversing denial of defendant’s motion for a bill of particulars on due process and double jeopardy grounds where indictment contained identical counts).

The decision below short-changes these important constitutional protections by allowing prosecutors to charge, and juries to convict, defendants on multiple identical counts with no realistic way to tell the charges apart or determine which counts align with what conduct. Indeed, explaining that indictments “need only meet minimal constitutional standards,” the court below recently upheld a *516-count* carbon-copy indictment with no accompanying bill of particulars. *State v. David S.*, No. 22-0113, 2023 WL 6012817, at *1–2 (W. Va. Sept. 15, 2023). These decisions are inconsistent with this Court’s decision in *Russell* and with basic constitutional protections.

Given the complexity and importance of these issues, an extension of time will allow counsel to properly analyze the reasoning for the divergent decisions and present a thorough and helpful petition.

2. An extension is warranted to allow counsel time to coordinate and prepare a petition that will aid the Court’s review of these issues. Applicant has asked the Northwestern Supreme Court Practicum to help prepare his petition. An

extension of time will permit the Practicum students the time necessary to complete a cogent and well-researched petition without interfering with their other studies or the academic calendar.

An extension is also warranted because of the press of counsel's other client business. The Practicum has assisted with the merits briefing, and Mr. Green will present oral argument, in *Fischer v. United States*, No. 23-5572, set for argument on April 16. The Practicum and undersigned counsel are also responsible for reply briefs in support of petitions in *Johnson v. United States*, No. 23-6496, *Robbertse v. Garland*, No. 23-873, and *Lopez-Aguilar v. Garland*, No. 23-6801, and forthcoming petitions in *Streett v. United States*, No. 22-2056 (10th Cir.) and *Martinez v. Garland*, No. 22-1221 (4th Cir.).

A 30-day extension will allow counsel the necessary amount of time to effectively handle Applicant's petition and other client business, and will allow the Northwestern Practicum students sufficient time for research and drafting efforts.

CONCLUSION

For these reasons, Applicant respectfully requests an extension of 30 days, to and including May 24, 2024, within which to petition for review in this case.

Respectfully submitted,

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