

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BRANDON WASHINGTON, *Petitioner*,

v.

ATTORNEY GENERAL OF THE STATE OF ALABAMA, ET AL., *Respondent*.

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

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

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, Petitioner Brandon Washington prays for a 32-day extension of time to file his petition for certiorari to this Court to and including June 7, 2024. The final judgment of the Eleventh Circuit was entered on February 6, 2024, and petitioner’s time to petition for certiorari to this Court expires May 6, 2024. This application is being filed 10 days before that date.

Copies of the majority and dissenting opinions below are attached hereto. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

As shown by the opinion below, this case presents the issue of whether trial counsel was ineffective for failing to convey a 30-plea offer to Mr. Washington during his capital murder trial in violation of *Missouri v. Frye*, 566 U.S. 134 (2012). The state court engaged in fact-finding procedures that were grossly deficient, violated Alabama law, and failed to provide Mr. Washington the opportunity to develop the factual basis for his *Frye* claim. Then, notwithstanding this lack of opportunity, the state trial court concluded that Mr. Washington had not met his burden of proof and denied relief. The state court’s resolution of Mr. Washington’s *Frye* claim, as well as the Eleventh Circuit’s opinion upholding this decision,¹ constitute a significant

¹ The Eleventh Circuit originally held that Mr. Washington had successfully “clear[ed] the AEDPA hurdle” with respect to the claim and remanded the case to the district court for an evidentiary hearing. Several months later, the same panel

departure from the accepted and usual course of judicial proceedings and call for an exercise of this Court's supervisory power.

Petitioner has at all times been represented in the courts below by Kristen M. Nelson, who serves as lead *pro bono* counsel for Mr. Washington, as well as Deanna Oswald² and Alexandria Darby of the Office of the Federal Public Defender for the Northern District of Alabama.

Ms. Nelson is the Executive Director of Spero Justice Center, a nonprofit organization dedicated to ending extreme sentencing practices in her home state of Colorado. Ms. Nelson represents Mr. Washington *pro bono* amid myriad other personal and professional responsibilities. She has spent the last several months working on two Colorado state post-conviction cases involving first-degree murder convictions, both with urgent submission deadlines, as well as a lawsuit against the Colorado Department of Corrections pertaining to its failure to effectively implement the State's special needs parole statute. She has also been occupied with numerous time-consuming obligations involving the operational side of her nonprofit organization, which very recently underwent a complex fiscal sponsorship transition.³

Ms. Oswald is the Chief Appellate Attorney and a Branch Supervisor for the Office of the Federal Defender for the Northern District of Alabama. Ms. Oswald has a full, active caseload in the Northern District of Alabama and in the Eleventh Circuit Court of Appeals. She has several matters set before the district court in the coming weeks and a brief due to the Eleventh Circuit on May 3, 2024, in *United States v. Gaines* (No. 24-10117-DD). A 32-day extension will allow Ms. Oswald to effectively represent Mr. Washington while also fulfilling other professional responsibilities.

For these reasons, Petitioner respectfully requests that an order be entered extending his time to petition for certiorari in the above-captioned case to and including June 7, 2024. A 32-day extension of time with a new due date of June 7, 2024 should allow counsel sufficient time to draft a petition for writ of certiorari on Petitioner's behalf while also fulfilling other professional responsibilities.

that resolved the case in Mr. Washington's favor granted the State's petition for rehearing, withdrew its previous opinion, and substituted an opinion denying Mr. Washington relief.

² Ms. Oswald is a member of the Bar of this Court.

³ This fiscal sponsorship transition involved, *inter alia*, identifying and obtaining new professional liability, general liability, and worker's compensation insurance policies for the organization, identifying and selecting a new health insurance plan and related benefits for employees, implementing new payroll procedures, and learning and implementing a new financial accounting software system.

Respectfully submitted this 26th Day of April, 2024,



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