

OCTOBER TERM, 2024

IN THE
SUPREME COURT OF THE UNITED STATES
No. _____

TEDOR DAVIDO,
Petitioner,

v.

SECRETARY, PA. DEPT. OF CORRECTIONS, et
al.,
Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN
WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATE COURT OF APPEAL FOR THE THIRD CIRCUIT

JENNIEFER CHICCARINO*
ERIC J. MONTROY
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FOR THE EASTERN DISTRICT OF
PENNSYLVANIA
CAPITAL HABEAS CORPUS UNIT
SUITE 545-W, THE CURTIS CENTER
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Court

Counsel for Petitioner, Tedor Davido

DATED: JUNE 18, 2025

OCTOBER TERM, 2024

IN THE
SUPREME COURT OF THE UNITED STATES
No. _____

TEDOR DAVIDO,
PETITIONER,

v.

SECRETARY, PA. DEPT. OF CORRECTIONS, ET
AL.,
RESPONDENT.

APPLICATION FOR AN EXTENSION OF TIME WITHIN
WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATE COURT OF APPEAL FOR THE THIRD CIRCUIT

TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE
SUPREME COURT AND CIRCUIT JUSTICE FOR THE THIRD CIRCUIT:

Petitioner, TEDOR DAVIDO, respectfully requests a sixty (60) day extension of time within which to file a petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit. In support thereof, Petitioner submits as follows:

1. This is a capital case. Mr. Davido is a death sentenced Pennsylvania inmate who sought federal habeas corpus relief. The district court denied Mr. Davido's habeas petition and declined to issue a certificate of appealability (COA) on July 20, 2021. (Appendix C). On July 25, 2023, Mr. Davido sought and was granted a COA from the court of appeals on two issues. (Appendix B). The Third

Circuit denied COA on the remaining four issues raised by Mr. Davido in his application. The court of appeals affirmed the district court's denial of relief on February 2, 2025. (Appendix A). Mr. Davido sought rehearing, which the court of appeals denied on April 8, 2025 (Appendix D).

2. Mr. Davido intends to file a petition for writ of certiorari related to the two issues for which the Third Circuit granted COA, but affirmed the district court's denial of habeas corpus relief; as well as one issue which was denied COA by the Third Circuit. This Court has jurisdiction over such a petition under 28 U.S.C. § 1254.

3. Petitioner's counsel cannot meaningfully prepare a professionally appropriate certiorari petition by the current due date of July 7, 2025. Undersigned counsel is responsible for numerous capital cases and is also the First Assistant Federal Defender for the Federal Community Defender Office for the Eastern District of Pennsylvania and is thus responsible for the administration of a large federal public defender office.

4. Pursuant to Rule 13.5 of the Rules of The Supreme Court of the United States, Petitioner may file a writ of certiorari within ninety (90) days of the Third Circuit's decision, i.e. by July 7, 2025.

5. This request for an extension is being filed and served at least ten (10) days in advance of the due date, as provided for in Rule 13.5.

6. WHEREFORE, Petitioner requests that the Court allow a sixty (60) day extension for the preparation and filing of this Petition for Writ of Certiorari to the Supreme Court of Pennsylvania addressing the post-conviction appeal decision of that Court.

Respectfully submitted,

/s/ Jennifer Chiccarino
JENNIFER CHICCARINO*
ERIC J. MONTROY
FEDERAL COMMUNITY DEFENDER
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA
CAPITAL HABEAS CORPUS UNIT
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IN THE
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v.

SECRETARY, PA. DEPT. OF CORRECTIONS, ET AL.,
RESPONDENT.

CERTIFICATE OF SERVICE

I hereby certify that I am a member in good standing of the bar of this Court and that on this 18th day of June, 2025 I caused one copy of the foregoing Application For An Extension Of Time Within Which To File A Petition For A Writ Of Certiorari To The Court of Appeals for the Third Circuit to be served by United States mail, postage prepaid on the counsel identified below, pursuant to Rule 29.4(a) of the Rules of this Court. All parties required to be served have been served.

Counsel for Respondent:

SUSAN E. AFFRONTI
SENIOR DEPUTY ATTORNEY GENERAL
OFFICE OF ATTORNEY GENERAL
CRIMINAL LAW DIVISION
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NORRISTOWN, PA 19403

/s/ Jennifer Chiccarino
Jennifer Chiccarino

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APPENDIX A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-9000

TEDOR DAVIDO,
Appellant
v.

SECRETARY PENNSYLVANIA DEPARTMENT OF CORRECTIONS;
SUPERINTENDENT GREENE SCI;
SUPERINTENDENT ROCKVIEW SCI

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2:06-cv-00917)
District Judge: Hon. Mitchell S. Goldberg

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
February 3, 2025

Before: CHAGARES, MATEY, and AMBRO, *Circuit Judges*

(Filed: February 10, 2025)

OPINION*

*This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

MATEY, *Circuit Judge*.

Tedor Davido seeks a writ of habeas corpus to challenge his convictions for first-degree murder and rape. Because the District Court properly denied his petition, we will affirm.

I.

On May 14, 2000, an argument broke out between Davido and his girlfriend, Angelina Taylor, during which Davido became physically abusive. Davido’s “sister called 911 from a pay phone,” “identif[ied] herself as a neighbor,” and “reported that a man was beating a woman at 26 Hager Street.” App. 154. Police “were immediately dispatched to investigate a ‘domestic situation’ that involved a ‘man . . . hitting a woman[,]’ and were informed en route that loud screaming had been heard from inside the residence.” App. 154 (alteration in original) (quoting App. 295). But when officers arrived mere minutes later, “all was quiet.” App. 154. “Responding to a ‘gut feeling’ that someone inside might be injured or otherwise in need of assistance, one officer entered the residence through an unsecured window.” App. 154. During their sweep of the house, officers discovered Taylor “completely unresponsive and having difficulty breathing.” App. 154. Taylor was transported to the hospital, where she ultimately died.

A jury found Davido guilty of first-degree murder and rape. After unsuccessfully challenging his conviction on direct appeal, Davido filed a pro se Post-Conviction Relief Act (PCRA), 42 Pa. Cons. Stat. §§ 9541–9546, petition, which the PCRA court denied, and the Pennsylvania Supreme Court affirmed. Davido then petitioned for a writ of habeas corpus, pursuant to 28 U.S.C. § 2554, claiming, in relevant part, that 1) trial

counsel provided ineffective assistance by failing to move to suppress evidence; and 2) the trial court violated his Sixth Amendment Right to self-representation. The District Court denied Davido's petition and he appealed. We issued a certificate of appealability (COA).¹

II.

A.

Davido claims that his right to counsel was violated because his attorney did not move to suppress evidence obtained from the officers' warrantless entry. But he must first show "that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice." *Kimmelman v. Morrison*, 477 U.S. 365, 375 (1986). A search warrant is not required if "'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey v. Arizona*, 437 U.S. 385, 394 (1978) (quoting *McDonald v. United States*, 335 U.S. 451, 456 (1948)). One such exigency "is the need to assist persons who are seriously injured or threatened with such injury."

¹ The District Court had jurisdiction under 28 U.S.C. § 2254 and we have jurisdiction under 28 U.S.C. §§ 1291 and 2253. "Because the District Court dismissed the petition without conducting an evidentiary hearing" on the claims for which we granted a COA, "we exercise plenary review." *Morton v. Dir. V.I. Bureau of Corr.*, 110 F.4th 595, 600 (3d Cir. 2024). "[O]n habeas review, we defer to the state court's rulings for claims adjudicated on the merits," *Rega v. Sec'y, Pa. Dep't of Corr.*, 115 F.4th 235, 240 (3d Cir. 2024), unless they were 1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court," or 2) "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," § 2254(d).

Brigham City v. Stuart, 547 U.S. 398, 403 (2006). This “emergency aid exception” applies if there is “an objectively reasonable basis for believing,” *Michigan v. Fisher*, 558 U.S. 45, 47 (2009) (per curiam) (quoting *Brigham City*, 547 U.S. at 402, 406), “that ‘a person within [the house] is in need of immediate aid,’” *id.* (alteration in original) (quoting *Mincey*, 437 U.S. at 392).

Here, there is ample evidence of exigencies obviating the need for a warrant. The 911 caller identified herself as a neighbor and “reported that a man was beating a woman.” App. 154. After being “dispatched to investigate a ‘domestic situation’ that involved a ‘man . . . hitting a woman[,]’” officers were informed en route “that loud screaming had been heard from inside the residence.” App. 154 (alteration in original) (quoting App. 295). But when officers arrived, less than three minutes after the 911 call was made, “no one answered the door, and no sound could be heard except the unanswered ringing of a telephone within the residence.” App. 159. Taken together, these circumstances are sufficient to justify a warrantless search, such that Davido cannot show his counsel was ineffective.

B.

Nor was it objectively unreasonable for the Pennsylvania Supreme Court to conclude that Davido failed to clearly and unequivocally invoke his right to proceed pro se during the guilt phase of trial. “[T]he Sixth and Fourteenth Amendments include a ‘constitutional right to proceed *without* counsel when’ a criminal defendant ‘voluntarily and intelligently elects to do so.’” *Indiana v. Edwards*, 554 U.S. 164, 170 (2008) (quoting *Faretta v. California*, 422 U.S. 806, 807 (1975)). The request to proceed pro se must be

made “clearly,” “unequivocally,” “knowingly[,] and intelligently.” *Faretta*, 422 U.S. at 835.

In a four-page letter sent in advance of trial, Davido outlined his public defender’s shortcomings, requested appointment of new counsel, asked for exhumation of Taylor’s body for additional tests, reiterated his request for new counsel and, in the alternative, stated “that if you do not ap[p]oint new coun[s]el then [I’]ll have no other alternative but to exer[c]ise my 6th [A]mendment to represent my[s]elf and have [the public defender] as my assistant.” App. 198. The trial court refused to appoint new counsel and denied Davido’s request to proceed *pro se*.

Nothing about Davido’s request was clear or unequivocal. Based on “the totality of circumstances surrounding the request,” the Pennsylvania Supreme Court correctly concluded that Davido’s request to proceed *pro se* was equivocal because “it was employed as a bargaining device, rather than as a clear demand for self representation,” when “posed as his only alternative if he was not afforded new counsel.” App. 134. Because Davido failed to “clearly and unequivocally ask to proceed *pro se*,” he did not overcome the “reasonable presumption against a waiver of counsel.” *Buhl v. Cooksey*, 233 F.3d 783, 790 (3d Cir. 2000).

* * *

For these reasons, we will affirm the District Court’s judgment.

APPENDIX B

ELD-019

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **22-9000**

TEDOR DAVIDO, Appellant

VS.

SECRETARY PENNSYLVANIA DEPARTMENT OF CORRECTIONS; et al.

(E.D. Pa. Civ. No. 2-06-cv-00917)

Present: CHAGARES, *Chief Judge*, MATEY, and AMBRO, *Circuit Judges*

Submitted are:

- (1) Appellant's Motion for Extension of Word Limit for [Application] for Certificate of Appealability ("COA");
 - (2) Appellant's Application for COA Under 28 U.S.C. § 2253(c)(1);
 - (3) Appellees' Motion for Permission to Exceed Word Limitation for Memorandum in Opposition to Application for COA;
 - (4) Appellees' Memorandum in Opposition to Application for COA;
 - (5) Appellant's Unopposed Motion for Extension of Word Limit for Reply in Support of Application for COA; and
 - (6) Appellant's Reply in Support of Application for COA
- in the above-captioned case.

Respectfully,

Clerk

(Continued)

ORDER

Appellant's motions to exceed the page limitations applicable to his request for a certificate of appealability (COA) and reply in support thereof are **GRANTED**. Appellees' motion to exceed the page limitation applicable to their response is also **GRANTED**.

Appellant's request for a COA is **GRANTED** as to Appellant's claims that 1) trial counsel provided ineffective assistance by failing to move to suppress evidence obtained as the result of a warrantless entry and search, and 2) Appellant was denied his Sixth Amendment right to represent himself during the guilt phase. We are satisfied that jurists of reason could debate the District Court's resolution of these claims. *See* 28 U.S.C. § 2253(c); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Appellant's request for a COA on his remaining claims is **DENIED**.

In addition to any other issues the parties may wish to address within the scope of the COA, the parties are directed to address whether the circumstances surrounding the entry of Appellant's home present "a paradigm instance" for application of the inevitable discovery exception to the warrant requirement. *Commonwealth v. Davido*, 106 A.3d 611, 623–24, & 655 (Saylor, J., concurring) (citing *Nix v. Williams*, 467 U.S. 431, 447 (1984)).

By the Court,

s/ Paul B. Matey

Circuit Judge

Dated: July 25, 2023
ARR/cc: MCL; JAB

APPENDIX C

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-9000

TEDOR DAVIDO,
Appellant

v.

SECRETARY PENNSYLVANIA DEPARTMENT OF CORRECTIONS;
SUPERINTENDENT GREENE SCI;
SUPERINTENDENT ROCKVIEW SCI

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2:06-cv-00917)
District Judge: Hon. Mitchell S. Goldberg

PETITION FOR REHEARING

BEFORE: CHAGARES, *Chief Judge*, and HARDIMAN, SHWARTZ, KRAUSE,
BIBAS, PORTER, MATEY, PHIPPS, MONTGOMERY-REEVES, CHUNG, AMBRO*,
Circuit Judges

* Judge Ambro's vote is limited to panel rehearing only.

The petition for rehearing filed by appellant Tedor Davido in the above-captioned matter has been submitted to the judges who participated in the decision of this Court and to all other available circuit judges of the Court in regular active service. No judge who concurred in the decision asked for rehearing, and a majority of the circuit judges of the Court in regular active service who are not disqualified did not vote for rehearing by the Court en banc. It is now hereby **ORDERED** that the petition is **DENIED**.

BY THE COURT

s/ Paul B. Matey
Circuit Judge

Dated: April 8, 2025
ARR/cc: EJM; SEA; JAB;