No.

IN THE

Supreme Court of the United States

VIOLET LOVE RAY,
Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS;
ATTORNEY GENERAL, STATE OF FLORIDA,
Respondents.

APPLICATION FOR A 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 ELEVENTH CIRCUIT

Application to the Honorable Clarence Thomas,
as Circuit Justice for the Eleventh Circuit

Pursuant to Supreme Court Rule 13.5, Applicant Violet Love Ray, hereby requests a 60-day extension of time, to and including April 20, 2025, within which to file a petition for a writ of certiorari.

1. The decision below is *Ray v. Secretary, Florida Department of Corrections*, No. 23-13453 (11th Cir. 2024). The Eleventh Circuit issued an order on September 12, 2024 denying a certificate of appealability, *see* App. A, and denied a motion for reconsideration on November 21, 2024, *see* App. B. Unless extended, Applicant's time to seek certiorari in this Court expires February 19, 2025. Applicant is filing this application at least ten days before that date. *See* S. Ct. R. 13.5. This Court's

jurisdiction would be invoked under 28 U.S.C. § 1254(1). Respondents consent to this extension request.

2. This case presents at least the following substantial question of law meriting this Court's attention: whether a certificate of appealability ("COA") required by 28 U.S.C. § 2253(c) may be denied following a division among state appellate judges on the question whether the petitioner has experienced the denial of a constitutional right. This Court has established that in deciding whether to issue a COA, the issuing court is neither required, nor permitted, to undertake full consideration of the factual and legal merits of the case because "[t]he question is the *debatability* of the underlying constitutional claim, not the resolution of that debate." *Miller-El v. Cockrell*, 537 U.S. 322, 342 (2003) (emphasis added). This Court has further established that, to meet this standard, a petitioner need only establish that "reasonable jurists could debate whether … the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The federal courts have reached conflicting results in the application of these principles. Some courts have held that once an issue has garnered a division among state appellate judges, a COA should be granted absent the "unlikely event that the views of the dissenting judge(s) are erroneous beyond any reasonable debate." *Jones v. Basinger*, 635 F.3d 1030, 1040 (7th Cir. 2011); *see also* United States Court of Appeals for the Third Circuit, *Local Rules*, R. 22.3 ("[I]f any judge of the panel is of the opinion that the applicant has made the showing required by 28 U.S.C.

§ 2253, the certificate will issue."). Other courts, like the Eleventh Circuit in this case, impose a more demanding standard at odds with this Court's direction to grant a COA if a "reasonable jurist[]" could be persuaded of the merits of the petitioner's claim. In this case, for example, a state appellate judge determined that Ms. Ray had established ineffective assistance of counsel in violation of her constitutional rights in a trial that led to a sentence of life imprisonment without parole. Nevertheless, the Eleventh Circuit determined that Ms. Ray had not made the threshold showing of debatability as to her claim required to warrant a COA. *See* App. A.

The lower courts' differing approaches to the standard for issuing a COA has drawn repeated scrutiny from this Court in recent years. *See Johnson v. Vandergriff*, 143 S. Ct. 2551, 2553 (2023) (Sotomayor J., joined by Kagan and Jackson, JJ., dissenting) (criticizing Eighth Circuit for applying "too demanding" a standard for issuing a COA where state and federal judges had divided on the merits of the habeas petition); *Jordan v. Fisher*, 135 S. Ct. 2647, 2651 (2015) (Mem.) (Sotomayor, J., joined by Ginsburg and Kagan, JJ., dissenting from the denial of certiorari) (the fact that "[t]wo judges … found [the claim] highly debatable" should "indicate that reasonable minds could differ—*had differed*—on the resolution of [the petitioner's] claim"). Confusion over the proper standard has also led to a "disturbing lack of uniformity" in multiple circuits in decisions regarding whether to issue a COA. *Moody v. United States*, 958 F.3d 485, 488 (6th Cir. 2020) (Thapar, J.) (quoting *Portfield v. Bell*, 258 F.3d 484, 487 (6th Cir. 2001)); *see also* Julia Udell, *Certificates of*

Appealability in Habeas Cases in the United States Court of Appeals for the Eleventh Circuit: A Study (2020) (noting that rates of granting COAs by individual judges in the Eleventh varied from between 2.33% to 25.81%). Absent this Court's intervention, whether an applicant who may—like Ms. Ray—be serving a life sentence or even facing a death sentence on the basis of a constitutionally infirm conviction has an opportunity to present the merits of her habeas petition depends much on the luck of the draw.

3. Correcting the Eleventh Circuit's overly demanding standard for issuance of a COA is also necessary to prevent a serious miscarriage of justice in this case. Ms. Ray suffered an unimaginable tragedy after a fatal injury caused the death of her two-year-old daughter, F.R. Then the tragedies compounded: Despite nothing but circumstantial evidence and conjecture, and notwithstanding multiple plausible alternative explanations for F.R.'s death, the State elected to prosecute and obtained convictions against Ms. Ray for first-degree murder, child abuse, and child neglect. Ms. Ray is now serving a life sentence without parole. Worse still, as direct result of F.R.'s death, the State terminated the parental rights of Ms. Ray and her husband over their remaining five children—special-needs children, like F.R. had been, whom Ms. Ray and her husband welcomed into their home after their biological parents had given them up.

Ms. Ray sought post-conviction relief, claiming that she had received ineffective assistance of counsel in violation of her Sixth Amendment rights. Most critically, trial counsel had completely neglected to challenge the centerpiece of the

State's theory of the case: that F.R. had suffered 13 strikes to the head "around the same time," impacts that (again, as defense counsel failed to rebut) could only be explained by a violent assault. Far from it. Defense counsel *reinforced* the State's theory of the case at trial. Moreover, at a post-conviction hearing ordered by the state appellate court, evidence emerged demonstrating that had Ms. Ray received effective counsel the trial would very likely have reached a different outcome: For example, the State's key expert witness walked back her testimony that F.R. suffered 13 impacts the night of her death and conceded that innocuous events may have been the cause.

After the state post-conviction court denied relief, Ms. Ray appealed to the state appellate court. A divided panel denied the appeal. However, Justice Cohen issued a reasoned dissent presenting the view that defense counsel's failure to challenge the "13 impacts" theory presented by the State's expert constituted ineffective assistance of counsel. Ms. Ray filed a petition for Writ of Habeas Corpus with the United States District Court for the Middle District of Florida, which was denied. The district court declined to issue a COA. Moreover, even though Ms. Ray pointed out that Justice Cohen's dissent in the state court proceedings demonstrated that "reasonable jurists" could debate the merits of her ineffective assistance of counsel claim, the Eleventh Circuit denied Ms. Ray's request for a COA as well. In a two-sentence opinion, the Eleventh Circuit stated that Ms. Ray had "failed to make a substantial showing of the denial of a constitutional right." App. A.

Ms. Ray should be given an opportunity to present the merits of her constitutional claim. Ms. Ray should not be forced to serve a sentence of life parole for a crime she did not commit as a result of constitutionally deficient assistance of counsel, or be further victimized in connection with the tragic loss of her daughter.

4. A 60-day extension within which to file a certiorari petition is reasonable and necessary.

a. Additional time is necessary for counsel to become fully familiar with the issues, the extensive evidentiary record, and relevant case law, and to best present the issues for this Court's review. Given the importance of this issue and the severity of the life sentence Ms. Ray faces absent further review, there is good cause for extension.

b. The request is further justified by counsel of record[1] for the petition's press of business on other pending matters. Among other things, counsel responsible for preparing Ms. Ray's petition have an argument on February 28th in *Amazon v. CIM*, No. 24-2-09232-3 SEA (Wash. Sup. Ct.), post-trial briefs due February 19 and March 15th in *U.S. Bank Nat'l Ass'n v. DLJ Mortg. Capital, Inc.*, Index No. 650369/2013 (N.Y. Sup. Ct.), assistance for an oral argument on March 6 in *Sonos, Inc. v. Google LLC*, No. 23-2040 (Fed. Cir.), an answering brief on March 9th in *Micron Tech., Inc. v. Netlist*, Nos. 24-2281, -2282 (Fed. Cir.), an answering brief on March 31st in *Netlist, Inc. v. Samsung Elecs.*, No. 24-2304 (Fed. Cir.), preparation

[1] Expected counsel of record for the petition, Paul F. Rugani, is applying for admission to practice before this court.

for an oral argument to be scheduled in March in *Chestnut Westside, LLC et al. v. Amazon Energy, LLC et al.*, F088003 (Cal. Ct. App.), and assistance in preparation for oral arguments to be scheduled in March in *U.S. Bank Nat'l Ass'n v. DLJ Mortg. Capital, Inc.*, Case Nos. 2024-00716 and 2024-00717 (N.Y. App. Div.).

5. The requested 60-day extension would cause no prejudice to Respondents, who have advised that they consent to the extension.

6. For the foregoing reasons, Applicant hereby requests that an extension of time be granted, up to and including April 20, 2025, within which to file a petition for certiorari.

Respectfully submitted,

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February 5, 2025

App. A

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-13453

VIOLET LOVE RAY,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:20-cv-00263-JLB-PRL

ORDER:

Violet Ray appeals the denial of her 28 U.S.C. § 2254 habeas corpus petition and seeks a certificate of appealability ("COA"). Her motion for a COA is DENIED because she has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

/s/ Andrew L. Brasher

UNITED STATES CIRCUIT JUDGE

App. B

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-13453

VIOLET LOVE RAY,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:20-cv-00263-JLB-PRL

Before GRANT and BRASHER, Circuit Judges.

BY THE COURT:

Violet Ray has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's September 12, 2024, order denying a certificate of appealability to appeal the denial of her 28 U.S.C. § 2254 petition. Upon review, Ray's motion for reconsideration is DENIED because she has offered no new evidence or arguments of merit to warrant relief.