

NO. 17A721  
IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 2017

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**ARTHUR BROWN, JR.,**

*Petitioner,*

vs.

**STATE OF TEXAS,**

*Respondent.*

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APPLICATION FOR A TEN (10) DAY EXTENSION OF TIME  
IN WHICH TO FILE PETITION FOR WRIT OF CERTIORARI TO  
THE TEXAS COURT OF CRIMINAL APPEALS  
-SECOND REQUEST-  
(UNOPPOSED MOTION)

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Capital Case

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To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit.

NOW COMES, Petitioner, Arthur Brown, Jr. (“Mr. Brown”), by and through undersigned counsel, and in accordance with Supreme Court Rules 13.5 and 30.2, respectfully requests an extension of time of ten (10) days within which to file his Petition for Writ of Certiorari to review the opinion of the Texas Court of Criminal Appeals.

In support of his request, Mr. Brown would show the following:

1. Petitioner is a death-sentenced inmate in the custody of the State of Texas. This case involves a petition arising from the Texas Court of Criminal Appeals' denial of habeas corpus relief.

2. This Court's jurisdiction to review the decision of the Texas Court of Criminal Appeals is invoked in accordance with 28 U.S.C. § 1257(a).

3. On November 22, 1993, Petitioner was sentenced to death in the 351<sup>st</sup> Judicial District Court of Harris County, Texas.

4. After state and federal post-conviction proceedings had ended, the State of Texas scheduled an execution date for October 29, 2013. Mr. Brown, through undersigned counsel, sought to withdraw the execution date in order to conduct testing on the firearms evidence that was presented during his trial. The State agreed to withdraw the execution date to allow testing. Upon receiving the results of this testing, Mr. Brown filed a subsequent application for writ of habeas corpus in the state court raising a due process false evidence claim, among other claims. The Court of Criminal Appeals held that the due process claim satisfied the statutory requirements to allow the subsequent writ application to proceed and remanded that claim to the trial court. After a hearing, the trial court adopted Mr. Brown's proposed findings of fact and conclusions of law and recommended that relief be granted. The Texas Court of Criminal Appeals disagreed with the trial court and held that Mr. Brown did not demonstrate sufficient harm.

5. On October 18, 2017, the Court of Criminal Appeals (with one judge dissenting) issued an opinion denying habeas relief on the false evidence claim. As a result, Mr. Brown's original due date for filing a petition for certiorari in this Court was January 16, 2018.

6. This is the second request for an extension of time to file a petition for writ of certiorari. Petitioner filed the first request, seeking 30 additional days to file a petition, on or about January 4, 2018. This Court, by order dated January 8, granted that motion and extended the time to file a petition to February 15, 2018.

7. On January 5, 2018, the day after undersigned counsel filed the first request for extension, counsel received notification from the 106<sup>th</sup> Judicial District Court of Gaines County, Texas, that the following case would be set for a felony jury trial on the court's February 2, 2018, trial docket: *The State of Texas v. Javier Moreno*, Cause No. 17-4678. The *Moreno* case involves four felony counts, including sexual assault of a child and indecency with a child by contact. Jury selection is scheduled for February 2, and the trial will resume with evidence the next week on February 5, 2018. It is anticipated that the trial will take the the entire week of February 5, 2018, and may continue into the next week. As a result, it is likely that the trial will last until a week or less before the petition is due to this Court in this case.

8. Had counsel been aware that this case would be called for trial at the time of filing the first request for extension, he would have sought additional time in that motion. Counsel has been endeavoring to work on both this cert petition

while preparing for trial; however, it is apparent that additional time will be required to complete the cert petition.

9. Counsel has contacted the opposing counsel for the Respondent, Josh Reiss with the Harris County District Attorney's Office and Erich Dryden with the Texas Attorney General's Office, by electronic mail and can represent that the State is not opposed to the requested extension.

10. Wherefore, based on the foregoing, Petitioner respectfully requests an extension of time of ten (10) days, to and including February 26, 2018 (February 25, 2018, is a Sunday), in which to file the Petition for Writ of Certiorari to review the denial of habeas corpus by the Texas Court of Criminal Appeals.

Respectfully submitted,

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By: /s/ Paul E. Mansur  
Paul E. Mansur  
Attorney for Petitioner,  
Arthur Brown, Jr.

Certificate of Service

I hereby certify that on January 29, 2018, I served, by email and by first class, U.S. mail, the foregoing application for extension of time to file a petition for writ of certiorari on counsel for the State at the following:

Greg Abbott  
attn: W. Erich Dryden  
Texas Attorney General  
Postconviction Litigation Division  
P.O. Box 12548  
Austin, Texas 78711-2548.

Josh Reiss  
Assistant District Attorney  
Post Conviction Writs Division  
Harris County District Attorney's Office  
1201 Franklin Street, Suite 600  
Houston, Texas 77002-1923

/s/ Paul E. Mansur