

No. _____

IN THE
Supreme Court of the United States

MAURICE ANDERSON,
PETITIONER,
V.
STATE OF LOUISIANA,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
LOUISIANA COURT OF APPEAL, FIRST CIRCUIT

UNOPPOSED APPLICATION FOR A 45-DAY EXTENSION OF TIME TO
FILE A PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

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**UNOPPOSED APPLICATION FOR A 45-DAY EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO
THE LOUISIANA COURT OF APPEAL, FIRST CIRCUIT**

To the Honorable Samuel Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

For the specific reasons set forth below, Petitioner Maurice Anderson respectfully requests, under Supreme Court Rules 13.5, 22, 30.2, and 30.3, a forty-five (45) day extension of time within which to file a petition for writ of certiorari. If this Application is granted, then the certiorari petition will be due on June 18, 2018. As discussed herein, this case raises several important Eighth Amendment questions regarding Louisiana's habitual offender laws. Furthermore, Mr. Anderson has only recently retained Counsel of Record G. Ben Cohen to represent him *pro bono* before this Court. Respondent does not oppose Mr. Anderson's request for an extension.

Mr. Anderson has not previously sought an extension of time from this Court. The Supreme Court of Louisiana denied review of the Louisiana Court of Appeal, First Circuit's decision on February 2, 2018. The time for filing a petition in this Court would thus expire on May 3, 2018, absent an extension. Consistent with Supreme Court Rule 13.5, this application has been filed at least 10 days before that date. In support of this Application, Mr. Anderson provides the supporting information in the following paragraphs.

1. On October 22, 2014, Mr. Anderson was convicted of theft of over \$1500.00 and simple battery, in violation of LSA-R.S. 14:67(B)(1) and LSA-R.S.

14:35, respectively. The state trial court initially sentenced Mr. Anderson to ten years¹ imprisonment at hard labor on the theft and six months imprisonment in parish jail on the simple battery. The sentences were to be served consecutively. Mr. Anderson appealed the trial court's ruling on the motion to quash based on untimely commencement of trial. The Louisiana Court of Appeal First Circuit denied the appeal and affirmed the conviction and sentences in an unpublished opinion. *State v. Anderson*, 2016 La. App. Unpub. LEXIS 47, 2015-1043 (La. App. 1 Cir. 02/24/16).

2. Subsequently, the state filed a habitual offender bill of information. At the habitual offender hearing, the state alleged Mr. Anderson was a fourth-felony habitual offender and introduced evidence of predicate convictions that included theft, simple burglary, unauthorized entry, and possession/introduction of contraband (allegedly marijuana) into a penal institution. The state did not allege that any of Mr. Anderson's previous offenses constituted a crime of violence or a sex offense. The trial court imposed a habitual offender sentence of sixty years at hard labor, without the benefit of probation or suspension of sentence. The trial court explicitly noted that Mr. Anderson had no felony convictions for a crime of violence. Mr. Anderson appealed *pro se* and his appointed lawyer filed an *Anders* brief and sought to withdraw. The First Circuit rejected Mr. Anderson's challenges to his sentence, including the argument that the sixty-year habitual offender sentence

¹ At the time of the offense in 2012, this was the maximum sentence a defendant could receive for theft of over \$1500.00. In 2014, the maximum amount was reduced to five years.

imposed on the theft offense was unconstitutionally excessive. *See State v. Anderson*, 2017 La. App. Unpub. LEXIS 47, 2016-1191 (La. App. 1 Cir. 02/17/17). The court affirmed the habitual offender adjudication and sentence, and granted the lawyer's motion to withdraw. *Id.*

3. On February 2, 2018, the Louisiana Supreme Court denied review of the First Circuit Court of Appeal's decision. *State v. Anderson*, No. 2017-KO-0671, 2018 La. LEXIS 352 (La. Feb. 2, 2018). Chief Justice Johnson dissented, noting that "defendant has no convictions for crimes of violence" and that the state legislature "recently amended the [habitual offender statute] to provide for a reduction of sentences . . . in certain circumstances." *Id.* at *2. Chief Justice Johnson calculated that Mr. Anderson would have only been sentenced to **20 years imprisonment** under the amended habitual offender statute. *Id.*; see La. R.S. § 15:529.1(A)(4)(b) (effective November 1, 2017). Taking into consideration the fact that Mr. Anderson was in his 40s at the time of sentencing, Chief Justice Johnson indicated that the 60-year sentence – "effectively a life sentence" – was grossly disproportionate to the severity of the offense, and should be set aside. *Id.* at *3. Justice Crichton wrote separately to say he would have granted the application to examine the sentence in light of the amendments to the habitual offender statute. *Id.*

4. Mr. Anderson has only recently retained undersigned counsel to serve as Counsel of Record before this Court on a *pro bono* basis. Counsel has not had the opportunity to fully review the record below, but an initial review indicates that this

case may present several important Eighth Amendment issues that warrant this Court's review, including but not limited to:

1. Whether sentencing a defendant in his 40s to sixty years at hard labor for a non-violent offense is cruel and unusual?
2. Whether such a sentence is prohibited by the evolving standards of decency when the legislature has since limited the maximum punishment to twenty years?

Based on preliminary research, similar questions have been raised by judges around the country. *See e.g., United States v. Rivera-Ruperto*, 884 F.3d 25, 26 & n.3 (1st Cir. 2018) (Barron, J., concurring) (describing in detail the line of precedent leading up to *Harmelin v. Michigan*, 501 U.S. 957 (1991), and why that “fractured” opinion should be revisited by this Court).

5. Mr. Anderson intends to file a petition for certiorari in this case and requests additional time to file the petition as he only recently obtained undersigned counsel to assist him with the petition. Counsel requires additional time to gather and review the relevant record materials and to provide the type of comprehensive analysis that would aid this Court in determining whether review is warranted.

6. Respondent does not oppose Mr. Anderson's request for an extension.

7. Under Rules 13.5 and 30.3, this Court may extend the time for seeking certiorari for up to sixty (60) additional days. We ask Your Honor to grant an extension of forty-five (45) days under the circumstances, up to and including Monday, June 18, 2018. Counsel seeks the extension requested herein for good

cause and seeks no more time than is necessary to accommodate the circumstances described herein.

8. Accordingly, Mr. Anderson asks that the deadline for filing a petition for writ of certiorari be extended for forty-five (45) days, up to and including Monday, June 18, 2018.

Respectfully Submitted,



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Dated: April 20, 2018

CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the 20th day of April, 2018, pursuant to Supreme Court Rules 29.3 and 29.4, a copy of the Application for an Extension of Time Within Which to File a Petition for a Writ of Certiorari to the Louisiana Court of Appeal, First Circuit, was served on each party to the above proceeding, or that party's counsel, and on every other person required to be served, by depositing an envelope containing these documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

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