

**IN THE SUPREME COURT OF THE UNITED STATES
CASE NO. 17A1231**

DENNIS MILLER,

Petitioner,

v.

**Secretary, Pennsylvania Department of Corrections, Superintendent
SCI-Greene, and Superintendent SCI-Rockview**

Respondents.

**MOTION FOR EXTENSION OF TIME FOR THE FILING OF
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

PETITIONER, Dennis Miller, through undersigned counsel, respectfully moves for an additional extension of ten (10) days to prepare and file his Petition for Writ of Certiorari seeking review of the order of the United States Court of Appeals for the Third Circuit in *Miller v. Comm’r Pa. Dept. of Corr., et. al.*, C.A. No. 16-9002, dated November 17, 2017 (Appendix A), *rehearing denied*, January 30, 2018 (Appendix B). In support thereof, Petitioner respectfully submits as follows:

1. This is a habeas corpus case brought by a Pennsylvania state prisoner who is pending resentencing on a homicide charge for which the sentence will change from death to life without parole.

2. Mr. Miller had been convicted of first degree homicide, and related charges including rape and indecent assault. He had been sentenced to death on the first degree homicide conviction.

3. Following the completion of state post-conviction proceedings in which no relief was granted, Mr. Miller filed a Petition for Writ of Habeas Corpus. The United States District Court granted the writ as to Mr. Miller's rape conviction and death sentence and denied relief on Petitioner's other guilt-phase claims. *Miller v. Beard*, 214 F. Supp.3d 304 (E.D. Pa. 2016).

4. Both Mr. Miller and Respondents appealed. On December 6, 2017, the United States Court of Appeals for the Third Circuit denied Mr. Miller's Application for Certificate of Appealability and, on January 30, 2018, it denied his application for panel rehearing.

5. On March 9, 2018, Respondents filed a motion to withdraw their cross-appeal pursuant to Fed. R. App. P. 42(b). Subsequently, their appeal was dismissed by Order of the Third Circuit on March 13, 2018.

6. Petitioner, through undersigned counsel, wishes to file a Petition for Writ of Certiorari to seek this Court's review of the Third Circuit's decision denying the Certificate of Appealability.

7. Previously, this Court granted Petitioner a 30 day extension of time, until May 30, 2018, to file his Petition for Writ of Certiorari.

8. Because of responsibilities in other capital cases, Petitioner's counsel cannot meaningfully prepare a professionally appropriate Petition by its current due date. In this week and the upcoming week, undersigned counsel's responsibilities include the following: preparing

a Brief in Opposition for this Court in a capital case and preparing an appellate brief in another capital case. Counsel has also had to care for his wife who had surgery this week.

9. Under these circumstances, Petitioner requests that the Court grant this Motion and extend by ten days the deadline by which the Petition for Writ of Certiorari must be filed.

10. This request is made more than ten days before the filing deadline herein and is timely.

11. The granting of this request shall cause no prejudice to the Respondents.

12. This request is made in good faith and is not predicated on an intent to delay.

WHEREFORE, Petitioner requests that the Court grant a ten day extension for the preparation and filing of his Petition for Writ of Certiorari, extending the deadline from May 30, 2018, to June 11, 2018 (because June 9, 2018 falls on a Saturday).

Respectfully submitted,

/s/Samuel J.B. Angell

Samuel J.B. Angell*

Assistant Federal Defender

Pa. Bar No. 61239

Federal Community Defender

Eastern District of Pennsylvania

Capital Habeas Corpus Unit

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Samuel_Angell@fd.org

Counsel for Petitioner, Dennis Miller

* member of the bar of this Court

Dated: May 18, 2018

CERTIFICATE OF SERVICE

I, Samuel J.B. Angell, certify that on this date, I caused a copy of the foregoing *Motion for Extension of Time for the Filing of Petition for Writ of Certiorari* to be served by FIRST CLASS MAIL upon the following person:

Christopher J. Schmidt
Deputy Attorney General
Office of Attorney General of Pennsylvania
Appeals & Legal Services
Strawberry Square, 13th Floor
Harrisburg, PA 17120
(717) 787-6348

/s/ Samuel J.B. Angell
Samuel J. B. Angell

Dated: May 18, 2018

APPENDIX A

ELD-012

November 17, 2017

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **16-9002**

DENNIS MILLER, Appellant

VS.

COMMISSIONER PENNSYLVANIA DEPARTMENT OF CORRECTIONS; ET AL.

(E.D. Pa. Civ. No. 2:10-cv-03469)

Present: CHAGARES, GREENAWAY, JR., and RENDELL, Circuit Judges

Submitted are:

- (1) Appellant's motion to file a request for a certificate of appealability ("COA") that exceeds 20 pages;
 - (2) Appellant's request for a COA under 28 U.S.C. § 2253(c)(1);
 - (3) Appellees' response to Appellant's request for a COA; and
 - (4) Appellant's reply in further support of his request for a COA
- in the above-captioned case.

Respectfully,

Clerk

MMW/TWC/mb

(continued)

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ORDER

Appellant's motion for leave to file an application for a certificate of appealability ("COA") that exceeds 20 pages is granted. Appellant's COA application raises the following claims: (1) Appellant's trial counsel, R. Kerry Kalmbach, was ineffective for failing to sufficiently investigate, prepare, and present a heat-of-passion defense; (2) the Commonwealth violated Brady v. Maryland, 373 U.S. 83 (1963), by failing to disclose evidence that would have impeached prosecution witness Michael Torres, and Kalmbach was ineffective for failing to investigate Torres's background, interview him, and present this impeachment evidence; and (3) the cumulative effect of the aforementioned errors violated Appellant's due process rights. We hereby deny Appellant's COA application, for he has failed to show that reasonable jurists would debate the District Court's denial of these three claims or conclude that any of these claims is adequate to deserve encouragement to proceed further. See Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). With respect to Appellant's first claim, reasonable jurists would not debate that, in light of his decision not to testify at trial, he could not show that he was prejudiced by Kalmbach's alleged failure to sufficiently investigate, prepare, and present a heat-of-passion defense. See Strickland v. Washington, 466 U.S. 668, 694 (1984). As for Appellant's second claim, reasonable jurists would not debate (a) that Appellant failed to show that the alleged Brady evidence was "material," see United States v. Bagley, 473 U.S. 667, 682 (1985), or (b) that Kalmbach's alleged failures concerning Torres prejudiced Appellant, see Strickland, 466 U.S. at 694. That is, even if the proffered impeachment evidence would have effectively negated Torres's trial testimony, reasonable jurists would not debate the conclusion that there is not a reasonable probability that the trial judge would have found Appellant guilty of heat-of-passion voluntary manslaughter instead of first-degree murder. See id.; see also Bagley, 473 U.S. at 682. Lastly, reasonable jurists would not debate that Appellant's third claim fails because the alleged errors mentioned above, even when considered in the aggregate, did not have "a substantial and injurious effect or influence in determining the . . . verdict." Collins v. Sec'y of Pa. Dep't of Corr., 742 F.3d 528, 542 (3d Cir. 2014) (quoting Fahy v. Horn, 516 F.3d 169, 205 (3d Cir. 2008)).

By the Court,

s/ Michael A. Chagares
Circuit Judge

Dated: December 6, 2017
MB/cc: Samuel J.B. Angell, Esq.
Christopher J. Schmidt, Esq.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

16-9002

DENNIS MILLER,
Appellant

v.

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

(E.D. Pa. No. 10-cv-03469)

SUR PETITION FOR REHEARING

Present: CHAGARES, GREENAWAY, Jr., and RENDELL, Circuit Judges

The petition for panel rehearing filed by appellant, in the above entitled case having been submitted to the judges who participated in the decision of this court, and no judge who concurred in the decision having asked for rehearing, the petition for panel rehearing is denied.

By the Court,

s/ Michael A. Chagares
Circuit Judge

Dated: January 30, 2018
sb/cc: Samuel J.B. Angell, Esq.
Christopher J. Schmidt, Esq.