

No. _____

In the
Supreme Court of the United States

LEO LOUIS KACZMAR, III,

Applicant,

v.

STATE OF FLORIDA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA**

DIRECTED TO THE HONORABLE CLARENCE THOMAS,
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT

ANDY THOMAS

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Second Judicial Circuit of Florida

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January 5, 2018

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR
A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA**

**To the Honorable Clarence Thomas, Associate Justice of the
Supreme Court of the United States and Circuit Justice for the Eleventh
Circuit:**

Petitioner Leo Louis Kaczmar, III, respectfully requests, pursuant to Rule 13(5) of the Rules of this Court, for an extension of time of 58 days, to and including Friday, March 16, 2018, for the filing of a petition for a writ of certiorari to review the decision of the Florida Supreme Court dated January 31, 2017 (Exhibit 1), on which a timely motion for rehearing was denied on October 19, 2017 (Exhibit 2). The jurisdiction of this Court is based on 28 U.S.C. § 1257.

1. The date within which a petition for a writ of certiorari would be due, if not extended, is January 17, 2018. This application is being filed more than 10 days before that date.

2. Petitioner was charged with first-degree murder and other offenses. In pretrial motions, he argued that various aspects of Florida's capital sentencing scheme were unconstitutional under the Sixth, Eighth, and Fourteenth Amendments. The trial court denied petitioner's motions.

At trial, petitioner was convicted of first-degree murder and other offenses. The jury recommended the death penalty. After finding that the aggravating circumstances outweighed the mitigating circumstances, the trial court sentenced petitioner to death. On appeal, the Florida Supreme Court affirmed petitioner's

convictions, but remanded for a new penalty phase.

Prior to the subsequent penalty phase, petitioner renewed his prior motions, including those in which he argued that various aspects of Florida's capital sentencing scheme were unconstitutional under the Sixth, Eighth, and Fourteenth Amendments. The trial court again denied petitioner's motions.

At the conclusion of the subsequent penalty phase, the jury recommended the death penalty. After finding that the aggravating circumstances outweighed the mitigating circumstances, the trial court sentenced petitioner to death.

On appeal before the Florida Supreme Court, petitioner argued that his death sentence should be vacated because Florida's capital sentencing scheme was unconstitutional under this Court's decisions in Ring v. Arizona, 536 U.S. 584 (2002), and Hurst v. Florida, 136 S. Ct. 616 (2016).¹ Petitioner further contended that the constitutional defect in Florida's capital sentencing scheme, including the jury being misled concerning its role in the sentencing process in a way that diminished its sense of responsibility for imposing the death penalty, gave rise to structural error under this Court's decision in Sullivan v. Louisiana, 508 U.S. 275 (1993).

The Florida Supreme Court affirmed petitioner's death sentence. While it agreed with petitioner's argument that Florida's capital sentencing scheme was unconstitutional, the constitutional error was subjected to harmless-error review and

¹While petitioner's case was pending in the Florida Supreme Court, this Court issued its decision in Hurst, 136 S. Ct. at 616. The Florida Supreme Court subsequently allowed supplemental briefing.

determined to be harmless.

3. While the above-mentioned motion for rehearing was pending, petitioner's lead counsel in the Florida Supreme Court, Nada M. Carey, Esq., retired from the Second Judicial Circuit of Florida Office of Public Defender. For multiple decades, Ms. Carey handled capital appeals for the Second Judicial Circuit of Florida Office of Public Defender. Following Ms. Carey's retirement, petitioner's case was reassigned to petitioner's Counsel of Record in this case.

4. Petitioner's Counsel of Record was not involved in the trial or appellate proceedings below. The case was briefed extensively in the Florida Supreme Court. Additional time is necessary for petitioner's Counsel of Record to completely familiarize himself with the record below, fully research the legal issues involved in this case, and prepare an appropriate petition for consideration by this Court.

5. Petitioner's Counsel of Record is currently working on a petition for a writ of certiorari in Steven Anthony Cozzie v. State of Florida (No. 17A534). The time for filing that petition has previously been extended, and that petition is now due on January 29, 2018. Mr. Cozzie's capital case was also reassigned to petitioner's Counsel of Record following Ms. Carey's retirement.

6. This case presents substantial issues of law, among which are:

(1) whether a jury is "affirmatively misled . . . regarding its role in the sentencing process so as to diminish its sense of responsibility," Romano v. Oklahoma, 512 U.S. 1, 10 (1994), when the jury is repeatedly instructed regarding a capital sentencing scheme under which the jury renders "an advisory sentence" and "the final

decision as to which punishment shall be imposed is the responsibility of the judge,” but that sentencing scheme is later held to violate the Sixth Amendment right to jury trial; and

(2) whether, considering the Sixth Amendment right to jury trial in conjunction with the Fourteenth Amendment right to due process and the “Eighth Amendment’s heightened ‘need for reliability in the determination that death is the appropriate punishment in a specific case,’” Caldwell v. Mississippi, 472 U.S. 320, 323 (1985) (quoting Woodson v. North Carolina, 428 U.S. 280, 305 (1976)), structural error occurs when a jury not only is given misleading and inaccurate instructions that ultimate responsibility for determining the appropriateness of imposing the death penalty rests elsewhere, but also fails to return beyond-a-reasonable-doubt findings as to multiple, critical elements necessary to impose the death penalty.

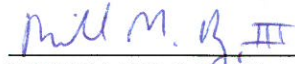
For the foregoing reasons, petitioner hereby requests that an extension of time to and including March 16, 2018, be granted within which petitioner may file a petition for a writ of certiorari.

Respectfully submitted,

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