

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Richard Harley Greenway, Petitioner,

vs.

Charles L. Ryan, Director of the Arizona Department of Corrections, et al.,
Respondents.

****CAPITAL CASE****

**APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT
OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

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To the Honorable Anthony M. Kennedy, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to this Court's Rules 13.5, 22, and 30, Petitioner Richard Harley Greenway respectfully requests a fifty-nine-day extension of time, up to and including March 30, 2018, within which to file a petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case. If not extended, the time for filing a petition will expire on January 30, 2018. Consistent with Rules 13.5 and 30.2, this application is being filed at least ten days before that date.

The United States Court of Appeals for the Ninth Circuit filed an opinion, a copy of which is attached hereto as Appendix A, denying Mr. Greenway's habeas appeal on May 11, 2017. Because Mr. Greenway also had a supplemental brief pending before the court, addressing the application of *McKinney v. Ryan*, 813 F.3d 798 (9th Cir. 2015) (en banc), *cert. denied*, 137 S. Ct. 39 (2016) to his case, the court stayed the time in which to file a petition for panel rehearing or rehearing en banc from the denial of Mr. Greenway's appeal until the court issued its decision on the remaining matter. A copy of this ruling is attached hereto as Appendix B. On August 8, 2017, the United States Court of Appeals for the Ninth Circuit filed its opinion denying relief pursuant to *McKinney*. A copy of this opinion is attached hereto as Appendix C. A timely filed petition for panel rehearing or rehearing en banc was

denied in an order issued on November 1, 2017, a copy of which is attached hereto as Appendix D. This Court has jurisdiction pursuant to 28 U.S.C. § 1254 and Supreme Court Rule 10. Assistant Attorney General Laura P. Chiasson, who is assigned to represent the Respondents in this matter, has indicated to undersigned counsel that Respondents do not oppose this requested fifty-nine-day extension.

Background

This is a capital case. Mr. Greenway was convicted by a Pima County, Arizona jury in 1989 of two counts of first-degree murder, one count of first degree burglary, one count of armed robbery, one count of theft by control, and one count of arson of an unoccupied structure. Mr. Greenway, who was nineteen years of age and had an I.Q. of 72, and a sixteen-year-old co-defendant committed these acts on March 27, 1988. Because Mr. Greenway's trial was conducted prior to this Court's ruling in *Ring v. Arizona*, 536 U.S. 584 (2002), the trial judge who presided over Mr. Greenway's case was responsible for finding the aggravating factors that would make him eligible for the death penalty and the existence of mitigating circumstances. The trial judge found three aggravating circumstances and only one mitigating circumstance, Mr. Greenway's age at the time of the murders, and sentenced him to death. Applying controlling Arizona law at the time, the Arizona Supreme Court on its independent review of Mr. Greenway's sentence affirmed the trial court's sentences and expressly affirmed the trial judge's finding that Mr. Greenway's low I.Q., which indicated

borderline intellectual functioning and not mental retardation, “*was neither significant enough to qualify as a mitigating factor*, nor sufficiently substantial to call for leniency.” *State v. Greenway*, 823 P.2d 22, 36 (Ariz. 1991).

In Mr. Greenway’s first habeas appeal before the Ninth Circuit Court of Appeals, the court reversed the district court’s holding that his claims of ineffective assistance of trial and appellate counsel were procedurally barred and remanded the case back to the district court for consideration of these claims on the merits. A copy of this opinion is attached hereto as Appendix E.

Following remand and the denial of Mr. Greenway’s claims in district court, and while Mr. Greenway’s case was still pending on appeal, the Ninth Circuit Court of Appeals issued an opinion in *McKinney v. Ryan*, which held that the Arizona Supreme Court had consistently articulated and applied an impermissible causal-nexus test to mitigating evidence in violation of *Eddings v. Oklahoma*, “in accordance with its strong view of stare decisis.” *McKinney*, 813 F.3d at 803. The court subsequently allowed supplemental briefing on the applicability of *McKinney* to Mr. Greenway’s case. A copy of this ruling is attached hereto as Appendix F. The Ninth Circuit Court of Appeals ultimately rejected Mr. Greenway’s ineffective assistance of counsel claims and affirmed the district court’s denial of habeas relief. *See* Appendix A. The court also denied relief on Mr. Greenway’s supplemental claim. *See* Appendix C.

Reasons for the Requested Extension of Time

1. This case presents complex issues concerning the interplay between the requirements of AEDPA deference and the burden of proof placed upon a habeas corpus petitioner alleging a constitutional violation by a state court. The important issues raised by this case require considerable research and analysis on the part of counsel.

2. To date, undersigned counsel has been unable to afford Mr. Greenway's petition for writ of certiorari the considerable attention it requires. Counsel for Mr. Greenway, Therese Michelle Day, is sole counsel for Mr. Greenway, and is currently appointed to nine capital habeas cases. Since Mr. Greenway's petition for rehearing was denied, Ms. Day filed a replacement opening brief in a capital habeas case in the Ninth Circuit Court of Appeals on November 21, 2017, and a post-hearing brief in federal district court, related to a week-long evidentiary hearing in a capital habeas case that occurred in August of 2017, on December 5, 2017. Additionally, Ms. Day has a motion for certificates of appealability due in federal district court on February 6, 2018, an amended habeas petition due in federal district court on February 12, 2018, and two reply briefs to capital habeas petitions due in the Ninth Circuit Court of Appeals on February 26, 2018, in four other separate capital habeas cases. Ms. Day will work diligently to file the petition for writ of certiorari on or before March 30, 2018.

Wherefore, Petitioner Greenway respectfully requests that an order be entered extending the time in which to file his petition for writ of certiorari up to and including March 30, 2018.

Respectfully submitted this 18th day of January, 2018.

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