

No. ____

IN THE SUPREME COURT OF THE UNITED STATES

Brett Jones,
Applicant,

v.

State of Mississippi,
Respondents.

**APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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

Pursuant to this Court's Rules 13.5, 22, and 30.3, and with the consent of Respondent, Applicant Brett Jones respectfully requests a 30-day extension of time to file a petition for a writ of certiorari to review the judgment of the Supreme Court of Mississippi in this case, to March 29, 2019. As discussed herein, this case appears to involve an important question of federal constitutional law upon which state courts of last resort are divided: whether the Eighth Amendment authorizes a juvenile to be sentenced to life without parole absent an explicit judicial finding of permanent incorrigibility. Mr. Jones requests this extension because Counsel of Record David M. Shapiro, who will represent Mr. Jones *pro bono* before this Court, did not represent Mr. Jones in the state court proceedings and therefore requires additional time to review the record and prepare the petition. Mr. Shapiro has numerous filing deadlines and other professional commitments which would otherwise prevent him

from providing the sort of comprehensive analysis that aids this Court in determining whether to grant certiorari.

Mr. Jones has not previously sought an extension of time from this Court. The Mississippi Supreme Court issued its order dismissing Mr. Jones's previously granted petition for certiorari on November 29, 2018. *See* Attachment A. The time for filing a petition would therefore expire on February 27, 2019, absent an extension. Consistent with Rule 13.5, this application has been filed at least 10 days before that date. This Court has jurisdiction over this case under 28 U.S.C. § 1254(1).

1. In 2005, a Mississippi court imposed on Mr. Jones a mandatory sentence of life imprisonment without the possibility of parole for a murder he committed when he was fifteen years old.

2. In 2012, this Court held that the Eighth Amendment prohibits mandatory sentences of life without parole for crimes committed by juveniles. *Miller v. Alabama*, 132 S. Ct. 2455 (2012). The Court elaborated on this rule in 2016, stating that a sentence of life without parole may imposed only on “the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.” *Montgomery v. Louisiana*, 136 S. Ct. 718, 733–34 (2016).

3. Following *Miller*, the Mississippi Supreme Court vacated Mr. Jones's mandatory life-without-parole sentence and remanded for a new sentencing hearing. *See Jones v. State*, 122 So.3d 698 (Miss. 2013). At the hearing, Mr. Jones presented a wealth of mitigating evidence, including unrebutted testimony that he had demonstrated a capacity for rehabilitation during his incarceration. Nevertheless,

the circuit court re-sentenced Mr. Jones to life without possibility of parole. Resentencing Order, *State v. Jones*, No. CR 04-833(G)(L) (Miss. Cir. Ct. Apr. 17, 2015) (attached hereto as Attachment B). The circuit court “dictated into the record” its findings in support of that sentence. *Id.* Those findings did not include a finding that Mr. Jones is permanently incorrigible.

4. Mr. Jones appealed, and the Mississippi Court of Appeals affirmed. The court of appeals opined that the Eighth Amendment does not require a sentencing authority to make a finding of permanent incorrigibility before imposing a sentence of life without parole for a crime committed by a juvenile. *Jones v. State*, No. 2015-KA-00899-COA, slip op. at 9-10, (Miss. Ct. App. Dec. 14, 2017) (attached hereto as Attachment C). Two judges dissented. Those judges would have held that “before a juvenile homicide offender may be sentenced to life in prison without the possibility of parole, a sentencing authority must make specific on-the-record findings of fact that illustrate that he is among the very rarest of juvenile offenders who are irreparably corrupt, irretrievably broken, and incapable of rehabilitation.” *Id.* at 23. And because “the trial court failed to make a finding on the record as to whether Jones is among the *rarest* of juvenile offenders under *Miller* and *Montgomery*,” those judges “would [have] reverse[d] and remand[ed] to the trial court for resentencing.” *Id.* (emphasis in original).

5. After initially granting Mr. Jones’s petition for a writ of certiorari and hearing oral argument, the Supreme Court of Mississippi sitting en banc dismissed the petition. En Banc Order at 1, *Jones v. State*, No. 2015-CT-00899-SCT (Miss. Nov. 29,

2018) (attached hereto as Attachment A). Four justices dissented, opining that “the majority, without deigning to provide any discussion of the arguments presented to this Court, waves aside the United States Supreme Court’s decision in *Montgomery* and allows an unconstitutional sentence to stand.” *Id.* at 2.

6. This case presents an important issue involving the Eighth Amendment’s protections against subjecting juveniles to cruel and unusual punishment. Mr. Jones intends to file a petition for certiorari asking this Court to hold that consistent with the Eighth Amendment, a sentence of life imprisonment without the possibility of parole may imposed for a crime committed by a juvenile only when the sentencing authority makes a finding that the juvenile is permanently incorrigible.

7. Mr. Jones’s petition will satisfy the Court’s criteria for certiorari because it concerns an important question of federal constitutional law that divides state courts of last resort. At least seven state courts of last resort hold that a sentencing authority must make a finding of permanent incorrigibility before imposing a sentence of life without parole for a crime committed by a juvenile. *See Veal v. State*, 784 S.E.2d 403, 412 (Ga. 2016); *People v. Holman*, 91 N.E.3d 849, 863 (Ill. 2017); *Luna v. State*, 387 P.3d 956, 961 (Okla. Crim. App. 2016); *Landrum v. State*, 192 So. 3d 459, 469 (Fla. 2016); *Davis v. State*, 415 P.3d 666, 695 (Wyo. 2018); *Commonwealth v. Batts*, 163 A.3d 410, 435 (Pa. 2017); *State v. Seats*, 865 N.W.2d 545, 555–56 (Iowa 2015). In contrast, four state courts of last resort—including the Supreme Court of Mississippi—hold that a finding of permanent incorrigibility is not required. *State v. Valencia*, 386 P.3d 392, 396 (Ariz. 2016); *Chandler v. State*, 242 So.3d 65, 69 (Miss.

2018); *State v. Ramos*, 387 P.3d 650, 663 (Wash. 2017); *Johnson v. State*, 395 P.3d 1246, 1258 (Idaho 2017).

8. Mr. Jones respectfully requests additional time to file his petition for certiorari for two reasons:

First, Mr. Shapiro did not represent the applicant before the Mississippi Court of Appeals or Supreme Court; therefore, Mr. Shapiro requires additional time to evaluate the record developed below in order to provide the sort of comprehensive analysis that would aid this Court in deciding whether to address this fundamental constitutional issue.

Second, Mr. Shapiro has a number of other substantial competing commitments, including:

- an opening brief in the U.S. Court of Appeals for the Eleventh Circuit in *Geter v. King*, No. 18-14824, filed January 14, 2019;
- an opening brief in the U.S. Court of Appeals for the Tenth Circuit in *Lax v. Corizon Medical Staff*, No. 18-3238, filed January 25, 2019;
- an amicus brief in the U.S. Court of Appeals for the Eleventh Circuit in *Grochowski v. Clayton County, Georgia*, No. 18-14567, filed February 1, 2019;
- an opening brief in the U.S. Court of Appeals for the Seventh Circuit in *Lockett v. Bonson*, No. 19-1012, due February 21, 2019;

- an opening brief in the U.S. Court of Appeals for the Seventh Circuit in *White v. Watson*, No. 19-1040, due March 1, 2019; and
- a reply brief in the U.S. Court of Appeals for the Ninth Circuit in *Mills v. Mitchell*, No. 18-15531, due March 14, 2019.

9. These obligations are in addition to Mr. Shapiro's responsibilities as a full-time faculty member at Northwestern Pritzker School of Law.

10. For these reasons, Mr. Jones respectfully requests that the time to file a petition for a writ of certiorari be extended to and including March 29, 2019.

11. Counsel for Respondent consented to the requested extension.

Respectfully submitted,

/s/ David M. Shapiro

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