

THIS IS A CAPITAL CASE

No. _____

In the
Supreme Court of the United States

KENNETH ROSHELL ISOM,
Petitioner

v.

STATE OF ARKANSAS
Respondent

On Petition for a Writ of Certiorari to the
Arkansas Supreme Court

Unopposed Application for Extension of Time to
File Petition for a Writ of Certiorari

To the Honorable Justice Neil M. Gorsuch, Associate Justice of the Supreme
Court of the United States and Circuit Justice for the Eighth Circuit.

Pursuant to Rule 13.5, Petitioner Kenneth Roshell Isom, respectfully
requests a **30-day extension** of time in which to file his petition for writ of
certiorari in this Court, to and including **May 31, 2019**.

Petitioner will seek review of an opinion of the Arkansas Supreme Court filed
on December 20, 2018, attached as Exhibit A. The Arkansas Supreme Court denied

a petition for rehearing on January 31, 2019. *See* Exhibit D. The time to file a petition for writ of certiorari in this Court currently expires on May 1, 2019, and this application has been filed more than ten days before that date. This Court has jurisdiction under 28 U.S.C. § 1257(a).

This case arises from a rare reinvestiture of the state trial court with jurisdiction to hear evidence pursuant to a petition for writ of error *coram nobis* in a capital murder case. Isom claimed that police suppressed evidence that the surviving victim failed to pick out Isom in a line-up and may have suppressed a pair of scissors claimed by a witness to be the murder weapon. The Arkansas Supreme Court found the physical evidence claim to have “apparent merit” and reinvested the state trial court with jurisdiction to hear evidence on all Isom’s *Brady* claims. *Isom v. State*, 462 S.W.3d 662 (Ark. 2015). Prior to the hearing, Isom moved the trial judge, Sam Pope, to recuse arguing that Judge Pope’s substantial, adversarial history with Isom gave rise to an unconstitutional risk of bias. Judge Pope denied the motion to recuse and ultimately denied relief. The result was upheld on appeal, but two Justices of the Arkansas Supreme Court dissented arguing that a new hearing should be held in front of a different judge. *See* Exhibits B and C.

Petitioner intends to file a petition for writ of certiorari addressing whether Judge Pope’s prior dealings with Isom created an appearance of bias. Isom presented evidence that while a prosecutor, Sam Pope prosecuted Isom three times. Twice, Isom was acquitted after a trial. One prosecution resulted in prison time from which Isom was lawfully paroled. Learning of the parole board’s decision,

then-Prosecutor Pope had a personal meeting with the Governor's criminal justice coordinator seeking to annul the decision. As one of the dissenting justices explained, the sum of these experiences made Judge Pope particularly familiar with Isom:

Acquittals in criminal trials are not common in Arkansas; a defendant's acquittal in two separate criminal trials is obviously even rarer. I decline to speculate whether these rare failures instilled in Prosecutor Pope an animus toward Mr. Isom, or whether a preexisting animus caused Prosecutor Pope to twice take Mr. Isom to trial without sufficient evidence. I am certain, however, that Judge Pope's prior dealings with Mr. Isom, including his extraordinary efforts to get the governor to annul a lawful decision by the parole board, made him especially familiar with Mr. Isom.

Exhibit B at 3. Moreover, Judge Pope had further involvement with Isom as he sat as the judge for his capital murder trial and his state postconviction proceedings. The majority held that Pope's actions of seeking to annul Isom's parole were part of his "ordinary duties as prosecutor" and thus "Isom has failed to demonstrate actual bias or the appearance of bias sufficient to require recusal." Exhibit A at 21. The majority's opinion raises the substantial federal question of whether a prosecutor's significant prior involvement with a defendant can create an unconstitutional risk of bias. In *Williams v. Pennsylvania*, 136 S.Ct. 1899, 1905–07 (2016), the Court found a prosecutor's authorization to seek the death penalty in a case that he later sat on as a judge to be a "significant, personal involvement" in the case requiring recusal. The facts of the instant case show that Judge Pope's involvement with Isom, even though it was on different cases, was much more extensive and adversarial than the relatively brief involvement found problematic in *Williams*.

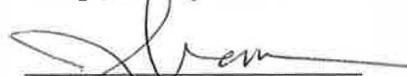
Counsel requires additional time to prepare a petition presenting this important issue to the Court. Counsel's duties in other death-penalty cases will prevent her from completing the petition in the time allowed by the rule. Counsel has been unable to devote sufficient time to preparation of the petition because of a statutory habeas deadline in the case of *Lacy v. Kelley*, No. 5:19-cv-95 (E.D. Ark.), and discovery and expert disclosure deadlines in the case of *Springs v. Kelley*, 5:13-cv-5 (E.D. Ark.). Counsel will be unable to prepare the petition under the current schedule because of a several day trial in a complex multi-plaintiff case, *McGehee et. al. v. Hutchinson*, 4:17-cv-179 (E.D. Ark), scheduled to begin on April 23, 2019. Because of these and other professional obligations, counsel requires additional time to prepare the petition in this matter.

Counsel has spoken to counsel for Respondent, Kent Holt, who does not oppose the request for additional time.

WHEREFORE, Petitioner respectfully requests that this Application be granted and that the Court allow him until May 31, 2019, to file his petition for a writ of certiorari.

April 16, 2019

Respectfully submitted,



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