

Capital Case

Case No. _____

In the
Supreme Court of the United States

RICKY RAY MALONE,
Petitioner/Applicant,
v.
MIKE CARPENTER, WARDEN,
OKLAHOMA STATE PENITENTIARY,
Respondent.

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

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**PETITIONER’S APPLICATION FOR EXTENSION OF
TIME TO FILE PETITION FOR A WRIT OF CERTIORARI**

**To the Honorable Sonia Sotomayor, Associate Justice of the United States
Supreme Court and Circuit Justice for the Tenth Circuit:**

In accordance with Rules 13, 22, 30.2, and 30.3 of the *Rules of the Supreme Court of the United States*, and for the reasons set forth herein, Petitioner/Applicant, Ricky Ray Malone, respectfully applies to this Court for an order extending the time in which to file his petition for a writ of certiorari from May 15, 2019, until July 15, 2019, a period of sixty (60) days. In support of this Application, Petitioner shows the Court as follows:

BACKGROUND

Mr. Malone is in the custody of the State of Oklahoma. He is incarcerated under a conviction of First-Degree Murder for which he has been sentenced to death.¹ On December 20, 2018, the United States Court of Appeals for the Tenth Circuit issued a published opinion in Case No. 17-6027, wherein the circuit court affirmed the original judgment entered by the United States District Court for the Western District of Oklahoma in Case No. CIV-13-1115-D. *See* Opinion attached as Attachment 1. Petitioner sought rehearing from the Tenth Circuit Court of Appeals, but the same was denied on February 14, 2019. *See* Order, attached hereto as Attachment 2.

¹ Mr. Malone is currently housed at the Oklahoma Forensic Center in Vinita, Oklahoma.

ARGUMENT AND AUTHORITIES

Petitioner, Ricky Ray Malone, seeks a writ of certiorari to the United States Court of Appeals for the Tenth Circuit with respect to its decision rendered on December 20, 2018, as referenced above. This Court’s jurisdiction to grant the same arises pursuant to 28 U.S.C. § 1254(1). According to Supreme Court Rule 13.3, a petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit is due on or before May 15, 2019. *See* Supreme Court Rule 13.3 (“[T]he time to file the petition for a writ of certiorari . . . runs from the date of the denial of rehearing”). However, the time granted by Supreme Court Rule 13.3 will be insufficient to allow Petitioner’s counsel to do justice to the issues at hand, which are of vast import. Therefore, Petitioner/Applicant, Ricky Ray Malone, seeks an extension of sixty (60) days in which to file his petition for a writ of certiorari. *See* Supreme Court Rule 13.5 (“[A] Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days”).

In accordance with Supreme Court Rule 13.5, this application is submitted at least ten (10) days prior to the present due date. Further, the requested extension is made in good faith and not for the purposes of delay.² The requested extension is made because of the vital importance associated with the issues in this capital case, namely, the rights to a fair trial and reliable sentence. This Court has repeatedly emphasized that “[o]ur duty to search for

² No execution date has been set. Thus, an extension of time will not create an unreasonable delay in the administration of justice.

constitutional error with painstaking care is never more exacting than it is in a capital case.” *Burger v. Kemp*, 483 U.S. 776, 785 (1987). It is respectfully submitted that counsel’s duty to present all authorized claims of constitutional error with painstaking care is equal or greater. As such, it is important that counsel be granted additional time to research the constitutional issues at hand so that counsel may prepare Petitioner’s petition with the care and accuracy demanded of such capital cases.

Mr. Malone’s counsel, Robert Jackson, is a solo private-practice attorney and is appointed in this matter pursuant the Criminal Justice Act, 18 U.S.C. § 3006A. Counsel maintains both an active private practice and CJA case loads. Counsel has numerous obligations in trial level criminal representations in the Western District of Oklahoma, in addition to appellate obligations in the Tenth Circuit, including being co-counsel in another capital case, *Mitchell v. Carpenter*, 10th Cir. No. 16-6258. In addition to federal practice, counsel also has an active inventory of Oklahoma state court matters and transactional matters. Given the press of business in his solo law practice and obligations to clients other than Mr. Malone, counsel is unable to adequately research and prepare a petition for certiorari in this capital habeas corpus matter in the time presently allotted.

Sarah M. Jernigan is an Assistant Federal Public Defender with the Capital Habeas Unit of the Office of the Federal Public Defender for the Western District of Oklahoma. Counsel is presently lead or co-counsel for the federal representation of multiple death row

inmates including Mr. Malone.³ Obligations on behalf of many of these clients have precluded counsel from being able to direct her full time and attention to the preparation of a petition for a writ of certiorari on behalf of Petitioner. Therefore, even if counsel exercises due diligence and gives priority to preparing the petition, it will not be possible to file the petition on time.

In light of counsel's current obligations and the importance of the constitutional issues that will be presented in this capital case, counsel submit that a sixty (60) day extension is necessary and appropriate in order to efficiently and effectively prepare the petition for certiorari on behalf of Mr. Malone.

WHEREFORE, in the interest of justice and for good cause shown, counsel submit that a reasonable extension of time should be granted to complete Mr. Malone's petition for a writ of certiorari. Counsel respectfully request this Court extend the current May 15, 2019 deadline for 60 days until July 15, 2019.

³ *Bosse v. Carpenter*, CIV-08-204-4 (W.D. Okla.), Reply to Federal Habeas Petition due June 7, 2019; *James Pavatt v. Carpenter*, 10th Cir. No. 14-6117, En Banc Oral Argument May 7, 2019; *Simpson v. Carpenter*, Petition for Writ of Certiorari due May 23, 2019 in the United States Supreme Court.

Respectfully submitted,

*s/ Robert S. Jackson**

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Dated this 29th day of April, 2019