

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

FLOYD DANIEL SMITH, *Petitioner*

v.

STATE OF CALIFORNIA, *Respondent*.

APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF CALIFORNIA
(DEATH PENALTY CASE)

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OCTOBER TERM, 2018

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v.
STATE OF CALIFORNIA, Respondent.

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To the Honorable John G. Roberts, Chief Justice of the Supreme Court of the
United States and Circuit Justice for the Ninth Circuit:

Petitioner, Floyd Daniel Smith, requests a 60-day extension of time to and
including December 15, 2018, to file his petition for a writ of certiorari in this Court. The
jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

On May 21, 2018, the Supreme Court of California issued its original opinion on
petitioner's automatic appeal from a sentence of death. *People v. Smith*, 4 Cal. 5th 1134
(2018) (*Smith*). A copy of the final opinion is attached as Appendix A. Petitioner filed a
petition for rehearing, which was denied by order on July 18, 2016, attached as Appendix
B. Thus, the time to petition for a writ of certiorari in this Court expires on October 16,
2018. This application for an extension of time of 60 days, to and including December
15, 2018, in which to file the petition is being filed more than 10 days before that date.

As shown by the California Supreme Court's opinion, this capital case raises various federal constitutional issues. Relevant here is the state supreme court decision that petitioner failed to demonstrate error under this Court's rule forbidding discrimination in jury selection announced in *Batson v. Kentucky*, 476 U.S. 79 (1986) (*Batson*).

Although petitioner's assigned counsel is currently working on the petition for writ of certiorari, an extension of time is justified in part by the nature of the issue described above and in part because of time restraints due to assigned counsel's responsibilities in other capital cases. The *Batson* question to be raised is substantial and warrants careful scrutiny and resolution. The California Supreme Court spent nearly twenty pages in its opinion analyzing this complex question. *See Smith*, 4 Cal. 5th at 1146-63. Most *Batson* claims are particularly factually intensive, but this one was especially so: as the California Supreme Court acknowledged, the prosecutor provided a "laundry list" of reasons for each of the stricken black jurors. *Id.* at 1157. And the prosecutor had excluded all black jurors not only once, but twice over the course of two consecutive trials, mandating analysis of a prior trial and a prior *Batson* motion. Preparation of the petition thus mandates exhaustive review of two separate trials, hundreds of pages of voir dire, and thousands of pages of jury questionnaires, from the two trials.

Furthermore, petitioner's counsel is assigned to other capital appeals and has had to devote a substantial amount of his time to meeting time-sensitive responsibilities in

those other cases since the state supreme court's decision in this case became final.

Petitioner's counsel is currently working on a another case in which a significant pleading is due October 12, 2018 and is also assigned to another capital appeal which must be filed on February 14, 2018 and which must be completed for internal review in December of 2018.

Petitioner's counsel has made this case the highest priority in his work schedule and is currently working to complete the petition for a writ of certiorari by its current deadline of October 16, 2018. Despite his best efforts, he has been unable to do so and respectfully request an extension of 60 days, to and including December 15, 2018, in which to file the petition for writ of certiorari on petitioner's behalf.

Accordingly, petitioner respectfully requests that an order be entered extending his time to petition for a writ of certiorari by 60 days, to and including December 15, 2018.

Dated: October 4, 2018.

Respectfully submitted,

MARY K. McCOMB
STATE PUBLIC DEFENDER
FOR THE STATE OF CALIFORNIA

/s/ Elias Batchelder

ELIAS BATCHELDER
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