

No. 19- _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term 2019

PHILLIP WAYNE TOMLIN,
Applicant/Petitioner,

v.

TONY PATTERSON, WARDEN, HOLMAN CORRECTIONAL
FACILITY,
Respondent.

Application for an Extension of Time Within Which to File a
Petition for Writ of Certiorari to the United States Court of
Appeals for the Eleventh Circuit

APPLICATION TO THE HONORABLE CLARENCE THOMAS
AS CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT

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October 9, 2019

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

To the Honorable Clarence Thomas, Associate Justice of the United States Supreme Court and Circuit Justice for the Eleventh Circuit:

Applicant-Petitioner, Phillip Wayne Tomlin, respectfully requests an extension of time of 60 days to file his petition for writ of certiorari, up to and including Friday, December 27, 2019, pursuant to Rule 13.5 of the Rules of this Honorable Court.

Undersigned counsel for Applicant-Petitioner has contacted the Alabama Attorney General, counsel for Respondent, regarding his application for 60 additional days, and the State of Alabama does not object to the 60-day extension.

The original deadline for Applicant-Petitioner to file his petition for a writ of certiorari is Monday, October 28, 2019, which is 90 days from July 30, 2019, the date that the Eleventh Circuit Court of Appeals issued an order denying Petitioner's motion for reconsideration of the Eleventh Circuit's denial of a Certificate of Appealability ("COA") in his appeal of the United States District Court for the Southern District of Alabama's

denial of his *pro se* 28 U.S.C. § 2254 habeas corpus petition. For good cause set forth herein, Petitioner asks that this deadline be extended by 60 days so that the new deadline would be Friday, December 27, 2019.

BACKGROUND

Applicant-Petitioner, Mr. Phillip Wayne Tomlin, has been incarcerated for forty-one years, since 1978, at Holman Prison in Alabama. He is currently serving a sentence of life imprisonment without parole (“LWOP”).

In an order dated May 8, 2019, the Eleventh Circuit Court of Appeals denied Mr. Tomlin a COA to seek appellate review of the denial of his habeas corpus petition, which challenged his sentence as an improper retroactive judicial reinterpretation of the 1975 Alabama Death Penalty Act in violation of his right to fair notice protected by the Due Process Clause of the United States Constitution. *Tomlin v. Patterson*, No. 19-10494 (Order dated May 8, 2019). In a further order dated July 30, 2019, the Eleventh Circuit Court of Appeals denied Mr. Tomlin’s motion for panel reconsideration. *Tomlin v. Patterson*, No. 19-10494 (Order dated July 30, 2019).

JURISDICTION

This Court has jurisdiction over any timely filed petition for writ of certiorari under 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for writ of certiorari was due to be filed on or before Monday, October 28, 2019. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition for writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

Supreme Court Rule 13.5 provides that “An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified.” Sup. Ct. R. 13.5. The specific reasons why an extension of time is justified are as follows:

1. Applicant-Petitioner has requested that the Columbia Law School Practicum assist in the preparation of his petition for writ of certiorari. An extension of time is necessary in order to permit the students enrolled in the Practicum enough time to conduct research and

complete a cogent and well-researched petition in this case. The Practicum students (Naomi Bates, Julia Udell, and Ashwini Velchamy) began working on Mr. Tomlin's petition only in September 2019 and will be dedicating the Fall semester to this petition. Undersigned counsel and the Practicum students are also studying the history of applications for COAs in the Eleventh Circuit, which requires some data collection and analysis; they will need more time to complete their study before using its results in Mr. Tomlin's petition for certiorari.

2. The extension of time is also necessary because of the other obligations of undersigned counsel as director of the Columbia Law School Practicum. This Fall, the Columbia Law School Practicum has several overlapping commitments representing other clients, including a new death penalty case entering federal habeas corpus proceedings in the State of Alabama and ongoing research into parole revocation proceedings in the State of New York. In addition, undersigned counsel requires additional time to accommodate other pressing matters, including teaching abroad from October 14-25, and November 18-22, 2019.

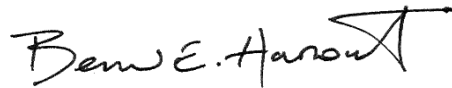
3. The additional time requested is reasonable in Applicant-Petitioner's case to allow undersigned counsel and the Practicum students to research, coordinate, and present the instant petition in a professional manner. A 60-day extension would allow the Columbia Law School Practicum students sufficient time for research and drafting efforts in accordance with Applicant-Petitioner's request.

4. The State of Alabama does not object to this request.

CONCLUSION

For the foregoing reasons and good cause shown, Applicant-Petitioner respectfully requests that this Court grant the application for an extension of time to file a petition for writ of certiorari, extending the time by 60 days, to and including December 27, 2019.

Respectfully submitted,



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