

CAPITAL CASE

A-_____

**In The
SUPREME COURT OF THE UNITED STATES
October Term 2019**

**Willie B. Smith, III,
*Applicant/Petitioner,***

v.

**Commissioner, Alabama Department of Corrections,
*Respondent.***

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

**APPLICATION TO THE HONORABLE
CLARENCE THOMAS, AS CIRCUIT JUSTICE**

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November 7, 2019

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APPLICATION FOR EXTENSION OF TIME

Pursuant to this Court's Rule 13.5 and 28 U.S.C. § 2101(c), Applicant Willie B. Smith, III, hereby requests a 59-day extension of time within which to file a petition for a writ of certiorari in this Court, to and including February 20, 2020.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Willie B. Smith, III v. Commissioner, Alabama Department of Corrections*, No. 17-15043 (11th Cir. May 22, 2019), a copy of which is attached as Exhibit A. The United States Court of Appeals for the Eleventh Circuit issued an order denying Mr. Smith's petition for rehearing en banc on September 23, 2019, a copy of which is attached as Exhibit B.

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of this Court, a petition for a writ of certiorari is due to be filed on or before December 23, 2019. In accordance with Rule 13.5, Applicant now files this application more than 10 days in advance of that due date.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant Willie B. Smith, III respectfully requests a 59-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Eleventh Circuit in this case, to and including February 20, 2020. An extension is warranted because of the importance of

the issues in this case, as well as undersigned counsel's need for additional time to prepare a petition that will assist this Court in deciding whether to grant certiorari.

1. Applicant Willie B. Smith, III is an inmate under sentence of death in Alabama. Mr. Smith's constitutional rights were violated when the prosecutor used 14 of his 15 peremptory strikes against female veniremembers. See *J.E.B. v. Alabama*, 511 U.S. 127 (1994); *Batson v. Kentucky*, 476 U.S. 79 (1986). In addition, Mr. Smith meets all of the elements of the test for intellectual disability and should not be eligible for the death penalty. See *Atkins v. Virginia*, 536 U.S. 304 (2002). The United States Court of Appeals for the Eleventh Circuit nevertheless affirmed the denial of Mr. Smith's federal habeas corpus petition. It believed that the state court's denial of Mr. Smith's *Batson* claim was reasonable, even though the denial rested on pretextual, religion-based explanations for the strikes, as well as on the trial judge's extra-record personal views about the prosecutor's character. It also believed that the state court's denial of Mr. Smith's *Atkins* claim was reasonable, even though Mr. Smith is intellectually disabled.

2. An extension of time is warranted given the exceptionally grave issues in this case. Mr. Smith's conviction and sentence violate bedrock rules of constitutional law. This Court has underscored that "[d]iscrimination in jury selection . . . causes harm to the litigants, the community, and the individual jurors," *J.E.B.*, 511 U.S. at 140, and also that "[n]o legitimate penological purpose is served by executing a person with intellectual disability." *Hall v. Florida*, 572 U.S. 701, 708 (2014). Mr. Smith presented substantial evidence of both discrimination in the jury

selection process and his intellectual disability. Yet his conviction stands and he faces a sentence of death. Moreover, as Mr. Smith will make clear in his petition for certiorari, the decision below reflects and deepens one or more divisions of authority regarding important questions of federal law.

3. Undersigned counsel respectfully submits that the extension of time requested here is further warranted because counsel of record has multiple obligations that would make it difficult to complete a petition for a writ of certiorari by the current deadline. Those obligations include an opening brief due November 12, 2019, in *ABS Glob., Inc. v. Cytonome/ST, LLC*, No. 19-2051 (Fed. Cir. docketed June 19, 2019), for which counsel of record is lead counsel for appellant; an oral argument on November 13, 2019, in *Malkan v. Am. Bar Ass'n*, No. 19-1958 (7th Cir. docketed May 20, 2019), in which counsel of record will be presenting oral argument; a reply brief due November 22, 2019, in *SynQor, Inc. v. Vicor Corp.*, No. 19-1704 (Fed. Cir. docketed Mar. 27, 2019), for which counsel of record has primary responsibility; a principal brief due December 12, 2019, in *ABS Glob., Inc. v. Cytonome/ST, LLC*, No. 19-2042 (Fed. Cir. docketed June 18, 2019), for which counsel of record is lead counsel for appellee and has primary responsibility; a principal brief due between December 6, 2019, and December 22, 2019, in *Immunex Corp. v. Sandoz Inc.*, No. 20-1037 (Fed. Cir. docketed Oct. 15, 2019), an expedited appeal for which counsel of record is representing appellees Immunex Corp. and Amgen Manufacturing, Ltd. and has primary responsibility for the brief; and a reply in support of a motion to dismiss due December 20, 2019, in *In re Humira (Adalimumab) Antitrust Litig.*, No. 1:19-cv-01873

(N.D. Ill. docketed Mar. 18, 2019), for which counsel of record is counsel for defendant in a consolidated antitrust class action.

4. The Attorney General for the State of Alabama does not oppose this request for a 59-day extension of time to file a petition for a writ of certiorari.

CONCLUSION

For these reasons, Applicant Willie B. Smith, III respectfully requests an extension of 59 days, to and including February 20, 2020, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

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