

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term 2021

DAVEL CHINN,

Petitioner,

v.

WARDEN, CHILLICOTHE CORRECTIONAL INSTITUTION,

Respondent.

UNOPPOSED APPLICATION TO EXTEND THE TIME TO FILE
A PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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by:

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Counsel for Petitioner Davel Chinn

To the Honorable Brett Kavanaugh, Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

1. For the specific reasons set forth below, Petitioner Davel Chinn respectfully requests, under Supreme Court Rules 13.5, 22, and 30.3, a sixty-day extension of time to file his petition for a writ of certiorari regarding the denial, by the United States Court of Appeals for the Sixth Circuit, of his request for habeas corpus relief under 28 U.S.C. § 2254.

2. An Ohio jury convicted Davel Chinn of aggravated murder and recommended a death sentence as punishment. The trial court accepted that recommendation and the state courts affirmed Mr. Chinn's conviction and death sentence on direct appeal. The Ohio courts also denied Mr. Chinn's requests for post-conviction relief.

3. Mr. Chinn filed an application for a writ of habeas corpus in the U.S. District Court for the Southern District of Ohio (Case No. 3:02-cv-00512), where he was represented by counsel appointed under the Criminal Justice Act. Although the district court ultimately denied his petition, it granted a certificate of appealability on two claims.

4. On February 4, 2022, the Sixth Circuit issued an opinion affirming the district court's denial of Mr. Chinn's petition (Case No. 20-3982). Copies of the opinion are attached.

5. Mr. Chinn seeks for this Court to review the Sixth Circuit's February 4, 2022 opinion. Jurisdiction in this Court is appropriate under 28 U.S.C. § 1254(1).

6. Good cause exists to justify Mr. Chinn's requested extension. His counsel require additional time to draft a petition for a writ of certiorari due to their obligations to other capital and non-capital clients in various stages of state and federal litigation as well as personal reasons. In particular, following Ohio's amendment of its post-conviction statute to include relief for seriously mentally ill capital petitioners, *see* Ohio Rev. Code 2953.21(A)(1)(a)(iv), counsel

recently filed a number of petitions for relief in advance of the April 12, 2022 deadline. Counsel are also reviewing of all of their Ohio clients' cases in light of the Supreme Court of Ohio's recent holdings in *State v. Bethel*, 2022-Ohio-783 (Mar. 22, 2022), that is it not "within the trial court's discretion to deny . . . a motion for leave" to file a new-trial motion under Ohio Rule of Criminal Procedure 33 based on a defendant's failure to file the motion within a reasonable time after discovering new evidence, and that a defendant seeking to assert a claim under *Brady v. Maryland* in an untimely or successive petition for post-conviction relief "is not required to show that he could not have discovered suppressed evidence by exercising reasonable diligence." In addition, lead counsel will conduct an oral argument in the Supreme Court of Ohio on April 27 in *State of Ohio v. Emile L. Weaver*, Case No. 2021-0622; has a Reply Brief due on May 11 in the United States Court of Appeals for the Sixth Circuit in *Kevin Keith v. Leon Hill*, Case No. 21-3948; and has an evidentiary hearing on May 23-25 in *State of Ohio v. Octavius Williams*, Case No. CR 11 547334-A (Cuyahoga County, Ohio). Likewise, co-counsel is presently drafting an amended habeas petition following extensive discovery in a capital habeas case in the United States District Court for the Southern District of Ohio, *Hunter v. Warden*, No. 1:15-209; and drafting a Merits Brief for a capital habeas case with seven claims certified for appeal pending in the United States Court of Appeals for the Sixth Circuit, *Von Davis v. Charlotte Jenkins*, No. 21-3404. Finally, both counsel have taken medical leave since the Sixth Circuit's decision in Chinn case, with attorney Troutman is only recently back working full-time after having surgery on a torn hamstring on March 10, 2022.

7. Petitioner Chinn's counsel thus require an extension of time to adequately prepare his petition for a writ of certiorari.

8. Counsel for Respondent Warden, Assistant Attorney General Brenda S. Leikala, of the Office of the Ohio Attorney General, has indicated that her office does not oppose this 60-day extension.

Therefore, Petitioner Davel Chinn respectfully requests that an order be entered extending his time to file a petition for a writ of certiorari for sixty days, from May 5, 2022 until July 4, 2022.

Respectfully Submitted,

Office of the Ohio Public Defender, by:

/s/ Rachel Troutman

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/s/ Erin Gallagher Barnhart

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Certificate of Service

I, Erin Barnhart, hereby certify that on this 21st day of April, 2022, a copy of the foregoing UNOPPOSED APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT was served in compliance with Supreme Court Rule 29.3 by regular United States Mail, first-class postage prepaid, on the following Counsel for Respondent Margret Bagley:

Brenda S. Leikala
Office of the Attorney General
150 East Gay St., 16th Floor
Columbus, Ohio 43215,

All parties required to be served have been served.

/s/ Erin G. Barnhart
Erin G. Barnhart
Counsel for Petitioner