

**CAPITAL CASE**

No. 22-A-\_\_\_

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**IN THE SUPREME COURT OF THE UNITED STATES**

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**KEVIN BURNS,**

Petitioner-Applicant,

v.

**TONY MAYS,**

Respondent

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**UNOPPOSED APPLICATION FOR EXTENSION OF TIME  
TO FILE PETITION FOR WRIT OF CERTIORARI**

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*To the Honorable Brett M. Kavanaugh, Associate Justice, and Circuit Justice for the United States Court of Appeals for the Sixth Circuit:* In this capital case, pursuant to Supreme Court Rule 13.5, Petitioner Kevin Burns respectfully applies for a sixty (60) day extension of time, to and including October 21, 2022, within which to file a petition for writ of certiorari.

In support of this application, Kevin Burns states:

1. This is a capital habeas corpus proceeding in which Mr. Burns has sought relief from his sentence of death pursuant to *Enmund v. Florida*, 458 U.S. 782 (1982) and *Strickland v. Washington*, 466 U.S. 668 (1984) as the record reflects that

he did not kill anyone, but due to ineffective assistance of counsel his lesser culpability was hidden from the jury (indeed, due to ineffective assistance they were misled to believe that he had fired the fatal shots that killed one of two victims). His better defended and separately tried co-defendants, despite being significantly more responsible for the two murders, received life sentences (or, in the “lucky” case of the man who supplied the firearms, avoided prosecution entirely).

2. Mr. Burns has also sought relief from his sentence of death pursuant to the clearly established law of this Court requiring a modicum of mitigation investigation *prior* to sentencing. *Andrus v. Texas*, 140 S. Ct. 1875 (2020); *Porter v. McCollum*, 558 U.S. 30 (2009); *Rompilla v. Beard*, 545 U.S. 374 (2005); *Wiggins v. Smith*, 539 U.S. 510 (2003); *Williams v. Taylor*, 529 U.S. 362 (2000). The record demonstrates that Mr. Burns’ counsel did not begin preparing for sentencing until after the guilt phase had concluded when, for the very first time, they met with their potential witnesses; this meager investigation led to unilluminating and misleading mitigation witness testimony that occupies a mere twelve pages of transcript.

3. Additional grounds for relief from Mr. Burns’ sentence of death include the Tennessee Court of Criminal Appeals imposition of a “nexus requirement,” which was contrary to clearly established Supreme Court law, *Smith v. Texas*, 543 U.S. 37 (2004), which permits review under § 2254(d)(1), and the State of Tennessee’s reliance on the changed testimony of a witness who had previously testified that a co-defendant, not Mr. Burns, had killed the victim for which Mr. Burns was later sentenced to death. *Napue v. Illinois*, 360 U.S. 254 (1959).

4. The issues that Mr. Burns submits warrant relief are based on a factual record that was developed in the State court; there are no issues or disputes in relation to 28 U.S.C. § 2254(e)(2). *Shinn v. v. Martinez-Ramirez*, 142 S. Ct. 1718 (2022).

5. On April 13, 2022, a divided panel of the Sixth Circuit Court of Appeals denied Mr. Burns relief. *Burns v. Mays*, 31 F.4th 497 (6th Cir. 2022) (Opinion Attached as Appendix A). On May 24, 2022, Mr. Burns's application for rehearing and rehearing en banc was denied, with one Circuit Judge dissenting. (Order Attached as Appendix B).

6. Kevin Burns presently has until August 22, 2022, to file a petition for writ of certiorari. *See* U.S.S.Ct.R. 13.1.

7. As summarized in paragraphs 1-3, above, multiple constitutional issues warrant relief from a sentence of death for Kevin Burns. In developing these issues, Mr. Burns's original brief to the Sixth Circuit Court of Appeals was 97 pages and 19,402 words in length; the subsequent reply brief was 48 pages, and 9,750 words in length. To *concisely* and effectively present the most meritorious issues to the Supreme Court, within the appropriate limitations of Rule 33.2, is a challenging endeavor.

8. Counsel has multiple other responsibilities and deadlines upcoming. On August 15, 2022, Counsel has an appellate brief due before the Tennessee Court of Criminal Appeals in relation to the correct application of Tennessee's newly amended intellectual disability statute—this brief must address matters of first impression

under Tennessee law. Counsel has three additional deadlines in mid-August in relation to other capital habeas cases.

9. A sixty (60) day extension may be granted, pursuant to Rule 13.5, and such would be appropriate under these circumstances, as your Honor has found in a number of recent capital cases. *See e.g. Chinn v. Warden*, U.S. No. 21A678 (July 4, 2022)(Kavanaugh, J.); *Hall v. Mays*, U.S. No. 21A213 (Dec. 9, 2021)(Kavanaugh, J.); *Taylor v. Jordan*, U.S. No. 21A156 (Nov. 19, 2021)(Kavanaugh, J.)

10. Opposing counsel, Deputy Tennessee Attorney General John Bledsoe, has been consulted; he does not oppose a 60-day extension in this matter.

Respectfully submitted,

/s/ Richard Lewis Tennent  
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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of this Application has been served on Deputy Attorney General John Bledsoe, at the Office of the Tennessee Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243 on this 8th day of August 2022.

/s/ Richard Lewis Tennent  
Richard Lewis Tennent  
Counsel for Kevin Burns