

OCTOBER TERM 2022

CASE NO. _____
IN THE SUPREME COURT OF THE UNITED STATES

TERRY LYNN KING,

Petitioner,

v.

TONY MAYS, WARDEN,
RIVERBEND MAXIMUM SECURITY INSTITUTION,
STATE OF TENNESSEE,

Respondent.

UNOPPOSED MOTION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONER, Terry Lynn King, an inmate at Riverbend Maximum Security Institution in Nashville, Tennessee, through undersigned counsel, respectfully moves for an extension of sixty days to prepare and file his Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit. In support of this unopposed request, Petitioner respectfully submits:

1. Petitioner was sentenced to death by a Tennessee jury in March of 1985. His convictions and sentence were affirmed by the Tennessee Supreme Court in July of 1986. *State v. King*, 718 S.W.2d 241, 243 (Tenn. 1986), *cert denied*, *King v. Dutton*, 512 U.S. 1222 (1994). In August of 2011, the District Court for the Eastern District of Tennessee denied Petitioner's petition for writ of habeas corpus pursuant to 28

U.S.C. § 2254. *King v. Bell*, No. 3:99-CV-454, 2011 WL 3566843 (E.D. Tenn. Aug. 12, 2011). The Sixth Circuit affirmed the district court's denial in February of 2017. *King v. Westbrooks*, 847 F.3d 788, 791 (6th Cir. 2017). A copy of that opinion is attached hereto as Exhibit A.

2. Shortly thereafter, Petitioner filed a timely petition for panel rehearing. Petition for Panel Rehearing, *King v. Westbrooks*, No. 13-6387 (6th Cir. Mar. 16, 2017). While that petition was pending, the Criminal Court for Knox County, Tennessee, granted a motion to reopen Petitioner's state post-conviction proceedings. Order on Motion to Reopen Petition for Post-Conviction Relief, *King v. State*, No. 72987 (Knox County Crim. Ct. Div. III Apr. 3, 2017). The Sixth Circuit held Petitioner's appeal in abeyance pending a decision in the reopened state proceedings, Order, *King v. Westbrooks*, No. 13-6387 (6th Cir. Apr. 18, 2017), which arrived in March of 2021. *King v. State*, No. E201900349CCAR3PD, 2021 WL 982503 (Tenn. Crim. App. Mar. 16, 2021), *appeal denied* (July 12, 2021), *cert. denied*, 142 S. Ct. 1146 (2022). On August 15, 2022, the Sixth Circuit reopened Petitioner's case and denied his motion for panel rehearing. *King v. Mays*, No. 13-6387, 2022 WL 3718003 (6th Cir. Aug. 15, 2022). A copy of the Sixth Circuit's order denying the motion for panel rehearing is attached hereto as Exhibit B.

3. Mr. King's Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit follows the denial of his motion for panel rehearing, filed August 15, 2022, and concerns the judgement entered by the Sixth Circuit on

February 9, 2017. Supreme Court Rule 13.3, 13.5. A copy of that judgment is attached hereto as Exhibit C.

4. Petitioner's petition for certiorari is due on November 10, 2022. *See* Supreme Court Rule 13.1, 13.3. This Court has jurisdiction over that petition under 28 U.S.C. § 1254(1). In accordance with this Court's Rules, Petitioner's request for an extension of time is being made more than ten days in advance of the current due date. Supreme Court Rule 13.5. The extension requested in this motion is sought on behalf of the Petitioner, Mr. King. *See id.*

5. Good cause exists to grant the extension in light of the complexity of the issues in Petitioner's case and undersigned counsel's workload. Undersigned counsel recently received an execution warrant for one of his clients in Texas, setting an execution date of February 8, 2023. *See* Exhibit D (order setting execution date for John Balentine). Undersigned counsel also oversees a different team whose client is facing a November 29, 2022 execution date. *See* Exhibit E (order setting execution date for Kevin Johnson). The short timeframe until both Mr. Johnson's and Mr. Balentine's execution dates, and the considerable end-stage litigation still to be completed in both cases, demonstrates good cause for the requested extension.

6. Petitioner's request is further justified by the complex issues raised in his petition. That petition addresses the extent to which the Due Process Clause requires federal courts to assess the cumulative effect of multiple legal errors. That question has split the circuit courts, with the Fourth and Eighth Circuits concluding

that no such assessment is required, the Ninth and Tenth Circuits concluding that the assessment is required under this Court’s clearly established precedent, and the First, Second, Third, Fifth, Seventh, and Eleventh Circuits concluding that errors should be cumulated and assessed—but under varying standards. The Sixth Circuit has explicitly joined the Fourth and Eighth Circuits in holding that cumulative error analysis is not available during federal habeas review, *Lorraine v. Coyle*, 291 F.3d 416, 447 (6th Cir.), *opinion corrected on denial of reh’g*, 307 F.3d 459 (6th Cir. 2002), and yet has nonetheless appeared willing to assess the cumulative effect of multiple errors in other cases, *see, e.g., DePew v. Anderson*, 311 F.3d 742, 751 (6th Cir. 2002); *Seymour v. Walker*, 224 F.3d 542, 557 (6th Cir. 2000), leaving capital habeas petitioners with little choice but to raise those claims in hopes the Sixth Circuit might finally resolve its “gnawing ambivalence about the claim’s existence.” *See* Ryan A. Semerad, *What’s the Matter with Cumulative Error?: Killing A Federal Claim in Order to Save It*, 76 Ohio St. L.J. 965, 990 (2015).

7. The reasons behind this circuit split are numerous and subtle. Given the complexity of the issues, the ubiquity of cumulative error claims in habeas proceedings, and the capital nature of the case, Petitioner requests additional time to complete the careful briefing and thorough research needed to provide this Court with a professionally adequate petition for writ of certiorari. Counsel therefore requests a sixty-day extension of time in which to prepare and file the certiorari petition.

8. On October 28, 2022, counsel for Petitioner contacted counsel for Respondent. Counsel for Respondent indicated that Respondent does not oppose this motion.

WHEREFORE, Petitioner prays that the Court allow a sixty-day extension of time for the preparation and filing of his Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

/s/ Shawn Nolan
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