

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DARREL ESTON LEE,

Petitioner,

v.

RYAN THORNELL, ET AL.,

Respondents.

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

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Ninth Circuit:

Pursuant to Supreme Court Rules 13.5, 22, and 30, Petitioner Darrel Eston Lee (“Lee”), an Arizona death row prisoner, prays for a 55-day extension of time to file his petition for writ of certiorari in this Court to and including April 14, 2025. Pursuant to the Court’s jurisdiction under 28 U.S.C. § 1254(1), Lee will petition for certiorari to have the Court review the opinion of the United States Court of Appeals for the Ninth Circuit of July 24, 2024, which affirmed the denial of habeas corpus relief, and the order of November 20, 2024, which denied Lee’s Petition for Rehearing and Petition for Rehearing En Banc that challenged the court’s affirmance of the denial of the writ of habeas corpus as to Lee’s conviction and death sentence.

Lee attaches the panel’s opinion and order as Appendices 1 & 2.

Lee was convicted in the Superior Court of La Paz County, Arizona, of first-degree

murder, kidnaping, theft, armed robbery, and credit card theft. (Appendix 1 at 7). Lee rejected a plea offer that would have spared his life in exchange for his testimony against Karen Thompson, his co-defendant who struck their carjacking victim in the head with a rock and killed him. (Appx. 1 at 6-7). Relief was denied on direct appeal (Appx. 1 at 8), and in state post-conviction relief (“PCR”) proceedings. (Appx. 1 at 8-9).

In federal habeas proceedings, Lee alleged claims of ineffective assistance of trial counsel (“IATC”) for presenting a false alibi at the guilt phase of trial and for failing to investigate and present to the capital sentencing judge available mitigating evidence that might have militated in favor of a sentence of life in prison. (Appx. 1 at 9-10). The district court denied relief, ruling that the state PCR court’s consideration of those constitutional claims and its denial of relief were not “unreasonable” under the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2241 *et seq.* (“AEDPA”) (Appx. 1 at 11). The court denied Lee’s request for an evidentiary hearing to prove his claims, finding that his PCR counsel lacked diligence in presenting such evidence in state court and Lee, therefore, was barred from presenting the new evidence under § 2254(e)(2). (Appx. 1 at 11).

Before the briefs were filed in the Ninth Circuit, this Court ruled in *Martinez v. Ryan*, 566 U.S. 1 (2012), that the ineffective assistance of state PCR counsel could excuse the procedural default of claims for failure to raise them in state court. As Lee’s panel noted, Ninth Circuit case law also allowed for the presentation of new facts to establish the IAC of PCR counsel to establish cause and prejudice to excuse the procedural default and to prove the underlying IATC claim. (Appx. 1 at 12-13) (citing *Detrich v. Ryan*, 740 F.3d 1237, 1246 (9th Cir. 2013) (en banc); *Dickens v. Ryan*, 740 F.3d 1302, 1321 (9th Cir. 2014) (en banc)). Lee’s Ninth Circuit panel stayed the appeal and remanded for application of *Martinez*. (Appx. 1 at 13). Even with the record expanded to include Lee’s new supporting evidence, the district

court denied relief on the IATC claims. (Appx. 1 at 13). The parties fully briefed the appeal, giving consideration to Lee's arguments in response to *Martinez*. As the panel noted, the intervening decision in *Shinn v. Ramirez*, 596 U.S. 366, 371 (2022), again altered the legal landscape and barred consideration of Lee's new evidence in the appeal of the district court's denial of habeas relief. (Appx. 1 at 13-14). The Ninth Circuit struck the previously-filed briefs and ordered the parties to file new briefs that addressed *Ramirez*. (Appx. 1 at 14). The Ninth Circuit affirmed the district court's denial of relief. (Appx. 1 at 26). It is that decision for which certiorari will be sought.

Undersigned counsel seeks the extension of time to file the petition for writ of certiorari based on counsel's efforts on behalf of other death row prisoners, including another matter pending in this Court. On December 27, 2024, the Court granted undersigned counsel's Application for Extension of Time to File Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit in *Chad Lee v. Ryan Thornell*, App. No. 24A625. *Chad Lee* is another Arizona capital habeas appeal. That petition is due to be filed on or before February 24, 2025, and counsel directs his efforts toward that filing deadline.

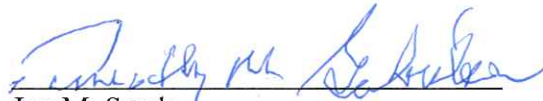
As counsel in the Capital Habeas Unit of the Office of the Federal Public Defender for the District of Arizona, undersigned counsel serves as sole counsel in six federal capital habeas corpus cases and as co-counsel in several others. In addition, the length and complexity of the issues for which certiorari will be sought are substantial. Matters to be addressed include the Court's decision in *Ramirez*, 596 U.S. 366, and the viability of an alternative theory for the admission of new evidence in the federal courts without violating § 2254(e)(2).

Undersigned counsel has no dilatory purpose in extending the due date to file the petition for writ of certiorari. The time is necessary to adequately represent Lee before the Court.

Wherefore, Lee respectfully requests that an order be entered extending his time to file the petition for writ of certiorari 55 days, to and including April 14, 2025.

Respectfully submitted,

February 6, 2025



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