No. _____

In the Supreme Court of the United States

STATE OF ALABAMA,
Applicant,
v.
BRANDON DEWAYNE SYKES,
Respondent.

UNOPPOSED APPLICATION FOR 60-DAY EXTENSION OF TIME IN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA COURT OF CRIMINAL APPEALS

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT:

Pursuant to 28 U.S.C. §2101(c) and Supreme Court Rule 13.5, Applicant State of Alabama respectfully moves for a 60-day extension of time, to and including February 9, 2026, in which to file a petition for a writ of certiorari in this Court. Respondent Brandon Dewayne Sykes does not oppose this request.

1. The Alabama Court of Criminal Appeals rendered its 3-1 decision on July 12, 2024, reversing Sykes's capital murder convictions and sentence of death (Exhibit A). Following the denial of its rehearing petition (Exhibit B), the State petitioned the Alabama Supreme Court for certiorari review, which that Court initially granted on February 20, 2025 (Exhibit C). Following briefing, however, that Court quashed the writ without opinion on September 12, 2025 (Exhibit D). This Court's jurisdiction would be invoked under 28 U.S.C. §1257(a).

2. Unless an extension is granted, the deadline for filing the petition is December 11, 2025. This application is timely because it is being filed "at least 10 days before the date the petition is due." S. Ct. R. 13.5. No prior application has been made in this case.

3. Sykes was convicted of murdering his ex-wife and sentenced to death. Because no witnesses saw the murder and no body was recovered, the State relied on circumstantial evidence to prosecute Sykes. That evidence was overwhelming. Among much else, cell-phone location evidence put Sykes in the vicinity of the crime, police found the victim's blood in Sykes's truck, and one witness testified that Sykes explicitly told him how he had murdered his victim—that he had "beat her up and threw her in his truck" and "took her and dumped her" body where they "used to go fishing." Ex. A at 14-15. That testimony was consistent with the crime scene, where police "saw bloodstains and smears throughout" the victim's house. Ex. A at 4-5. So badly was the victim beaten that "blood had 'soaked completely through the carpet padding and had pooled on the cement floor.'" *Id.*

4. At trial, Sykes sought to discount this evidence by arguing that "law enforcement did not know what had happened" to the victim. Ex. A at 42. Defense counsel "harped on this theory during his closing arguments" and repeatedly argued that "nobody knows" what happened in the house. Ex. A at 43-44. "The prosecutor responded to defense counsel's argument in his rebuttal:

> 'One thing [defense counsel] brought up is what happened in the house. The State doesn't know it. The State doesn't know. I'll concede some of that. We don't know exactly what happened in the house.

> There's only two people in the world that know what happened in that house. One of them's dead, and the other one is sitting right there at the end of that table. (Indicating.) Those are the only two people that know what happened in that house, but we can look at the facts in evidence.'"

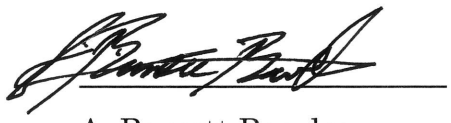
Ex. A at 44 (alteration in original; emphasis omitted). Sykes did not object to the comment, and the trial court did not address it in any way—understandably since the comment was made in response to defense counsel's closing argument.

5. The Alabama Court of Criminal Appeals ignored that context, viewed the comment in isolation, compared it to isolated comments in other cases, held that the comment "directly" impugned Sykes's decision not to testify, and reversed Sykes's convictions and sentence without pausing to determine whether the comments were prejudicial. Exhibit A at 25-26. That was error twice over. First, this Court has never interpreted the Fifth Amendment as imposing a "these words look like those words" test. Just the opposite: It has instructed courts that "prosecutorial comment[s] must be examined in context" to determine whether they were a "fair response" to a "claim made by [the] defendant or his counsel" or, instead, were comments the prosecutor made "on his own initiative" suggesting that the jury "draw an adverse inference from a defendant's silence." *United States v. Robinson*, 485 U.S. 25, 32-33 (1988) (discussing *Griffin v. California*, 380 U.S. 609 (1965)). And second, this Court has held that harmless-error analysis applies to *Griffin* violations. *See Chapman v. California*, 386 U.S. 18, 22 (1967); *United States v. Hastings*, 461 U.S. 499, 508 (1983). Unfortunately, other courts are also confused about how exactly to apply this Court's decisions when a prosecutor's comments could be viewed as commenting on a defendant's decision not to take the stand.

6. The State of Alabama thus respectfully requests an extension of 60 days to file a petition for a writ of certiorari. Undersigned counsel was not involved in the case in the state courts and has significant personal and professional obligations in the coming weeks. In addition, the State intends to seek review in a companion case—*Alabama v. Powell*—that raises the same issues; an extension would help the State streamline those petitions and make this Court's review more efficient. And, as noted, the respondent does not oppose the request and will not be prejudiced if it is granted.

Respectfully submitted,

Steve Marshall
Attorney General



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