

No. _____

CAPITAL CASE

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

**TONY TERRELL CLARK,
Applicant,**

v.

**STATE OF MISSISSIPPI,
Respondent**

**APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI**

S. BETH WINDHAM
Counsel of Record
KRISSEY C. NOBILE
MISSISSIPPI OFFICE OF CAPITAL
POST-CONVICTION COUNSEL
239 North Lamar Street, Suite 404
Jackson, MS 39201
(601) 359-5733
bwindham@pcc.state.ms.us
knobile@pcc.state.ms.us

December 16, 2025

To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States and Circuit Justice for the Fifth Circuit:

1. In accordance with this Court’s Rules 13.5, 22, 30.2 and 30.3, Applicant Tony Terrell Clark respectfully requests that the time to file his petition for a writ of certiorari be extended for 30 days, through January 30, 2026. The Mississippi Supreme Court issued its order on June 19, 2025. (Exhibit A) and denied rehearing on October 2, 2025. (Exhibit B). Absent an extension of time, the petition would be due on December 31, 2025. This Court’s jurisdiction is based on 28 U.S.C. 1257. This request is unopposed.

2. This case presents important questions of federal constitutional law in the context of capital conviction and sentencing: (1) whether the Mississippi Supreme Court may set an impossible standard in post-conviction review of an ineffective *Batson v. Kentucky*, 476 U.S. 79 (1986) challenge to meet the test for prejudice as set forth in *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); and (2) whether the Mississippi Supreme Court may may refuse to consider on post-conviction, new evidence and arguments that rebut the prosecutor’s asserted race-neutral reasons for exercising peremptory strikes against Black jurors that were not presented to the trial court.

3. At Clark’s trial, the State “was over five times more likely to strike a Black prospective juror than a white one.” *Clark v. Mississippi*, 143 S.Ct. 2406, 2408 (2023) (Sotomayor, J., dissenting from denial of cert.) While the trial court held that Clark met his *prima facie* burden in his *Batson* challenges it accepted the State’s purported facially neutral reasoning for the strikes. *Clark v. State*, 343 So. 3d 943, 954-55 (Miss. 2022).

4. On direct appeal the Mississippi Supreme Court found that Clark “failed to present a comparative juror analysis or sufficient rebuttal evidence to the trial court, ultimately finding no *Batson* violation.” *Clark v. State*, 418 So. 3d 1226, 1236 (Miss. 2025) (King, P.J. concurring in

part and dissenting in part) *citing Clark v. State*, 343 So. 3d 943, 954-971 (Miss. 2022). The Mississippi Supreme Court has now foreclosed collateral relief for the failure to present this rebuttal evidence finding that he “did not show that counsel’s performance before the trial court was deficient” and it “did not deprive him of a fair trial with a reliable result.” *Id.* at 1232. In doing so it accepted the State’s argument that to prove *Strickland* prejudice in this context a petitioner must show “that the outcome of the trial would have been different.” State’s Response in Opposition p. 50, *citing Powers v. State*, 371 So. 3d 629, 682-90 (Miss. 2023). Clark submits that the Mississippi Supreme Court is applying an impossible standard to *Strickland* prejudice to evade federal review.

5. To require proof that the racial composition of a jury altered the result of the trial would do violence to *Batson*’s premise that a person’s race is not relevant to his qualification to serve as a juror. Such a requirement would also contradict *Strickland*’s presumption that “[t]he assessment of prejudice should proceed on the assumption that the decisionmaker is reasonably, conscientiously, and impartially applying the standards that govern the decision. It should not depend on the idiosyncrasies of the particular decisionmaker[.]” *Strickland v. Washington*, 466 U.S. 668, 695 (1984).

6. Clark’s petition will thus satisfy the Court’s criteria for certiorari because it will present an important question of federal constitutional law in the context of capital conviction and sentencing.

7. Counsel respectfully requests more time to file the petition for certiorari because counsel has many other substantial competing commitments in their other capital cases including:

- Pending motion by the State of Mississippi to set an execution date, and a pending motion for rehearing on a successive state post-conviction petition in *Willie Jerome Manning v. State of Mississippi*, 95-DP-0066-SCT and 2023-DR-01076-SCT.
- Pending motion by the State of Mississippi to set an execution date, and a pending successive state post-conviction petition in *Robert Simon, Jr. v. State of Mississippi*, 91-DP-00353-SCT and 2016-DR-00092-SCT.
- Pending successive state post-conviction petition and briefing in *Devin Allen Bennett v. State of Mississippi*, 2025-DR-01074-SCT.
- Pending motion to dismiss by the State of Mississippi and pending successive state post-conviction petition in *Lisa Jo Chamberlin v. State of Mississippi*, 2025-DR-01034-SCT.
- Preparation for an evidentiary hearing in *Tony Terrell Clark v. State of Mississippi*, 2022-DR-00829-SCT.
- Investigation and preparation of an initial state post-conviction petition in *Willie Cory Godbolt v. State of Mississippi*, 2020-DP-00440-SCT.
- Investigation and preparation of an initial state post-conviction petition in *Martez Abram v. State of Mississippi*, 2023-DP-00614-SCT.
- Pending Petition for Writ of Certiorari and briefing in *Stephen Elliot Powers v. Mississippi*, No. 25-5940. (State's response is due on December 22, 2025).
- Extensive travel, investigation, and preparation of successive state post-conviction petitions and related motions in other active capital cases.

For these reasons, Tony Terrell Clark respectfully requests that the time to file his petition for a writ of certiorari be extended for 30 days including January 30, 2026.

Respectfully submitted,

S. Beth Windham

S. BETH WINDHAM
Counsel of Record
Counsel for Tony Terrell Clark

December 16, 2025

CERTIFICATE OF SERVICE

I certify that I have served copies of this Motion via U.S. mail, postage pre-paid, to all parties of record using the below address:

LaDonna Holland
Office of the Attorney General
Post Office Box 220
Jackson, MS 39205-0220
Ashley.Sulser@ago.ms.gov
Ladonna.Holland@ago.ms.gov

This the 16th day of December, 2025.

S. Beth Windham

COUNSEL FOR APPLICANT