

No.: _____.

IN THE
SUPREME COURT OF THE UNITED STATES

Koury Scales,

Applicant,

v.

The State of Ohio,

Respondent.

Application for an Extension of Time to File a Petition for Writ of Certiorari
to the Ohio Court of Appeals Eighth Judicial District

To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme
Court of the United States and Circuit Justice for the Court of Appeals for the Sixth
Circuit (State of Ohio)

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INTRODUCTION

Now Comes, Applicant Koury Scales (Mr. Scales), by and through undersigned counsel, pursuant to Rule 13.5, and, 28 U.S.C. § 2101(d) to respectfully request a 60-day extension for the deadline to file a petition for a writ of certiorari from Monday, October 19, 2026, to Friday, December 18, 2026, for good cause shown, and, any other relief deemed just.

PROCEDURAL HISTORY AND JURISDICTION

1.) On March 31, 2025, Mr. Scales was arrested and charged with felonies before the Cuyahoga County (Ohio) Court of Common Pleas, General Division, Criminal Branch in the case 2026-CR-700507. The court then consolidated this case with another pending felony case, 2024-CR-696458. On December 16, 2025, Mr. Scales pleaded guilty in both cases pursuant to a plea agreement and stipulated sentence agreement of five years in prison that, under Ohio Criminal Rule 11, waives most of his appellate rights. The agreement stated that he could receive a reduced sentence for good behavior. When he entered prison, the warden informed him that the trial court was mistaken and that he was not eligible for a reduction in sentence for good behavior.

2.) He attempted to contact his trial counsel to file a notice of appeal but was not successful in contacting his trial counsel. The 30-day notice of appeal deadline therefore expired on January 15, 2025. He then, thinking that the deadline was jurisdictional, filed an Ohio Civil Rule 60 motion on February 3,

2026. The motion was denied on February 4, 2026, because the criminal rules of procedure applied and therefore the proper remedy is a petition for a delayed appeal before the state district court.

- 3.) On February 26, 2026, a petition for a delayed appeal was filed. He also moved the Court of Appeals to appoint counsel and provide transcripts at the state's expense. The case was correctly filed with the Ohio Court of Appeals, Eighth Judicial District, Cuyahoga County. The case number is 2026-CA-116179. On March 27, 2026, the State District Court of Appeals denied the petition. The motion for counsel and transcripts was also denied. He filed a pro se petition for rehearing and hearing en banc, but the court denied those petitions as untimely. Mr. Scales then retained counsel.
- 4.) On May 11, 2026, a timely petition for jurisdiction (Writ of Certiorari) was filed in the Ohio Supreme Court. The case number is 2026-0575. On July 21, 2026, the Ohio Supreme Court denied the petition. The deadline for further appeal is currently Monday, October 19, 2026, and Mr. Scales seeks an extension until Monday, December 18, 2026.
- 5.) While the petition to the Ohio Supreme Court was pending, Mr. Scales filed a petition to reopen the appeal with the Ohio Court of Appeals, Eighth Judicial District, Cuyahoga County, on June 25, 2026. The petition is similar to post-conviction relief but instead addresses issues de hors the record that occurred during the appeal, where post-conviction relief is not available because the common pleas court is a creature of the county government

without jurisdiction to consider post-conviction issues arising in the Court of Appeals.¹ On July 2nd, 2026, the Court denied the petition on state-law grounds.

6.) On August 17th, 2026, a timely petition for jurisdiction was filed with the Ohio Supreme Court challenging the state district court's denial of the petition to reopen the appeal. Such motion is still pending before the Ohio Supreme Court.

7.) Therefore, jurisdiction exists for a petition for a writ of certiorari because all state remedies have been exhausted on his petition for a delayed appeal. See, US Con. Art. III, Sec. 2. See also, 28 U.S. Code § 1257(a).

STATEMENT OF THE CASE AND OF FACTS

8.) In his petition for a delayed appeal, Mr. Scales stated that trial counsel failed to respond to his requests for a timely notice of appeal to be filed. He also claimed that the prison system prevented him from filing a pro se notice of appeal. Therefore, he argued that cause was established to excuse his procedural default. He argued that prejudice occurred because he would have prevailed on a meritorious appeal. He argued that trial counsel was ineffective and that the trial court erred in informing him that he would be

¹ Just as the federal government is supreme over the state government in Ohio, the state government is supreme over the county government.

eligible for a reduction of his sentence for good behavior. He also argued that his plea was not made knowingly, voluntarily, and intelligently.

- 9.) In his motion to appoint counsel pending a delayed appeal, he argued that binding precedent requires such appointment since the case is a direct appeal. See, *McKane v. Durston*, 153 U.S. 684, 687 (1894); *Evitts v. Lucey*, 469 U.S. 387, 393 (1985); *Halbert v. Michigan*, 545 U.S. 605, 610 (2005); *Griffin v. Illinois*, 351 U.S. 12, 24 (1956); *Douglas v. California*, 372 U.S. 353 (1963).
- 10.) In his motion for transcripts at the state's expense, he argued that binding case law requires such appointment. See, *Griffin v. Illinois*, 351 U.S. 12 (1956); *Mayer v. Chicago*, 404 U.S. 189, 194 (1971); *Bounds v. Smith*, 430 U.S. 817, 822 (1977); *Britt v. North Carolina*, 404 U.S. 226, 227 (1971).
- 11.) The Court of Appeals denied the petition for a delayed appeal and the motions for appointment of counsel and transcripts in a one-line order.
- 12.) When he appealed that decision to the Ohio Supreme Court, he argued that a right to court-appointed counsel and a transcript at the state's expense exists on a petition for a delayed appeal. He also argued both ineffective assistance of counsel and the denial of the right to counsel. He finally argued that he would prevail on the merits on appeal. The petition was denied in a one-page order.
- 13.) In the petition to reopen his appeal, he argued that he suffered a complete denial of appellate counsel. He argued that he would have prevailed

on appeal because it was not made in a knowing, voluntary, and intelligent manner. Finally, he argued that trial counsel was ineffective for failing to appeal. The appeal was then denied on state law grounds. In his petition to the Ohio Supreme Court, he argued that the state law procedural issues do not bar further review. He also argued that he would prevail on the merits in the state district court.

REASONS FOR GRANTING AN EXTENSION

- 14.) The first reason for an extension is that Mr. Scales is awaiting a decision of the Ohio Supreme Court on his petition for jurisdiction in the petition to reopen his appeal. If the petition is granted, it could make the issues he intends to waive moot. In addition, the petition to reopen expands the record below because counsel filed it, unlike the petition for delayed appeal, which was filed pro se. Therefore, Mr. Scales deserves an opportunity to exhaust state remedies in his delayed appeal.
- 15.) Second, counsel has multiple appeals pending in state court, and, multiple felony cases, and counsel is a solo practitioner. Counsel has never filed a petition for certiorari before, so needs more time to prepare the petition and conduct legal research in this case.
- 16.) Third, Mr. Scales has colorable claims to raise in his petition for certiorari.

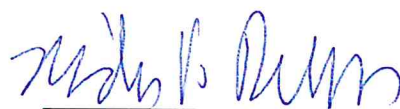
THERE ARE COLORABLE CLAIMS FOR RELIEF

- 17.) In *Gideon v. Wainwright* (1963), 372 U.S. 335, it was held that the right to counsel extends to all critical stages of a criminal case. In *Douglas v. California*, 372 U.S. 353 (1963), it was held that this includes direct appeals of right. In *Halbert v. Michigan*, 545 U.S. 605, 125 S.Ct. 2582, 162 L.Ed.2d 552 (2005), it was held that this even extends to timely discretionary appeals following a no-contest plea.
- 18.) However, in *Ross v. Moffitt*, 417 U.S. 600 (1974), it was held that the right does not extend to an appeal to the state supreme court. Also, in *Pennsylvania v. Finley*, 481 U.S. 551 (1987), it was held that there is no right to counsel in a post-conviction relief case.
- 19.) Therefore, the first question presented will be whether there is a right to counsel and a due process right to transcripts in a petition for a delayed appeal.
- 20.) The second question presented will be whether failing to provide counsel in a petition for a delayed appeal is a complete denial of counsel under *United States v. Cronin*, 466 U.S. 648, or ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984).
- 21.) The third question presented will be whether or not due process is violated when the prison system obstructs a defendant from filing a timely pro se appeal when counsel fails to do so.

CONCLUSION

Wherefore, for the foregoing reasons, Applicant Koury Scales, pursuant to Rule 13.5, and, 28 U.S.C. § 2101(d), respectfully requests a 60-day extension for the deadline to file a petition for a writ of certiorari from Monday, October 19, 2026, to Friday, December 18, 2026, for good cause shown, and, any other relief deemed just.

Respectfully Submitted,



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