

No. 24-_____

IN THE SUPREME COURT OF THE UNITED STATES

SIR MARIO OWENS, PETITIONER

vs.

STATE OF COLORADO, RESPONDENT.

**ON PETITION FOR WRIT OF CERTIORARI TO THE
COLORADO SUPREME COURT**

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

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To the Honorable Justice Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Tenth Circuit:

APPLICATION FOR EXTENSION OF TIME

Petitioner Sir Mario Owens, through undersigned counsel and pursuant to Supreme Court Rules 13.5, 21, 22, and 39, respectfully seeks a 45-day extension of time, to and including August 8, 2024, within which to file a Petition for a Writ of Certiorari. In support of this request, counsel state as follows:

1. The Colorado Supreme Court (CSC) issued its published Opinion affirming the state trial court's judgment of conviction on February 20, 2024. *See People v. Owens*, 2024 CO 10, 544 P.3d 1202. (Appendix 1). Petitioner timely petitioned for rehearing, but the CSC denied that petition on March 25, 2024. (Appendix 2). Absent an extension, the time to petition this Honorable Court for a writ of certiorari would expire on **June 24, 2024**, which is the next day after the ninetieth day from the date of the CSC's order denying Mr. Owens' petition for rehearing (the ninetieth day being Sunday, June 23, 2024). *See* Sup. Ct. R. 13.1 & 13.3. This application is being filed more than ten days before that date. *See* Sup. Ct. R. 13.5.

2. Undersigned counsel have conferred with counsel from the Colorado Attorney General's Office and they do not oppose the requested extension of time.

JURISDICTION

3. This Court has jurisdiction to grant certiorari pursuant to 28 U.S.C. § 1257(a).

BACKGROUND

4. The State prosecuted Mr. Owens for two counts of first-degree murder after deliberation and other, lesser charges, following a drive-by shooting in Aurora, Colorado on June 20, 2005. Owens pled not guilty, and prosecutors sought the death penalty. Following a lengthy trial and penalty phase proceedings, the district court entered a judgment of conviction and imposed a sentence of death in December 2008.

5. So-called “postconviction” proceedings were thereafter initiated in the trial court under Colorado’s Unitary Review Statute (collectively housed in section 16-12-201 *et seq.*, C.R.S. (2008) and Colo. Crim. P. 32.2), and continued for the next nine years. Eventually, the trial court denied Owens’ postconviction claims in August 2017. Although Owens properly noticed his appeal, more lengthy delays ensued due to significant problems securing a complete and accurate appellate record. Then, in March 2020, Colorado’s General Assembly abolished the death penalty in all future cases, and Colorado’s Governor subsequently commuted Owens’ death sentence – along with those of the only two other members of the state’s death row – to life in prison without the possibility of parole.

6. The CSC subsequently “determined that the unitary review process no longer applied in this case,” but nevertheless retained jurisdiction over Owens’ direct

appeal. *See People v. Owens*, 2024 CO 10, ¶ 1. The CSC ultimately issued a published opinion affirming the judgment of conviction. *Id.*, ¶¶ 1, 3-4, 150. The CSC held, *inter alia*, that the trial court did not err in overruling Owens’ *Batson* challenges to the prosecution’s use of back-to-back peremptory strikes to remove from the jury the only two black jurors who could possibly have been empaneled, even though Owens is black and the case had racial undertones. *Id.*, ¶¶ 3, 74-103.

7. Owens’ grounds for certiorari stem from his *Batson* claims, which raise a number of difficult and important issues that courts have struggled with when confronted with situations in which the prosecution’s asserted race-neutral justification for striking a minority juror is that the juror – or friends or family members – had negative interactions with law enforcement that they believed were connected to their race. Mr. Owens asserts that the CSC decided an important federal constitutional question in ways that conflict with and contravene this Court’s relevant decisions, other state courts of last resort, and United States courts of appeals, or decided an important question of federal law that has not been, but should be, settled by this Court making this case a worthwhile candidate for this Court’s certiorari review.¹ *See* Sup. Ct. R. 10(b) & (c).

¹ Notably, the CSC has waded even deeper into this debate with the recent release of two published opinions in *People v. Johnson*, 2024 CO 35, and *People v. Austin*, 2024 CO 36, on June 3, 2024, both of which concern this same issue.

REASONS FOR GRANTING AN EXTENSION OF TIME

8. An extension of time is necessary to prepare Mr. Owens' petition for writ of certiorari competently and thoughtfully. The questions presented are important and legally complex, and there is still significant work to be done to distill the facts and the law in a way that will assist the Court in meaningfully exercising its discretion as to whether to grant a writ of certiorari. Presenting these issues directly, clearly, and concisely — as required by Sup. Ct. R. 14 — is particularly difficult and time-consuming in a former capital case such as this, where the record as a whole is unusually voluminous and the various portions of the record related to the issue presented on certiorari includes weeks of voir dire and hundreds of lengthy juror questionnaires.

9. Undersigned counsel have been working diligently on this petition, but have not been able to complete it due to other significant professional and personal responsibilities.

10. Mr. Reppucci has been largely pre-occupied with various professional and personal matters. These include filing appellate briefs and motions and engaging time-sensitive work in numerous serious criminal and habeas cases, including but not limited to *United States v. Wofford*, Tenth Circuit Court of Appeals No. 23-5131 (opening brief filed April 22, 2024), *Godinez v. Williams et al.*, Tenth Circuit Court of Appeals No. 22-1194 (supplemental briefing filed April 24, 2024); *People v. Williams*,

Denver District Court 12CR4101 (court-ordered briefing filed on May 3); *People v. Shea*, Colorado Court of Appeals No. 23CA1414 (opening brief filed May 9, 2024). On top of this, he has been completed time-sensitive work on various tasks, motions, and hearings in various other cases, including but not limited to: *United States v. Kornacki*, Tenth Circuit Court of Appeals 24-1071 & 24-1073 (record filed June 6, 2024); *People v. Gillmore*, Colorado Court of Appeals 2024CA734 (appeal filed April 26, 2024); *People v. Brownlow*, Denver District Court 22CR20002 (motions deadline June 15, 2024); *People v. Webster*, Denver District Court 10CR837; *People v Chavez*, Denver District Court 96CR5882, *People v. Khamov*, Jefferson County District Court 14CR24 and 14CR1464; and Boulder District Court, *People v. Pargee*, 21CR362. More notably and to the point, Mr. Reppucci has been continuously grieving from the unexpected death of his father last Christmas Eve, helping care for and comfort his mother in her time of need, and planning his father's memorial service. That ceremony will take place on June 16, 2024, in Charlottesville, Virginia, and Mr. Reppucci is unavailable to work on the petition in this case until he returns to Colorado on June 18, 2024.

11. Responsibility for drafting the Petition has thus fallen primarily to Mr. Walta. Mr. Walta, for his part, has been busily attending to a number of matters over the last several weeks, including, but not limited to, the following: filing the Opening Brief in *People v. Samuel Birch*, Colorado Court of Appeals Case No. 22CA928 (filed May 3, 2024); filing the Reply Brief in *People v Tyler Le Ber*, Colorado Court of

Appeals Case No. 22CA1098 (filed May 9, 2024); filing the Opening Brief in *People v. Joann Roof*, El Paso District Court Case No. 23CV32355 [County Court Appeal] (filed May 24, 2024); filing the Opening Brief in *People v. Tony Stockdale*, Colorado Court of Appeals Case No. 23CA149 (filed June 2, 2024); preparing and presenting expert testimony in *People v. Terry Gaines*, El Paso County District Court Case No. 09CR1314 (hearing conducted June 3, 2024); filing the Reply Brief in *People v. Steven Muniz*, Colorado Court of Appeals Case No. 22CA448 (filed June 10, 2024); and, preparing for a hearing in *People v. Nashid Rivers*, Colorado Court of Appeals Case No. 21CA814 (hearing set for June 13, 2024). In addition, Mr. Walta has been drafting Opening Briefs in two other matters: *People v. Jeffrey Viars*, Colorado Court of Appeals Case No. 23CA1016 (due June 27, 2024), and *People v. Casey Fernau*, Colorado Court of Appeals Case No. 23CA1356 (due July 5, 2024).

12. Given the amount of work that still remains to be done on the Petition, and in the other matters referenced above, we do not believe it will be possible to file Mr. Owens' Petition by June 24, 2024, in a form deserving of this Honorable Court's review and the important constitutional question presented.

13. The requested extension of time is for forty-five days. *See* Sup. Ct. R. 13(5) (authorizing extension of up to sixty days for the filing of a petition for writ of certiorari). This is a realistic assessment of the time needed to complete the Petition, and as evidenced by the Colorado Attorney General's Office lack of opposition to the requested extension, the additional delay is not unreasonable and is certainly not

being sought without justification.

WHEREFORE, Petitioner Sir Mario Owens respectfully requests that an order be entered extending his time in which to Petition for a Writ of Certiorari to and including August 8, 2024.

Respectfully submitted this 12th day of
June 2024,

/s/ Mark G. Walta

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AFFIDAVIT OF SERVICE

MARK G. WALTA, a member of the bar of this Court, hereby attests that pursuant to Supreme Court Rule 29, the preceding Unopposed Application for Extension of Time in Which to File Petition for Writ of Certiorari to the Colorado Supreme Court was served on counsel for the Respondent by enclosing a copy of these documents in an envelope, first-class postage prepaid and addressed to:

JOHN T. LEE & KATHARINE J. GILLESPIE
COLORADO ATTORNEY GENERAL'S OFFICE
RALPH L. CARR COLORADO JUDICIAL CENTER
1300 BROADWAY, 9TH FLOOR
DENVER, CO 80203

and that the envelope was deposited with the United States Postal Service, Denver, Colorado 80206, on June 12th, 2024, and further attests that all parties required to be served have been served.

/s/ Mark G. Walta

MARK G. WALTA