

CAPITAL CASE

No. 24A_____

In the Supreme Court of the United States

KYLE FLACK, *APPLICANT*

v.

STATE OF KANSAS, *RESPONDENT*

**APPLICATION DIRECTED TO THE HONORABLE NEIL M. GORSUCH
FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT
OF CERTIORARI TO THE KANSAS SUPREME COURT**

Clayton Perkins,
Counsel of Record
Caroline M. Zuschek
Kathryn D. Stevenson
KANSAS CAPITAL APPELLATE
DEFENDER OFFICE
300 SW Jackson, Ste. 303
Topeka, KS 66603
(785) 291-3207
cperkins@sbids.org

Counsel for Applicant Mr. Kyle Flack

UNOPPOSED APPLICATION FOR A 60-DAY EXTENSION OF TIME

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

1. Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, 30, and 33.2, Applicant Kyle Flack respectfully requests a 60-day extension of time, but because the sixtieth day would fall upon a Saturday, requests up to and including Monday, October 28, 2024, to file his petition for a writ of certiorari. The Kansas Supreme Court issued its opinion and entered judgment on January 19, 2024. A copy of that opinion is attached as Appendix A. Mr. Flack moved the Kansas Supreme Court for rehearing of its decision, but that Court denied his motion on May 29, 2024. A copy of the order denying Mr. Flack's motion is attached as Appendix B. Currently, a petition would be due August 27, 2024. This application to extend that deadline is coming more than 10 days before the present filing deadline. This Court has jurisdiction under 28 U.S.C. § 1257(a) to review the decision of the Kansas Supreme Court.

2. In the decision to be reviewed, the Kansas Supreme Court affirmed Mr. Flack's jury-trial convictions for capital murder, first-degree murder, second-degree murder, and criminal possession of a firearm, for the killing of three adults and one child. The Kansas Supreme Court also affirmed Mr. Flack's death sentence. In its opinion, the Kansas Supreme Court, *inter alia*, denied Mr. Flack's arguments that, under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, his convictions and sentence must be reversed due to the district court's failure to suppress his statements.

3. Mr. Flack has good cause to seek an extension of time. Counsel for Mr. Flack are three capital public defenders in a small office of the Kansas State Board of Indigents' Defense Services. Counsels' office consists of four attorneys (one of whom joined the office and capital defense work less than three weeks ago) and two support staff. None of the attorneys currently in this office were part of Mr. Flack's appellate team during his original briefing before the Kansas Supreme Court.

The ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (2003), Guideline 4.1, states that a capital defense team “should consist of no fewer than two attorneys qualified in accordance with Guideline 5.1.” Since the Kansas Supreme Court's decision denying Mr. Flack's motion for re-hearing came down, Mr. Flack has not had a consistent two-attorney team due to unfortunate circumstances, some of which remain ongoing. One of his attorneys contracted COVID-19 and has been out-of-office entirely for a substantial amount of time while the attorney and the attorney's family recover. Another has been dealing with a very serious attempted suicide by a close friend, which has required significant support and time away from the office. The attorneys' necessitated leaves of absences have delayed the preparation of an effective petition for a writ of certiorari on behalf of Mr. Flack and represent good cause for granting this extension.

In addition, counsel have been and will be occupied with additional matters, including the following cases that require full merits briefing on direct appeal:

- *State v. Cornell A. McNeal*, No. 125,931 (Kan.) (Direct appeal from capital murder conviction);
- *State v. Henry Parker*, No. 126,164 (Kan. App.);

- *State v. Myderia Casteel*, No. 126,387 (Kan. App.).

Further, Mr. Flack's attorneys serve as appellate advisors on numerous district-court level public defense teams defending clients facing capital trials and execution. In this capacity, counsel assist in the trial-level advocacy in myriad ways, which includes preparation for and attendance of numerous district court proceedings. Mr. Flack respectfully submits that counsels' press of business constitutes additional good cause for an extension of time to file his petition for a writ of certiorari.

4. Counsel for Mr. Flack contacted Anthony Powell, Solicitor General of the Kansas Attorney General's Office, counsel for the respondent, and he stated that his Office does not oppose Mr. Flack's application for a 60-day extension.

CONCLUSION

For the foregoing reasons, Mr. Flack respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari by 60 days, up to and including Monday, October 28, 2024.

Dated: August 2, 2024

Respectfully submitted,

/s/ Clayton J. Perkins

Clayton J. Perkins,

Counsel of Record

Caroline M. Zuschek

Kathryn D. Stevenson

KANSAS CAPITAL APPELLATE

DEFENDER OFFICE

300 SW 8th Ave., Suite 303

Topeka, KS 66603

(785) 291-3207

cperkins@sbids.org

Counsel for Mr. Kyle Flack