

No. 24A_____

In the Supreme Court of the United States

SHERMAN BROWN, APPLICANT

v.

KEVIN MCCOY

**APPLICATION DIRECTED TO THE HONORABLE JOHN G. ROBERTS, JR.,
FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT**

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APPLICATION FOR EXTENSION OF TIME

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

1. Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 12.4, 13.3, 13.5, 22, 30, and 33.2, Sherman Brown respectfully requests a 30-day extension of time, up to and including Friday, October 4, 2024, to file a petition for a writ of certiorari. The United States Court of Appeals for the Fourth Circuit issued its opinion and entered judgment in Mr. Brown's cases on April 11, 2024, and issued its order denying his petition for rehearing en banc on June 6, 2024. A copy of the opinion is attached as Appendix A (App. 1a-2a), and a copy of the order denying Mr. Brown's petition for rehearing en banc is attached as Appendix B (App. 3a). Mr. Brown's petition is currently due September 4, 2024. This application has been filed on August 19, 2024, more than ten days before the time for filing the petition is set to expire. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the decision of the Fourth Circuit.

2. Counsel are working diligently, subject to the press of other work identified below, to identify the issues and arguments that they believe are likely to warrant this Court's review.

3. In 1969, Sherman Brown was wrongfully convicted of capital murder and sentenced to death. In 1973, after his death sentence was vacated as a result of this Court's decision in *Furman v. Georgia*, 408 U.S. 238 (1972), Mr. Brown was re-sentenced to life imprisonment. Forty-seven years after the crime, a gold-standard DNA laboratory completed testing on highly probative biological evidence and

produced powerful exculpatory DNA results. Despite these results, Mr. Brown remains incarcerated serving a life sentence.

Armed with exculpatory DNA results and modern forensic science discrediting the invalid and unreliable hair and fiber evidence at the core of the Commonwealth's case, Mr. Brown sought relief in the Virginia Supreme Court, asserting his innocence and a violation of his due process rights. When the state court denied Mr. Brown's innocence and due process claims, he sought relief from the federal district court, reasserting his innocence and a constitutional claim that the admission of unreliable hair and fiber evidence violated his due process rights. The district court denied Mr. Brown's habeas petition and declined to issue a certificate of appealability. In so doing, the district court gave undue deference to the state court's findings in a series of rulings that reasonable jurists would find debatable. Mr. Brown then sought a certificate of appealability from the Fourth Circuit, which denied his request and dismissed the appeal. That decision was not only unsound but presents important federal questions as to how federal courts review newly discovered evidence of innocence and innocence related claims that have been decided by state courts.

4. The extension is necessary because the issues likely to be presented in Mr. Brown's case are complex and significant. They include the proper interpretation and application of this Court's precedent regarding appeals in habeas corpus cases and whether decisions of the lower court foreclose the possibility of debate among reasonable jurists.

5. Mr. Brown has good cause to seek an extension of time. Counsel of Record, who is the fulltime pro bono counsel in the Washington office of the firm at which he works, has been addressing and must continue to address several competing deadlines extending from June through October that have made and will continue to make it difficult to meet the current deadline for filing a petition for writ of certiorari. Counsel of Record is responsible for managing and supervising the pro bono work performed by over 200 attorneys, while also performing administrative duties related to his firm's pro bono program. In addition to those responsibilities, Counsel of Record maintains an active litigation docket of his own. Between the Fourth Circuit's decision below and the requested deadline, counsel has been and is occupied with depositions, briefing deadlines and argument preparation in a variety of matters, including:

- July 12, 2024: reply brief in support of motion for compassionate release in *United States v. Markist Bannister*, Case No. 1999-FEL-24 (Superior Court for the District of Columbia);
- July 12, 2024: reply brief in support of motion pursuant to Incarceration Reduction Amendment Act in *United States v. Markist Bannister*, Case No. 1999-FEL-24 (Superior Court for the District of Columbia);
- July 23, 2024: reply brief in support of petition for judicial review of an administrative agency decision in *Petition of Clarence Jones III*, Case No. C-03-CV-23-003511 (Circuit Court for Baltimore County, Maryland);
- July 22, 23, 24 & 25, 2024: depositions in *Jeffrey Corporal v. Secretary Robert Green et al.*, Case No. 8:20-cv-01193-DKC (United States District Court for the District of Maryland);
- August 1, 2024: subsequent application for writ of habeas corpus and accompanying motion for stay of execution in *Ex Parte Robert Leslie Roberson III* Writ Cause No. WR-63,081 (Texas Court of Criminal Appeals),

and accompanying motion to withdraw execution date in *Ex Parte Robert Leslie Roberson III*, Trial Cause No. 26, 162 (3rd District Court, Anderson County, Texas);

- October 1, 2024: amicus brief on behalf of concerned scientists in support of appellant in *Donnie Lee Wyldes v. State of Iowa*, Case No. 24-1123 (Supreme Court of Iowa);
- October 4, 2024: hearing on motion pursuant to Incarceration Reduction Amendment Act in *United States v. Markist Bannister*, Case No. 1999-FEL-24 (Superior Court for the District of Columbia).

Finally, Counsel of Record is leading a team of lawyers at his firm who, along with their client's Texas post-conviction lawyer and lawyers at the Innocence Project, represent Robert Roberson, a Texas death row inmate with an execution date scheduled for October 17, 2024. The Roberson team anticipates significant litigation and clemency efforts in the period before their client's scheduled execution.

Mr. Brown respectfully submits that his counsel's need for additional time to prepare his petition given the press of existing business constitutes good cause for an extension of time.

CONCLUSION

For the foregoing reasons, Sherman Brown respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari by 30 days, up to and including October 4, 2024.

Dated: August 19, 2024

Respectfully submitted,

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