

CAPITAL CASE

No. 24-_____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2024

PAUL DAVID STOREY,
Petitioner

v.

STATE OF TEXAS,
Respondent

APPLICATION TO EXTEND TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI
FROM SEPTEMBER 17, 2024 TO OCTOBER 17, 2024

To the Honorable Samuel A. Alito, Jr.:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3, petitioner Paul David Storey respectfully requests that the time to file a petition for a writ of certiorari be extended 30 days from September 17, 2024, to and including October 17, 2024. On June 19, 2024, the Texas Court of Criminal Appeals denied the *State's Motion for the Court to Reconsider Applicant's Subsequent Writ on its Own Initiative*.

Absent an extension, the petition would be due on September 17, 2024. This application is being filed at least 10 days before that date. Sup. Ct. R. 13.5. Aside from agreeing that Mr. Storey is entitled to habeas relief and that the forthcoming petition should be granted, the State does not oppose the extension request. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1257 to review this case.

Background

Mr. Storey was found guilty of capital murder on September 2, 2008. A Tarrant County jury answered the special issues in such a way that required the District Court to enter a sentence of death on September 19, 2008. The Texas Court of Criminal Appeals (“TCCA”) affirmed his conviction and sentence. *Storey v. State*, AP-76,018 (Tex.Crim.App., delivered October 6, 2010)(not designated for publication), *cert. denied*, *Storey v. Texas*, 563 U.S. 919 (2011). His initial application for writ of habeas corpus was denied, and after exhaustion of his remedies in federal court, his execution date was set.

At that time, Glenn and Judith Cherry, the parents of the murder victim, Jonas Cherry, were notified about the date of execution. It was at this time that it was revealed that the parents passionately opposed Mr.

Storey's execution. Moreover, the Cherrys had repeatedly urged the prosecution to not seek the death penalty. However, the prosecutors suppressed this information and in fact told the jury that the Cherrys supported his execution, a lie that won the sentence of death.

Based upon these revelations, counsel for Mr. Storey filed a subsequent writ application with six grounds based on these newly discovered facts. The TCCA remanded the case to the district court, which held extensive hearings. Based on detailed findings of fact and conclusions of law, the district court recommended relief on every ground. The district court also found that Mr. Storey had not waived these issues by failing to raise them in his initial state writ application. Furthermore, the district court found that the State, through its own misconduct, had forfeited the procedural bar to reaching the merits of the claims.

The TCCA dismissed the subsequent writ application on October 2, 2019 without reaching the merits of the constitutional claims. *Ex parte Storey*, 584 S.W.3d 437 (Tex.Crim.App. 2019). Judge Yeary and Judge Walker filed dissents, both joined by Judge Slaughter. Counsel for Mr. Storey filed a *Suggestion for Reconsideration on the Court's Own Initiative*, which the TCCA denied without written opinion. However, Judge Newell

joined the three dissenters from the original opinion.

Petitioner's counsel pursued a second-in-time petition in federal district court, which the Fifth Circuit Court of Appeals dismissed. *Storey v. Lumpkin*, 8 F.4th 382 (5th Cir. 2021). On June 30, 2022, this Court denied his petition for writ of certiorari. *Storey v. Lumpkin*, 142 S.Ct. 2576 (2022). Justice Sotomayer issued a written statement recognizing the "important issue" of prosecutorial misconduct that is the centerpiece of this case. *Storey v. Lumpkin*, 142 S.Ct. at 2578-79 (Sotomayer, J.).

Very much impressed with the profound points made by Justice Sotomayer in her statement respecting the denial of certiorari, the State through the Tarrant County District Attorney filed its *State's Motion for the Court to Reconsider Applicant's Subsequent Writ on its Own Initiative* ("*State's Motion to Reconsider*"). On June 28, 2023, the TCCA ordered the Tarrant County District Attorney and counsel for Mr. Storey, as well as other interested parties, to brief specified questions, including a second reconsideration of Mr. Storey's subsequent writ petition claims and whether consideration was procedurally barred. The State once again submitted extensive briefing confessing prosecutorial misconduct and argued that the claims were not barred, effectively waiving any procedural

impediments to reaching the merits. On June 19, 2024, the TCCA denied the *State's Motion to Reconsider* without opinion. *Ex parte Storey*, No. WR-75,828-02, Tex.Crim.App. Order (June 19, 2024)(denied without written order), *cert. pending*.

Reasons for Granting an Extension of Time

Counsel for Mr. Storey ask that the time to file a petition for a writ of certiorari should be extended for 30 days for the following reasons:

1. Mr. Hampton is in the midst of a two-and-a-half week jury trial in Travis County, Texas. In the middle of the presentation of its case, the prosecution filed a notice of appeal, necessitating a response. In short, this extensive trial has spilled into the state appellate courts, extending the litigation and counsel's time.

2. In addition, counsel is also preparing writ applications in *Ex parte Duran*, proposed findings in *Ex parte Garza*, and investigating writ applications in *Ex parte Frazier*, *Ex parte Barlow*, *Ex parte Gratton*, and *Ex parte Watson*.

3. Mr. Ware is now the full-time executive director of the non-profit Innocence Project of Texas and is litigating post-conviction actual innocence cases all over the State of Texas. This case falls outside of those

duties.

4. This petition involves the identical issues in *Glossip v. Oklahoma*, No. 22-7466 (U.S.) (petition granted Jan. 22, 2024), which will be argued next Term. It also involves the question pending in another Texas case, i.e., whether a person may be executed “based on a conviction secured by law enforcement officers who no longer defend it.” *Escobar v. Texas*, *cert. pending*, No. 21A602 (February 24, 2024).

5. The extension also does not prejudice any party. The State has confessed its misconduct and supports the relief sought herein, further showing that no party will be prejudiced.

6. The additional time requested will assist counsel in preparing a concise and well-researched petition that will be of maximum benefit to this Court.

Conclusion

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended for 30 days to and including October 17, 2024.

Respectfully submitted,



Keith S. Hampton
State Bar No. 08873230
Attorney at Law
P.O. Box 66488
Austin, Texas 78731
(512) 476-8484 (office)
(512) 762-6170 (cell)
hamplaw@swbell.net

Mike Ware /s/
Michael Logan Ware
State Bar No. 20864200
Attorney at Law
300 Burnett Street, Ste 160
Fort Worth, Texas 76102
817-338-4100 (office)
817-698-0000 (fax)
ware@mikewarelaw.com

Attorneys for Paul David Storey

September 3, 2024