

OCTOBER TERM, 2024

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IN THE SUPREME COURT OF THE UNITED STATES  
CASE NO. \_\_\_\_\_

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ROBERT WHARTON,  
Petitioner,  
v.

SUPERINTENDENT, GRATERFORD SCI,  
Respondent.

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**PETITIONER'S MOTION FOR EXTENSION OF TIME FOR THE FILING OF  
A PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

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Petitioner, ROBERT WHARTON, through counsel, respectfully moves for an extension of sixty (60) days to prepare and file his Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit. In support thereof, Petitioner submits as follows:

1. Robert Wharton was initially convicted of murder and sentenced to death in 1986 for his role in the 1984 murders of Bradley and Ferne Hart.
2. In 1992 the Pennsylvania Supreme Court reversed Wharton's death sentence and remanded the matter for a new penalty hearing. *Commonwealth v. Wharton*, 607 A.2d 710 (Pa. 1992). At that hearing, after over two days of deliberations and a reported deadlock, the jury returned a verdict of death.

3. This sentence was upheld on direct appeal. *Commonwealth v. Wharton*, 665 A.2d 458 (Pa. 1995). Wharton’s petition under the Pennsylvania Post-Conviction Relief Act was denied without a hearing and upheld on appeal. *Commonwealth v. Wharton*, 811 A.2d 978 (Pa. 2002).

4. Mr. Wharton next sought habeas corpus relief. After an evidentiary hearing on two guilt-innocence claims, the district court denied relief on all claims. On appeal, the Court of Appeals for the Third Circuit affirmed the denial of relief on his guilt-innocence phase claims but remanded Petitioner’s claim that counsel was ineffective for failing to present evidence of his good prison behavior for an evidentiary hearing. *Wharton v. Vaughn*, 722 F. App’x. 268, 285 (3d Cir. 2018) (Attachment A).

5. On remand, the Philadelphia District Attorney Office, who represented the Commonwealth, conceded that Petitioner was entitled to sentencing phase relief on the remanded ineffective assistance claim. The district court appointed the Office of the Pennsylvania Attorney General as amicus. The OAG opposed the concession of any relief. The district court, after conducting an evidentiary hearing, denied relief.

6. On March 8, 2024, a panel of the Court of Appeals issued a precedential opinion, affirming the district court’s denial of relief. *Wharton v. Superintendent, Graterford SCI*, 95 F.4<sup>th</sup> 113 (3d Cir. 2024) (Attachment B). Mr. Wharton timely filed a petition for rehearing that was denied on July 19, 2024 (Attachment C).

7. Pursuant to Rule 13 of the Rules of the Supreme Court of the United States, Mr. Wharton may file a writ of certiorari within 90 days of the Third Circuit's order denying rehearing, i.e. by October 17, 2024.

8. Mr. Wharton wishes to seek this Court's certiorari review of several of the issues presented to the Third Circuit. There is jurisdiction in this Court over such a petition under 28 U.S.C. § 1254(1).

9. Undersigned counsel, however, cannot meaningfully prepare a professionally appropriate certiorari petition by the current due date of October 17, 2024. Counsel is a public defender responsible for dozens of capital cases. Counsel's obligations include the filing of briefs in capital cases in the Pennsylvania Supreme Court, in the Southern District of Ohio, and in the District Court for South Dakota. As a result, it is not possible for counsel to adequately prepare the certiorari petition by its current due date.

10. This request for an extension is being filed and served more than ten (10) days in advance of the due date, as provided for in S.C.R. 13(5).

11. This request is made in good faith and is not predicated on an intent to delay. Assistant Philadelphia District Attorney Paul George, counsel for Respondent, has no objection to this request.

WHEREFORE, Petitioner prays that the Court allow a sixty (60) day extension for the preparation and filing of his Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

/s/ Stuart B. Lev  
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Dated:           October 2, 2024  
                  Philadelphia, Pennsylvania