

No. _____

In the Supreme Court of the United States

STATE OF UTAH,

Petitioner,

v.

DOUGLAS A. LOVELL,

Respondent.

On Application for an Extension of Time to
File a Petition for Writ of Certiorari

TO THE HONORABLE NEIL M. GORSUCH, CIRCUIT JUSTICE FOR
THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT:

Pursuant to Supreme Court Rules 13.5, 30.2, and 30.3, counsel for Petitioner State of Utah respectfully request a 60-day extension of time, up to and including Monday, December 23, 2024, in which to file a Petition for Writ of Certiorari. The current due date is October 23, 2024. This application is being filed 12 days in advance of that date.

JUDGMENT FOR WHICH REVIEW IS BEING SOUGHT

On July 25, 2024, the Utah Supreme Court affirmed Mr. Lovell's conviction for capital murder, but reversed his sentence of death on the ground that his trial attorney was constitutionally ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984), for not repeatedly objecting to allegedly prejudicial religious testimony elicited by the State on cross-examination from one of Mr. Lovell's mitigation witnesses—a former ecclesiastical leader in prison. The Utah Supreme Court found *Strickland* error despite defense counsels' knowledge that such objections would likely curtail the testimony of their subsequently-presented key penalty-phase witness who planned to invoke the same religious themes in her testimony to show that Mr. Lovell was a changed person. (App. A.). Petitioner did not seek rehearing. The Court has certiorari jurisdiction over this case under 28 U.S.C. § 1257.

REASONS FOR THE REQUESTED EXTENSION OF TIME

Petitioner requests a 60-day extension of time to file a Petition for Writ of Certiorari. An extension of time is necessary due to the heavy caseloads counsel for Petitioner are carrying. Over the next thirty days, their combined workload includes twenty-five deadlines and three oral arguments in Utah's Appellate courts. Moreover, given the exceptionally high caseloads of attorneys in the Utah Attorney General's Office's Criminal Appeals Division, reassignment of the *Lovell* matter to other attorneys is not feasible. Attorneys in the Division represent the State in *all* felony conviction appeals and *all* felony collateral proceedings and appeals from those proceedings state-wide, whether the defendant/petitioner is represented by private counsel, a public defender, conflict counsel, or is proceeding pro se. The Division also represents the State in appeals from *all* adjudications from juvenile court, in capital homicide litigation, and in factual innocence petitions. The Division cannot decline representation in any of these cases, nor can it reassign the cases to other attorneys within the Attorney General's Office due to budgetary, statutory, and other constraints.

Because of the increasing number of appeals, including interlocutory appeals from bail and newly-created justification hearings, and the prodigious postconviction filings over the past several years, all of the attorneys in the Division are laboring under extremely high caseloads. In the month of October 2024, the Division has eighty-three briefs due, six simplified appeal memoranda due, five interlocutory petition responses due, sixteen dispositive motions or other responses in postconviction and habeas proceedings due, and nine oral arguments scheduled.

Despite the diligent efforts of Petitioner's counsel to draft the petition for writ of certiorari by the current October 23rd deadline, additional time is needed to complete the petition. Additionally, a pleading of this importance requires multiple levels of review and editing.

Counsel for Petitioner contacted opposing appellate counsel and she indicated she objects to Petitioner's extension application.

CONCLUSION

For the foregoing reasons, counsel for Petitioner respectfully requests a 60-day extension of time—up to and including December 23, 2024—to file the Petition for Writ of Certiorari.

Respectfully submitted October 11, 2024.

SEAN D. REYES
Utah Attorney General
STANFORD E. PURSER
UTAH SOLICITOR GENERAL
COUNSEL OF RECORD
ANDREW F. PETERSON
DEPUTY SOLICITOR GENERAL
GINGER JARVIS
MARK C. FIELD
MICHAEL D. PALUMBO
WILLIAM M. HAINS
Assistant Solicitors General
350 N. State Street, Suite 230
P.O. Box 142320
Salt Lake City, UT 84114-2320
Telephone: (801) 538-9600
Spurser@agutah.gov

Counsel for Petitioner