

No. _____

IN THE
Supreme Court of the United States

DONALD E. DEARDORFF,

Petitioner,

v.

WARDEN,
HOLMAN CORRECTIONAL FACILITY,

Respondent

**APPLICATION TO EXTEND TIME TO FILE
PETITION FOR WRIT OF CERTIORARI**

CHRISTINE A. FREEMAN
Executive Director
SPENCER J. HAHN
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FEDERAL DEFENDERS FOR THE
MIDDLE DISTRICT OF ALABAMA
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Counsel for Petitioner

November 5, 2024

To the Honorable Justice Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

Pursuant to Supreme Court Rules 13.5, 22, and 30, Petitioner Donald E. Deardorff respectfully requests a 60-day extension within which to file a Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case. If not extended, the time for filing a Petition will expire on November 20, 2024. Consistent with Rules 13.5 and 30.2, this application is being filed at least ten days before that date.

This Court has jurisdiction in this case under 28 U.S.C. §§ 1254 and Supreme Court Rule 10.

**JUDGMENT FROM WHICH
REVIEW IS BEING SOUGHT**

On July 17, 2024, the United States Court of Appeals for the Eleventh Circuit affirmed the United States District Court's denial of Mr. Deardorff's petition for writ of habeas corpus. (Appendix A). The Court denied Mr. Deardorff's timely filed petition for panel rehearing on August 22, 2024. (Appendix B).

**REASONS FOR THE
REQUESTED EXTENSION OF TIME**

Counsel respectfully requests a sixty (60) day extension of time in which to file a petition for certiorari seeking review of the decision entered by the United States Court of Appeals for the Eleventh Circuit. In support of his request and demonstrating good cause, counsel states the following:

1. Donald Deardorff was convicted of capital murder based largely on testimony from a co-defendant that Mr. Deardorff was the trigger man responsible for the death of Ted Turner. The circumstantial evidence of which of the two killed Mr. Turner was ambiguous. The difference maker was an accusatory codicil—added to Mr. Turner’s last will and testament two months before his murder—stating, “Reaffirmed 7/27/99 just in case Don Deardorff is really crazy.” The prosecutor argued the codicil was “left in” Mr. Turner’s “will” as “a message . . . designed so you can’t miss it.” In his rebuttal closing, the prosecutor asserted, “What do we have on Donald Deardorff that points to him? . . . You have Ted Turner’s will naming” him.

2. The Confrontation Clause violation was not objected to, and the District Court denied habeas relief, finding no deficient performance, deeming it non-testimonial hearsay.

3. The Eleventh Circuit’s resolution of this claim affirmed after finding Mr. Deardorff failed to establish prejudice. The resolution of this claim presents critical issues of what is testimonial hearsay and what level of prejudice must be shown to prevail on an ineffective assistance claim. Although counsel has been diligent in researching and assessing how to effectively present these important issues to this Court, given his previous and ongoing obligations, he cannot meet the current filing deadline of November 20, 2024.

4. Undersigned counsel Spencer Jay Hahn is lead counsel on nine capital cases in various stages of litigation and second chair counsel on five other such cases.

5. Mr. Hahn is also handling end stage litigation for two capital clients, one of whom is set for execution on November 21, 2024. He has spent the preceding two months preparing for and leading a two-day evidentiary hearing involving hostile and expert witnesses. Following the hearing, he reviewed the transcript and record and wrote the bulk of the post-hearing brief. The case has been at issue since late on October 30, and a decision is expected any day. Regardless of the outcome at the District Court, an expedited appeal will be taken to the Eleventh Circuit, and ultimately, this Court.

6. The second matter concerns the State of Alabama's October 18, 2024, motion to set an execution date for another client, and for which a response is due on or before November 25, 2024. Part of that preparation involves substantial research and analysis of a novel issue that has been time consuming. Additionally, last week, counsel spent a day on travel and visitation with the client for whom a date has been sought.

7. Finally, he has a Rule 59 petition due on November 12, 2024, from the denial of habeas relief by the Northern District of Alabama. That matter involves a complex *Batson*¹ claim that has required extensive analysis.

Based on counsel's prior and ongoing obligations and the complexities of this case, Mr. Deardorff respectfully requests an extension of time of sixty (60) days within which to file the Petition for Writ of Certiorari to the United States Court of Appeals

¹ *Batson v. Kentucky*, 476 U.S. 79 (1986).

for the Eleventh Circuit, making his Petition due on or before January 20, 2025
(January 19, 2025, is a Sunday).

Respectfully submitted,

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