

No. _____ (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

October Term 2024

VON CLARK DAVIS,

Petitioner,

v.

WARDEN CHARLOTTE JENKINS,

Respondent.

UNOPPOSED APPLICATION TO EXTEND THE TIME TO FILE
A PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Federal Public Defender
by:

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Counsel for Petitioner Von Clark Davis

To the Honorable Brett Kavanaugh, Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

1. For the reasons set forth below, Petitioner Von Clark Davis respectfully requests, under Supreme Court Rules 13.5, 22, and 30.3, a sixty-day extension of time to file his petition for a writ of certiorari regarding the denial of his petition for habeas corpus relief by the United States Court of Appeals for the Sixth Circuit.

2. Mr. Davis was convicted and sentenced to death by a three-judge panel of Ohio judges in 1984. That panel imposed the same punishment upon remand from the state supreme court for resentencing. Following additional litigation in both state and federal court, the Sixth Circuit granted a conditional writ of habeas corpus to Mr. Davis due to a violation of this Court's decision in *Skipper v. South Carolina*, 476 U.S. 1 (1986), in his resentencing proceedings. *Davis v. Coyle*, 475 F.3d 761, 771 (6th Cir. 2007).

3. Upon his return to state court in 2009, a new panel resentenced Mr. Davis to death. After exhausting his state-court appeals, Mr. Davis filed a petition for writ of habeas corpus in the United States District Court for the Southern District of Ohio, (Case No. 2:16-cv-00495), where he was represented by the Office of the Federal Public Defender for the Southern District of Ohio's Capital Habeas Unit. That court ultimately denied his petition on March 29, 2021, but granted a certificate of appealability on several grounds for relief, which the Sixth Circuit subsequently expanded.

4. Following briefing and argument, a panel of the Sixth Circuit granted relief to Mr. Davis on August 16, 2023. The Warden filed a petition for rehearing en banc, which the court granted on November 20, 2024. The court subsequently granted Mr. Davis's motion to expand the certificate of appealability to include a claim that his jury waiver was unknowing and involuntary.

5. The parties filed supplemental briefs, and the en banc court heard oral argument on March 20, 2024. On August 14, 2024, Mr. Davis filed a notice of supplemental authority under Federal Rule of Appellate Procedure 28(j), and filed a Motion for Leave to File a Supplemental Brief on August 19, 2024.

6. On August 20, 2024, the en banc Sixth Circuit issued its decision in the case. The en banc court's opinion and judgment are attached.

7. In denying his habeas petition, the en banc court did not mention the arguments Mr. Davis raised in his 28(j) letter and did not rule on his motion seeking supplemental briefing. Because the court had overlooked these matters, Mr. Davis attempted to electronically file a Motion for En Banc Reconsideration on August 30, 2024. Later that day, the motion was returned to undersigned counsel "unfiled."

8. Following counsel's conversation with the Clerk of Court, Mr. Davis filed a Motion for Leave to file his Motion for En Banc Reconsideration on September 5, 2024. On September 13, 2024, the en banc court issued an order granting the motion for leave to file the en banc reconsideration motion, ordering the Warden to file a response, and denying Mr. Davis's pending motion for supplemental briefing as moot.

9. The parties completed briefing the reconsideration motion on September 26, 2024, and the Sixth Circuit issued an order denying Mr. Davis's motion on October 15, 2024. That order is also attached.

10. Mr. Davis seeks for this Court to review the Sixth Circuit's August 20, 2024, en banc opinion and judgment and its October 15, 2024 order denying en banc reconsideration.

11. Jurisdiction in this Court is appropriate under 28 U.S.C. § 1254(1).

12. Under this Court's Rules, Mr. Davis's deadline to file a petition for writ of certiorari following the Sixth Circuit's denial of his appeal is November 18, 2024.

13. Mr. Davis now seeks an extension of that deadline for an additional sixty (60) days. Good cause exists to justify Mr. Davis's requested extension. To begin, as the above-recounted events demonstrate, for many weeks after the en banc Court's decision, his counsel continued to brief and litigate matters in his case at the Sixth Circuit. Further, his counsel require additional time to draft a petition for a writ of certiorari due to their obligations to other capital clients in various stages of litigation and investigation in both state and federal court. Counsel have additional briefing due next week in one case and are litigating several pending motions in other cases. In addition, the petition itself will raise questions about the propriety of the Sixth Circuit's denial of relief on Davis's habeas claims, including the court of appeals' failure to address his argument about the importance of an intervening decision of this Court. Counsel require additional time to fully research and present these arguments to this Court.

14. Petitioner Davis's counsel thus respectfully request an extension of time to adequately prepare his petition for a writ of certiorari.

15. Counsel for Respondent Warden Charlotte Jenkins, Ohio Solicitor General T. Elliot Gaiser, of the Office of the Ohio Attorney General, has stated that his office does not oppose this 60-day extension.

Therefore, Petitioner Von Clark Davis respectfully requests that an order be entered extending his time to file a petition for a writ of certiorari for sixty days, from November 18, 2024, to January 17, 2025.

Respectfully submitted this 8th day of November, 2024,

Joseph Medici
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by:



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