No. _____

IN THE
Supreme Court of the United States

ULYSSES CHARLES SNEED,

Petitioner-Appellant,

v.

WARDEN, HOLMAN CORRECTIONAL FACILITY,

Respondent-Appellee.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CAPITAL CASE

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February 10, 2025

APPLICATION

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

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicant Ulysses Charles Sneed respectfully requests a 60-day extension of time, to and including April 25, 2025, 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. In support of this Application, Mr. Sneed states as follows:

1. In 1993, Mr. Sneed, then 23 years old with a deeply troubled background including two serious mental illnesses and sexual, physical, and substance abuse, participated in a convenience store robbery. During the robbery, another man, John Hardy, shot and killed the store clerk. Mr. Sneed was unarmed and did not hurt anyone. He had no idea what Hardy was going to do. Mr. Sneed was found guilty of robbery-murder, and the jury by a vote of 7-5 declined to impose the death penalty. That decision, however, was overridden by the sentencing judge under a statute that is constitutionally infirm and no longer in force.

2. Mr. Sneed's defense at trial was woefully deficient. Inexplicably, his counsel did not interview numerous family members, friends, neighbors, or the mothers of Mr. Sneed's children, who could have substantiated his mental illness and a lifetime of trauma leading up the crime. Counsel also failed to use available funding, or secure additional funding, to retain and call a forensic psychologist, Dr. Stanley

Brodsky, who would have testified on the effects of Mr. Sneed's physical, mental, and substance abuse.

3. During the sentencing phase, Mr. Sneed's counsel failed to call a single family member, friend, neighbor, or his children's mothers to testify. These individuals were available to testify, and they would have offered compelling mitigation testimony about the horrific physical and sexual abuse Mr. Sneed had suffered, the severe privation he and his family endured, and his many positive character traits. And, again, had forensic psychologist Dr. Brodsky been called, he would have testified that Mr. Sneed "hear[d] voices" and suffered from Depressive Disorder and PTSD. But none of this occurred due to Mr. Sneed's counsel's constitutionally deficient performance.

4. Given his compelling claims for relief from his death sentence, Mr. Sneed has been trying to present his claims on appeal. But, on July 8, 2024, a single Eleventh Circuit judge issued an order denying Mr. Sneed's application for a certificate of appealability. *See* ECF 18-1 (Single-Judge Order).

5. Current Eleventh Circuit Rules generally prohibit petitions for rehearing en banc to review the denial of a COA, and so, Mr. Sneed moved for reconsideration of the single-judge order denying him a COA.

6. On November 26, 2024, a divided panel of the Eleventh Circuit denied Mr. Sneed's motion for reconsideration, concluding that his ineffective assistance of counsel claims should not proceed further. First, the two-judge majority rejected the claim "that testimony from lay witnesses who personally knew [Mr. Sneed] is

necessarily more credible or compelling than the same testimony offered by expert witnesses" who purported to summarize what those who actually knew Mr. Sneed would have said—thereby making a merits finding that the uncalled witnesses would in fact have provided the "same testimony" as the experts who were called. ECF 22-2 at 2 (Reconsideration Order). Second, the majority determined that Mr. Sneed's counsel's funding requests for mental-heal specialists were legally sufficient and that it was sufficient to retain other experts, despite the clear contrast between their testimony and what Dr. Brodsky would have provided following a full psychiatric evaluation. ECF 22-2 at 2-3 (Reconsideration Order).

7. Dissenting, Judge Jordan would have granted a COA so that Mr. Sneed's ineffective assistance of counsel claims could be heard on the merits. In Judge Jordan's view, the majority "essentially conducted a merits review and determined conclusively that Mr. Sneed would not succeed on his ineffective assistance of counsel claims." ECF 22-2 at 5 (Reconsideration Order). That, as Judge Jordan noted, was "improper at this point in the proceedings," the COA stage, under this Court's precedents. ECF 22-2 at 5 (Reconsideration Order); *see, e.g.*, *Miller-El v. Cockrell*, 537 U.S. 322, 337, 336 (2003) (explaining that a COA "does not require a showing that the appeal will succeed" and, in fact, the habeas statute "forbids" a court's "full consideration of the factual or legal bases adduced in support of the claims"); *Buck v. Davis*, 580 U.S. 100, 115 (2017) (reversing denial of a COA and explaining that when a court denies a COA "based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction.") (citation omitted).

8. Consistent with this Court's precedents, and other Eleventh Circuit cases as well, a COA was warranted. As Judge Jordan explained, reasonable jurists could disagree whether Mr. Sneed's Sixth Amendment right to effective assistance of counsel was violated when his counsel failed to call lay witnesses to present mitigation evidence at the sentencing phase of his trial. And, as Judge Jordan also explained, it was "at least debatable" whether Mr. Sneed's counsel's funding requests for an independent mental-health evaluation were insufficient and that a fuller evaluation of and testimony about Mr. Sneed's mental health "could have had an impact." ECF 22-2 at 8-9 (Reconsideration Order).

9. After receiving this divided order, Mr. Sneed pursued all potentially available relief available in the Eleventh Circuit, including (i) a motion to suspend the Eleventh Circuit rules to allow Mr. Sneed to petition for rehearing en banc of the reconsideration order and the underlying COA denial, (ii) a motion for en banc reconsideration of the Eleventh Circuit's subsequent order denying that motion to suspend the rules, and (iii) a petition for rehearing en banc of that order denying the motion to suspend the rules.

10. Mr. Sneed's case raises important questions of clearly established constitutional law, including that his counsel was ineffective for failing to conduct an adequate mitigation investigation or call lay witnesses at the sentencing phase of his trial, and for failing to retain a forensic psychologist who would have testified that Sneed suffered from severe mental illnesses at the time of the crime.

11. Mr. Sneed's case also raises an important question whether the Eleventh Circuit exceeded its jurisdiction when it analyzed and rejected Mr. Sneed's constitutional claims on the merits, in direct contravention of the statutory limits on its authority at the COA stage and this Court's precedents. *See, e.g.*, *Buck*, 580 U.S. at 115 (finding error in the Fifth Circuit's denial of a certificate of appealability because "it reached that conclusion only after essentially deciding the case on the merits").

12. Mr. Sneed intends to petition this Court for a writ of certiorari to review the Eleventh Circuit's orders denying his application for a COA and his subsequent motion for reconsideration of that order. The jurisdiction of this Court would be invoked under 28 U.S.C. § 12451(1). That petition presently is due on or before February 24, 2025. Petitioner's counsel requires additional time to adequately address the issues presented in Mr. Sneed's case, which are of critical importance in this capital case. Therefore, Petitioner seeks an extension of 60 days to file his petition for writ of certiorari. *See* Supreme Court Rule 13.5.

13. Good cause exists for the 60-day extension of the time to file a certiorari petition.

14. First, Mr. Sneed's counsel have (and have had) numerous conflicting professional deadlines, including: (1) an opening merits brief in *Valli v. Avis Budget Rental Car Group, LLC, et al.,* No. 24-3025 (3d Cir.), filed on January 29, 2025; (2) an opening merits brief in *In Re: Dravo LLC – Derivative Claims Against Carmeuse Lime, Inc., And Certain Affiliated Entities*, Nos. 33 WAP 2024 and 34 WAP 2024 (Pa.),

filed on February 5, 2025; (3) oral argument in *Alexander v. Amerigroup, Inc.*, No. 24-0220 (Ia. Ct. App.), on February 12, 2025; (4) an opening merits brief in *County of San Bernardino v. The Insurance Company of the State of Pennsylvania*, No. 24-6986 (9th Cir.), due on February 28, 2025, and (5) an opening merits brief in *Allergan Sales, LLC v. Sofregen Medical Inc.*, No. 28, 2025 (Del.), due on March 11, 2025. An extension will ensure adequate time to prepare a comprehensive petition for writ of certiorari that will best aid the Court's review of the important issues implicated by the Eleventh Circuit's rulings.

15. Second, Mr. Sneed's counsel has focused substantial time, attention, and resources pursuing all potentially available relief from the Eleventh Circuit's November 26, 2024 order denying his motion for reconsideration. Indeed, Mr. Sneed's most recent Eleventh Circuit filings—(i) a motion for en banc reconsideration of the Circuit's order denying his motion to suspend the rules and permit an en banc petition as to the order denying a COA, and (ii) a petition for rehearing en banc of the order denying the motion to suspend the rules—remain pending and the court of appeals may grant Mr. Sneed relief that would delay (or obviate) the need to petition this Court for certiorari.

16. In accordance with Supreme Court Rule 13.5, this Application is submitted more than ten days before a petition is currently due. *See* Sup. Ct. R. 13.5. For all the foregoing reasons, Mr. Sneed respectfully requests that the Court extend the time to file a certiorari petition to and including April 25, 2025.

Respectfully Submitted,

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