

NO:
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2017

MICHAEL ST. HUBERT,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

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

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF
THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT
JUSTICE FOR THE ELEVENTH CIRCUIT

Pursuant to Supreme Court Rules 13.5, 22, and 30.3, Michael St. Hubert respectfully requests a forty-five-day extension of time, to and including July 13, 2018, within which to file a petition for a writ of certiorari from the judgment of the

United States Court of Appeals for the Eleventh Circuit. Mr. St. Hubert has not previously sought an extension of time from this Court.

Mr. St. Hubert is filing this Application at least ten days before the filing date, which is May 29, 2018. *See* S.Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

Mr. St. Hubert was charged in 2015, *inter alia*, with two counts of using and carrying a firearm during and relation to a crime of violence, and possessing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c). The alleged “crime of violence” in the first count was a substantive Hobbs Act robbery in violation of 18 U.S.C. § 1951, and in the second count, it was an attempted Hobbs Act robbery. Mr. St. Hubert moved to dismiss those counts, arguing that Hobbs Act robbery did not qualify as a “crime of violence” under either the elements or residual clause definitions in § 924(c)(3). However, the district court summarily denied that motion, and Mr. St. Hubert ultimately pled guilty to the above charges. He was sentenced to 84 months on the first § 924(c) conviction, and a consecutive 300 months on the second.

On appeal to the Eleventh Circuit, Mr. St. Hubert reprised his arguments from his motion to dismiss, adding that his plea had not waived his “crime of violence” challenges, which were unwaivable jurisdictional claims. After oral argument, and post-oral argument supplemental briefing, the Eleventh Circuit issued a published opinion agreeing that Mr. St. Hubert’s claims were jurisdictional and thus, not waived by his plea. However, the court of appeals rejected his “crime

of violence” challenges on the merits. *United States v. St. Hubert*, 883 F.3d 1319 (11th Cir. Feb. 28, 2018).

With particular regard to his claim that § 924(c)(3)(B) was unconstitutionally vague in light of *Johnson v. United States*, 576 U.S. ___, 135 S.Ct. 2551 (2015), the court noted that it had “already rejected a *Johnson*-based void-for-vagueness challenge to § 924(c)(3)(B) in *Ovalles v. United States*, 861 F.3d 1257 (11th Cir. 2017),” and under the prior panel precedent rule, it was “bound to follow *Ovalles*.” 883 F.3d at 1328. However, anticipating that this Court’s decision in the then-pending case of *Sessions v. Dimaya*, No. 15-1498 might undercut the reasoning in *Ovalles*, the court added: “Even assuming that *Ovalles* is not binding and that *Johnson* invalidated § 924(c)(3)(B)’s risk-of-force clause as unconstitutionally vague, we conclude St. Hubert’s challenge to his first § 924(c) conviction (Count 8) fails because this Court has already held that Hobbs Act robbery (the predicate for Count 8) independently qualifies as a crime of violent under § 924(c)(3)(A)’s use-of-force clause.” *Id.* (citations omitted). And, as an alternative and independent ground for upholding Mr. St. Hubert’s second § 924(c) conviction, the court held – as a matter of first impression in the circuit – that an attempted Hobbs Act robbery likewise qualified as a “crime of violence” under § 924(c)(3)(A). *See id.* at 1333-1334.

A copy of the opinion is attached as Exhibit A hereto.

Notably, on the very day the opinion issued, the Eleventh Circuit withheld the mandate *sua sponte*. And indeed, even though Mr. St. Hubert did not seek rehearing en banc, the mandate has still not issued at this time – possibly because

Sessions v. Dimaya, 138 S.Ct. 1204 (April 17, 2018) squarely rejected the precise analysis employed in *Ovalles*. While the *Ovalles* panel ordered supplemental briefing immediately after *Dimaya*, asking whether the en banc court should reconsider “our precedent’s use of the categorical approach in the 924(c) case of *United States v. McGuire*, 706 F.3d 133, 1336-1337 (11th Cir. 2013),” even if the court of appeals adheres to *McGuire* and finds § 924(c)(3)(B) unconstitutionally vague based on *Dimaya*, that would not provide Mr. St. Hubert with relief given the court’s alternative elements clause holdings. Mr. St. Hubert will be seeking review of both the court’s elements and residual clause holdings from this Court.

Undersigned counsel will not have sufficient time to prepare a petition for writ of certiorari on those issues by May 29th for several reasons. Counsel represents the petitioner in *Stokeling v. United States*, *cert. granted*, 138 S.Ct. 1438 (April 2, 2018) (No. 17-5554), and the petitioner’s merits brief in *Stokeling* is due June 11th. Three days after the *Stokeling* brief is filed, on June 14th, undersigned counsel’s son will be married in New Jersey, and counsel will be out of the office from June 12th through June 17th for the associated festivities. Although counsel will return to the office on June 18th, she will be attending the Federal Defender/CJA Conference in Naples, Florida from June 21st through June 23rd. As a result, it is unlikely that counsel will be able to devote her full attention to the petition for certiorari in this case until June 25th. Given the number of issues involved, and counsel’s other professional responsibilities, she will need several weeks from that date to prepare Mr. St. Hubert’s petition.

There will be no prejudice to any party from the grant of a forty-five day extension.

Since the time within which to file a petition for writ of certiorari in this case will expire on May 29, 2018, unless extended, Mr. St. Hubert respectfully requests that an order be entered extending his time to file a petition for writ of certiorari by forty-five days, to and including July 13, 2018.

Respectfully submitted,

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FEDERAL PUBLIC DEFENDER

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