

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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BRIAN SCHUMAKER - Petitioner

vs.

Hector Joyner, WARDEN - Respondent

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ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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APPLICATION TO FOURTH CIRCUIT JUSTICE TO  
EXTEND TIME TO FILE PETITION FOR CERTIORARI

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Brian-William:Schumaker, in proper person

and AGENT for Petitioner

c/o FCI Fort Dix

P.O.Box 2000, Joint Base MDL

NEW JERSEY [near 08640-090200]

APPLICATION TO FOURTH CIRCUIT JUSTICE TO  
EXTEND TIME TO FILE PETITION FOR CERTIORARI  
(Sup.Ct.R. 13.5)

RELIEF SOUGHT

Brian-William:Schumaker, in proper person and AGENT on behalf of BRIAN SCHUMAKER, the Petitioner, requests that the Chief Justice over the Fourth Circuit extend the time to file a petition for writ of certiorari to the United States Court of Appeals for the Fourth circuit in the matter of, BRIAN WILLIAM SCHUMAKER v. Hector Joyner, WARDEN, Fourth Circuit Appeal No. 17-7254, for a period of sixty (60) days from the date currently tolling of October 1, 2018.

GROUND FOR RELIEF

Judgments Below

1. On November 24, 2017, petitioner timely filed Informal Brief in the United States Court of Appeals For the Fourth (4th) Circuit on appeal to the decision of the United States District Court (USDC) to Case No. 1:17-cv-01473-HMH. This civil case was an original 28 USC §2241 Petition for Writ of Habeas Corpus on Constitutional claims of "actual innocence" to be construed together with 5th Amendment "Due Process of Law" infractions regarding instructions submitted to the jury on 11th Circuit USDC Case No. 1:07-cr-00289-JLG. This §2241 petition was filed in the Fourth Circuit pursuant to federal rules, since the petitioner was incarcerated at FCI Estill, SOUTH CAROLINA. The OPINION AND ORDER denying the petition was filed July 19, 2017. Extension of time to file the Appeal to November 27, 2017 was issued by direction of the 4th Circuit on October 3, 2017.

2. On April 25, 2018, the 4th Circuit, in an unpublished Per Curiam opinion AFFIRMED the District Court Judgment despite the USDC 's failure to

... accurately state, address, OR prudentially consider those Constitutional claims raised in the Petition.

3. On June 8, 2018, the petitioner timely filed a Petition For Rehearing, with Suggestion For Rehearing En Banc together with Motion To Recall Mandate in order to obtain the rationale of the 4th Circuit Panel failing to hold the USDC to nationally accepted instruction of the 11th Circuit in Clisby v. Jones, 960 F.2d 925,936(11th Cir.1992)(directing, "District courts are instructed to resolve all claims for relief in a petition for writ of habeas corpus..., regardless whether habeas corpus relief is granted or denied." and "A claim for purposes of this instruction is any allegation of a constitutional violation."). Moreover, in conjunction with the Clisby decision, it was this same 4th Circuit that stated in United States v. Hicks, 748 F.2d 854 at 857-58(4th Cir.1984), and again in United States v. Cousar, 538 Fed.Appx.83 at 85, where it emphasized 5th Circuit decision in Strauss v. United States, 376 F.2d at 419(5th Cir.1967) that, "If the trial judge evaluates or screens the evidence supporting a proposed defense, and upon such evaluation declines to charge on that defense, he dilutes the defendant's jury trial by removing the issue from the jury's consideration. In effect, the trial judge directs a verdict on that issue against the defendant. This is impermissible." In Hicks, "the conviction was reversed for one defendant, and the error was not harmless." The 4th Circuit court went on to say that, "Failing to give the jury an [ ]instruction is thus an error of constitutional magnitude...". Hicks, 748 F.2d at 857-58.

On July 3, 2018, the 4th Circuit filed its ORDER denying the petition for rehearing and rehearing en banc. The Mandate was filed on July 11, 2018.

#### Jurisdiction

4. The Supreme Court will have jurisdiction over this matter because 28 USC §1254(1) gives the Court jurisdiction over an appeal of a final judgment of a United States Court of Appeals.

### Reasons Why Relief From Time Limit Needed

5. Under Supreme Court Rule 13.1, time for filing of a petition for writ of certiorari in this matter expires on October 1, 2018.

6. Petitioner is a lay person, and submits that the reason for appealing the 4th Circuit Court of Appeals decision on the petitioner's §2241 actual innocence claims was due to the lower court's repeated failure to accurately state, address, or consider the constitutional questions raised, when the 4th Circuit court itself in previous cases has emphasized the questions raised by the petitioner as being "of constitutional magnitude", "...not harmless", and "impermissible."

7. Petitioner reiterates that the lower 11th Circuit has also repeatedly rebuffed the petitioner's assertions that constitutional violations to "due process" with regard to the trial court's jury instructions as to the 'theory of defense' essentially directed the verdict against the defendant/petitioner in this case; at preliminary review of the jury instructions through defense objections, objections at sentencing, on direct appeal, in the §2255 proceedings, in the appeal of those proceedings by the 11th Circuit, and again in the Request for Rehearing in the 11th Circuit. All of these refusals to ~~either acknowledge~~ or prudentially consider these constitutional claims have resulted in a further Constitutional infraction of the 'Equal Protection Clause' guarantee.

8. Petitioner strenuously contends that the two questions being raised in the petition are of national importance, and subsequent decisions in at least two (2) other circuits are at odds with the original trial court's opinion(s). Further identified are at least fifteen cases from numerous circuits and this Court agreeing that the convictions of the defendant/petitioner require reversal.

9. Petitioner has recently been moved from the 4th Circuit and is still organizing his court filings to retrieve the necessary documents to be

... used in support and appended to the petition for certiorari.

10. Notwithstanding the recent relocation of the petitioner and associated challenges in locating pertinent records, the forcible transfer has resulted in the aggravation of certain medical conditions that caused the loss of almost 20 lbs. With the rapid decline in the health of the undersigned since October 2017, medical personnel at the facility recently advised the undersigned that surgery is being scheduled for likely two (2) operations which could occur anytime within the next few days, without being provided specific notice.

11. Coupling these complications with the requested template forms to file the petition not yet being received, the petitioner will be prejudiced considerably in being unable to effectively brief the writ now being applied for.

#### Need for Length of Extension Sought

12. The petitioner is certainly aware of Sup.Ct.R. 13.5 that an application for an extension of time is "not favored". However, due to the exceptional circumstances surrounding the petitioner, a stay in the tolling or extending the time to file the petition for writ of certiorari for 60-days pursuant to Sup.Ct.Rules 13.5 and 22 will ensure the petitioner is not adversely prejudiced.

13. Pertinent records as prerequisite to the filing of a Petition for Writ of Certiorari, (ie - Motion to Proceed In Forma Pauperis) are enclosed hereunder, or will otherwise be forwarded to this honorable Court upon receipt of the actual petition.

#### Grounds for Certiorari in This Case

14. The arrest and conviction of petitioner raises grave Constitutional questions concerning the First, Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States. Departures from clearly established circuit decisions in not only the circuit of conviction, but also in the...

... 4th Circuit from where the underlying habeas corpus appeal originated, are so grave as to cause a "fundamental miscarriage of justice" which reach far beyond the petitioner sufficiently to call into question the public perception as to the integrity of federal judicial process in this union of States. Being denied an appeal with regard to the serious constitutional violations occurring throughout the period back to the day of arrest will appear as a muzzling effect to constitutional claims that the judiciary would just prefer to avoid through the silencing of a dissenting voice.

17. The petitioner is currently 133 months into serving a 360-month concurrent sentence and the opposing party(ies) will suffer no adverse consequences with this Court's grant of the time extension requested.

#### CONCLUSION

Therefore, in consideration of the foregoing, the petitioner respectfully requests the honorable Justice to GRANT the relief sought; and issue an Order to increase the tolling another 60-days, to December 1, 2018, for the petitioner to file the Petition for Writ Of Certiorari.

Respectfully submitted this 18 day of September 2018.

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AGENT for Petitioner  
Brian-William:Schumaker  
by restricted signature

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