

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

DEWEY HYLOR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

APPLICATION FOR EXTENTION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO 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

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INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

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**PETITIONER'S APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

Pursuant to Rules 13.5, 22, and 30.3 of the Rules of the Supreme Court of the United States, Dewey Hylor respectfully requests a sixty-day extension of time, to and including December 17, 2018, within which to file a Petition for Writ of Certiorari from the judgment of the United States Court of Appeals for the Eleventh Circuit in Case No. 17-10856. Mr. Hylor has not previously sought an extension of time.

Basis for Jurisdiction

The district court had jurisdiction of this case pursuant to 28 U.S.C. § 2255(a) because Mr. Hylor, a person under sentence of a court established by Act of Congress, filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence in

the United States District Court for the Southern District of Florida claiming that his sentence was in excess of the maximum authorized by law. On December 29, 2016, the district court denied Mr. Hylor's § 2255 motion, disposing of all the claims between the parties to this cause.

On February 24, 2017, Mr. Hylor timely appealed the denial of his § 2255 motion to the United States Court of Appeals for the Eleventh Circuit pursuant to 28 U.S.C. §§ 1291 and 2253. On July 18, 2018, the Eleventh Circuit affirmed the district court's decision, App. A-1.

Mr. Hylor is filing this Application at least ten days before the filing date for a petition for writ of certiorari, which is October 16, 2018. The jurisdiction of the Court will be invoked under 28 U.S.C. § 1254(1).

Judgment to be Reviewed and Opinion Below

The Eleventh Circuit's opinion affirming the district court's denial of Mr. Hylor's § 2255 motion is reported in the Federal Reporter at 896 F.3d 1219, and is reproduced in Appendix A-1.

Reasons for Granting an Extension

Mr. Hylor respectfully requests an additional 60 days to file his petition for writ of certiorari for two reasons. First, this Court's impending decision in *Denard Stokeling v. United States*, No. 17-5554, will directly affect the Court's consideration of Mr. Hylor's petition for writ of certiorari. In *Stokeling*, the Court will determine whether Florida robbery is a "violent felony" for purposes of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e).

Here, Mr. Hylor's prior conviction for Florida robbery was one of the three predicates relied upon by the district court to enhance Mr. Hylor's sentence under the ACCA. *See* App. A-1 at 2. Mr. Hylor's § 2255 motion asserted that his ACCA-enhanced sentence should be vacated because his Florida robbery conviction is not a violent felony under the ACCA, but the district court disagreed, and denied § 2255 relief. *See id.* at 3-4. The Eleventh Circuit affirmed. *Id.* at 9. Relevant here, the court of appeals concluded that it was bound by circuit precedent holding that Florida robbery is a violent felony for purposes of the ACCA. *See id.* (citing *United States v. Fritts*, 841 F.3d 937, 941-942 (11th Cir. 2016), and *United States v. Lockley*, 632 F.3d 1238, 1245 (11th Cir. 2011)).

Should this Court hold in *Stokeling* that Florida robbery is not a violent felony under the ACCA, the Eleventh Circuit's error in rejecting Mr. Hylor's § 2255 motion would be manifest. The Court will hear argument in *Stokeling* on October 9, 2018. A sixty-day extension of time in this case may be sufficient time for the *Stokeling* decision to issue, thereby allowing undersigned counsel time to craft Mr. Hylor's certiorari petition, and the relief he requests therein, in light of *Stokeling*'s holding.

Mr. Hylor also respectfully requests additional time to file his certiorari petition due to the workload of undersigned counsel. Prior to the current due date for Mr. Hylor's petition for writ of certiorari, undersigned counsel has an amended 28 U.S.C. § 2254 petition due in the district court on October 9, 2018 on behalf of a petitioner serving a 145-year sentence in *Alfonso Ponton v. Secretary, Fla. Dep't of Corr.*, No. 16-20059-Civ-Williams; a status report due in the district court on October

5, 2018, in *Huntley Thompson v. Fla. Dep't of Corr.*, No. 14-20471-Civ-Cooke, a § 2254 proceeding in which the district court has ordered DNA testing to determine the petitioner's actual innocence; and a status report due in the Eleventh Circuit on October 15, 2018, in *Anthony O. Wint, Jr., v. State of Florida, et al.*, 11th Cir. No. 17-13459-J, a § 2254 appeal remanded to the district court for the limited purpose of determining whether the petitioner's mental illness requires the appointment of a "next friend" to litigate on behalf of the petitioner.

Undersigned counsel is at present also preparing the reply brief in a § 2254 appeal, *Eric Barrass v. Sec'y, Fla. Dep't of Corr.*, 11th Cir. No. 18-11534, which is due on October 23, 2018. In addition, undersigned counsel is preparing for an evidentiary hearing in a § 2255 proceeding on a claim of ineffective assistance of counsel. That hearing is set for November 6, 2018, before the district court in *Ramon Acosta v. United States*, S.D. Fla. No. 18-20053-Cv-Moore/White.

Mr. Hylor's certiorari petition is at present due on October 16, 2018. A sixty-day continuance would cause the petition to fall due on Monday, December 17, 2018. S. Ct. R. 30.1. This request is not for purposes of delay. Rather, undersigned counsel believes that additional time is needed to allow for the careful preparation of the petition for writ of certiorari in this matter. No party will be prejudiced by the grant of a sixty-day extension of time.

Relief Requested

WHEREFORE, Mr. Hylor respectfully asks this Honorable Court to grant him a sixty-day extension of time within which to file a Petition for Writ of Certiorari, to and including December 17, 2018.

Respectfully submitted,

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Fort Lauderdale, Florida
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