

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2014
NO._____

EARLE D. WILLIAMS, Petitioner

vs.

STATE OF CALIFORNIA, Respondent

**APPLICATION FOR EXTENSION OF TIME
TO
FILE PETITION FOR WRIT OF CERTIORARI**

To the Honorable John G. Roberts, Chief Justice of the United States Supreme Court and
Circuit Justice for the Ninth Circuit

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Attorney for Applicant-Defendant

**To the Honorable John G. Roberts, Chief Justice of the United States Supreme Court
and Circuit Justice for the Ninth Circuit**

Applicant-Defendant, Earle D. Williams, respectfully request an extension of time to file a petition for writ of certiorari. (Sup. Ct. R. 13.5.) The earliest deadline for Applicants to file their petition is Tuesday, October 16, 2018, which is ninety days from Wednesday, July 18, 2018, the date on which the California Supreme Court denied Applicant's petition for review. For good cause set forth herein, Applicant asks that this deadline be extended by sixty days, to Saturday, December 15, 2018.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257.

BACKGROUND

The underlying, sufficient facts are that, on a sunny afternoon, Applicant walked onto a private yard, picked up a crying 5 year old girl, kissed her on the forehead, and carried her 26 feet before putting her down and exiting the premises just as the girl's mother emerged from the house. A verbal encounter between the mother and Defendant ensued. Defendant was arrested shortly thereafter. A search of Defendant's RV and home failed to discover pornography or kidnapping tools. Applicant had prior convictions for drug usage but none involving sexual misconduct with children.

Applicant was acquitted of lewd acts with a child under fourteen (Pen. Code, § 288, subd. (a)) but convicted of aggravated kidnapping with intent to commit a lewd act (Pen. Code, § 209, subd. (b)(1)) and uttering criminal threats (Pen. Code, § 422). On these counts and separately tried prior convictions, Defendant was sentenced to an

indeterminate life term with a 14 years parole date and a consecutive 16 year determinate term.

On timely appeal, Defendant contended, *inter alia*, that insufficient evidence supported his convictions under *Jackson v. Virginia* (1979) 443 U.S. 307. In an opinion filed April 12, 2018, Division One of the Second District Court of Appeal affirmed. The opinion is attached hereto.

Five days later, April 17, 2018, this Court published its decision in *Sessions v. Dimaya* (2018) 584 U.S. ___, No. 15-1498 (“*Dimaya*”). Applicant immediately petitioned for rehearing based on a substantial change in law prior to judgement becoming final. Rehearing was denied on May 2, 2018. The subsequently filed petition for review was denied on July 18, 2018. The order is attached. This request follows.

ISSUE PRESENTED

The contemplated issue presented is whether California's aggravated kidnapping statute, as written and as interpreted by California's Supreme Court, runs afoul the constitutional prohibition against vague and uncertain laws as expounded in *Dimaya*.

Under California law, *any* kidnapping must entail movement for a substantial distance. A “substantial distance” does not depend on any minimal numerical distance but on the quality of the asportation. (*People v. Martinez* (1999) 20 Cal.4th 225, 235, 237.) Kidnapping for the purpose of committing designated crimes, including lewd acts with children, requires proof of (1) simple kidnapping *and* (2) “that the movement of the victim be for a distance which is more than that which is *merely incidental* to the commission or attempted commission of [the target crime] and that this movement

substantially increase the risk of harm to the victim over and above that *necessarily present* in the commission or attempted commission of these crimes.” (*People v. Rayford* (1994) 9 Cal.4th 1, 20, interpreting *People v. Daniels* (1969) 71 Cal.2d 1119 [italics added].)

It is Applicant's contention that Penal Code section 209 contains a double layered vagueness that leaves a defendants' liberty interests solely dependent on the unguided whims of juries and appellate judges. Under the *Daniels/Rayford* test, courts assess whether the kidnapping movement increased a risk of harm “beyond that *inherent* in robbery” or “*necessarily* present in the commission or attempted commission of these [target] crimes” and or subjected the victim to risks beyond those “which such person is *normally* exposed.” (*Rayford*, *supra*, at pp. 12, 22, 23.) This so-called “test” is dependent on the chameleon of “a judge-imagined abstraction” such as that found infirm in *Dimaya*. In Applicant's view, *Dimaya* contained an important explication not present in *Johnson*, namely its further elucidation that unconstitutional vagueness depends on whether the statute in question “directs courts to consider whether an offense, *by its nature*, poses the requisite risk....” (*Dimaya*, at slip pp. 14-15 [italics added], discussing the meaning of the word “nature.”)

Under California law, proof of lewd conduct with an underage child requires only two elements: *any* touching coupled with a lewd intent. At trial, Applicant denied kissing the girl at all. The Court of Appeal found the jury's acquittal insignificant in that “[Applicant's] intent, as a violation of section 288 involves several elements, for lack of any one of which the jury would have been compelled to acquit.” (Slip. opn. pg. 8.) The

court of appeal found that there was sufficient evidence of aggravated kidnapping because there was no evidence “that would normalize a kiss” (slip p. 8) and because the asportation of Jazmyne was “substantial for purposes of kidnapping” because absent the mother’s supposed “intervention” (in coming outside) the 26 feet gave applicant a head start and “meant the difference between freedom and severe peril” (slip p. 11) These two prongs of the appellate court holding unmistakably rested on judicial ideation as to what a “normal” kiss was and what constituted the nature of a routine or non-dangerous versus a “substantial” asportation. It need only be noted, here, that the difference between freedom and peril comes into play *eo instante* at the first grabbing of the victim in which case every kidnapping is *ipso facto* aggravated.

The arbitrariness of California’s test for ascertaining the aggravated nature of a kidnapping is stunningly demonstrated by the fact that in *People v. Williams* (2017) 7 Cal.App.5th 644, the very same division as heard the present case, the court held that the movement of victims during multiple robberies some 20 to 60 feet into back room vaults or storage areas was insufficient under *Daniels* to create an increased risk of harm to the victims. (*Williams*, at pp. 668-669.)

REASONS FOR REQUEST

Counsel herein is a sole practitioner and is undertaking to file this petition pro bono on behalf of an indigent incarcerated petitioner.

In addition to other scheduled commitments, the press of working on and filing other cases briefs due in the past 90 days (including filed briefs in *People v. Guzman* (A150834), *People v. Barraza* (B285685), *People v. Lobo* (B281156) and *People v. Rowe*

(C085815)) has allowed insufficient time to prepare the petition. A reply brief in *People v. Aguilar* (B286770) is due on October 16, 2018. In addition, in *People v. Colon* (C084527), a change of law that went into effect on September 28, 2018, the same date as the appellate court's opinion, necessitates the filing of a petition for rehearing by October 13, 2018

CONCLUSION

For the foregoing reasons and good cause shown, Applicants respectfully request that this Court grant this application for an extension of time to file a petition for writ of certiorari.

Dated: 4 October 2018

Respectfully Submitted

KIERAN D. C. MANJARREZ
Attorney for Applicant/Defendant

PROOF OF SERVICE

Title: People v. Williams

Case No.: B269049 / _____

The undersigned declares:

I am a citizen of the United States of America, over the age of eighteen years and counsel for appellant herein. My business address is 1535 Farmers Lane 133, Santa Rosa, CA 95405.

On 5 October 2013 I served the attached, REQUEST FOR EXTENSION OF TIME on the parties in this action by electronic filing and/or by first class postage fully prepaid, in the United States Mail, addressed as follows:

- [x] Court of Appeal Dist 2 / Div 1
 - [x] 300 South Spring St., N.Tower, L.A., CA 90013
- [x] Attorney General 300 South Spring Street, 5th Fl .Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Sworn this 5 October 2018 at Santa Rosa, California.



Kieran D. C. Manjarrez