

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT DAVIES, Petitioner

v.

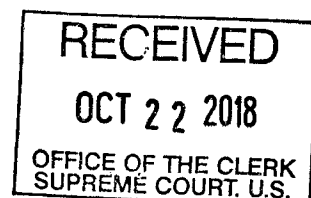
UNITED STATES, Respondent

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

To the Honorable Samuel A. Alito, Jr.
Associate Justice of the United States Supreme Court,
And Circuit Justice for the Third Circuit

Robert Davies, the Applicant herein, respectfully requests a 60-day extension of time, to and including January 14, 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case. The court of appeals entered its judgment summarily affirming the district court's order denying Robert Davies' motion to terminate supervised release without a hearing on August 17, 2018. No request for rehearing was made. Unless extended, the time within which to file a petition for a writ of certiorari will expire on November 15, 2018. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). Copies of the per curiam opinion of the courts of appeals and the memorandum opinion of the district court are attached.

1. This case presents the question whether, in the light of *Rosales-Mireles v. United States*, 138 S.Ct. 1897 (2018), the court of appeals abused its discretion by summarily affirming an order denying early termination of supervised release when the record affirmatively shows that the district court committed significant procedural errors in sentencing.



2. Petitioner is currently serving a lifetime term of supervised release in the Northern District of Ohio. On January 3, 2018, he filed with the sentencing court a motion to terminate the lifetime term of supervised release on the grounds that it's a greater deprivation of liberty than necessary and wholly unrelated to its statutory purpose because the factual and legal basis of the conviction and sentence were subsequently altered. The record of this case will affirmatively show that the district court denied the motion to terminate supervised release based upon arbitrary and unsupported, post hoc concerns, such as:

(a) The seriousness of the alleged offense, when the district judge identified an intended sexual act — bestiality — that the FBI case agent specifically refuted nine years earlier;

(b) The need to protect the public from future crimes, when (i) Mr. Davies is actually innocent of the offense for which he was convicted, (ii) the prosecutor knowingly withheld from the defense an exculpatory police report in which the arresting officers, after a four-hour interview of the alleged victims, concluded that “Both girls stated that there was nothing said or done to them in the physical presence of Davies. And more specifically while in Cecil Township. It was at this time that it was determined that we had no real crime occurring in Cecil,” and, (iii) after imposing sentence in this case, the government and district court have been altering the factual and legal basis of the conviction and sentence.

(c) The knowing misrepresentation of age, when the government (i) misled Mr. Davies by omitting from the written plea agreement the requisite intent language of U.S.S.G. § 2G1.3(b)(2)(A), and (ii) failed to present any facts to support a finding that Mr. Davies misrepresented his age with the intent to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prohibited sexual conduct, as required by U.S.S.G. § 2G1.3(b)(2)(A);

(d) The use of a computer, when the government failed to present any facts to support a finding that Mr. Davies used a computer with the intent to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prohibited sexual conduct, as required by U.S.S.G. § 2G1.3(b)(3)(A);

(e) A detrimental impact on the alleged victims, when (i) the alleged victims did not submit Victim Impact Statements or make any requests for restitution, (ii) the prosecutor agreed with the probation officer's findings in the Presentence Report (PSR) that restitution was not issue in this case, (iii) the government failed to present any facts to support a finding that Mr. Davies caused any impact on the alleged victims, (iv) the district court allowed the government's last minute request for a \$3,000 restitution order, and (v) allowed Mr. Davies to empathetically raise that amount to \$5,000.00.

(f) A history of mental health issues, when Mr. Davies was properly evaluated by a government-contracted psychologist who determined that Mr. Davies does not need medication; and

(g) A history of drug and alcohol abuse, when Mr. Davies, who is now 43 years of age, quit smoking marijuana at the age of 21 and never used any other drugs in his life, only seldom drinks alcohol, and has passed every drug since the age of 21, including all scheduled and random drug tests since he was released from pretrial detention on May 27, 2009.

3. The relief sought — termination of supervised release — was favorable to Mr. Davies and, obviously, would not extend the term of supervised release. Thus, because the prosecutor filed an untimely objection without addressing the merits, a hearing was not required before the court terminated or modified the length of the term of supervised release. However, since the district court did not terminate or modify supervised release, and since Mr. Davies did not waive his right to the hearing, the court was required to conduct a hearing.¹

4. As for the specific reasons for requesting an extension of time to file a petition for a writ of certiorari, the probation office in Western Pennsylvania filed a petition with the district court on May 17, 2018, seeking to revoke Mr. Davies' supervised release for allegedly violating the conditions of supervised release. The district court issued a summons that same day, set a final revocation hearing for June 11, 2018, and ordered Mr. Davies to appear with counsel to show why supervised release should not be revoked.

5. Thereafter, the district court retroactively appointed counsel to represent Mr. Davies, but specifically limited to revocation proceedings, which overlapped the filing date of, and prevented a ruling on, Mr. Davies' motion to stay the sentence pending appeal from the order denying early termination of supervised release, by making it appear as if he was represented by counsel when he filed the pro se motion to stay the sentence.

¹ Fed. R. Crim. P. 32.1(c)(2) provides: "A hearing is not required if (A) the person waives the hearing; or (B) the relief sought is favorable to the person and does not extend the term of probation or of supervised release; and (C) an attorney for the government has received notice of the relief sought, has had a reasonable opportunity to object, and has not done so."

6. When Mr. Davies appeared at the final revocation hearing on June 11, 2018, the district court did not hold a preliminary hearing, or require the government to establish probable cause for the alleged violations, as required by Fed. R. Crim. P. 32.1(c). Nor did the court discuss or set bail. Instead, the district court “gave” Mr. Davies 90 days to “come into compliance” with the conditions of supervised release. According to the district court, if Mr. Davies does comply, then the government “may withdraw” the revocation petition. Otherwise, the district court threatened to force Mr. Davies to serve his lifetime term of supervised release in the Western District of Pennsylvania.

7. As the record and the arguments of the government will show, the real purpose of the revocation proceeding is to punish Mr. Davies for challenging the validity of the conviction and sentence, to protect the government and district court from the consequences of repeatedly altering the factual and legal basis of the conviction and sentence, and to make it appear, in the name of “public safety,” that Mr. Davies cannot obey conditions of supervised release, so he cannot be trusted to roam about the community free and unsupervised.

8. With the exception of not maintaining employment, the conditions Mr. Davies allegedly violated are not actual conditions of his supervised release. For example, (i) he is not accused of refusing or failing a drug test, rather, he’s accused of refusing a drug and alcohol assessment to determine if treatment or testing is required; (ii) he is not accused of refusing or failing to participate in the mental health treatment program that he already completed, rather, he’s accused of refusing a mental health assessment to determine if treatment or testing is required; and (iii) he is not accused of refusing or failing to participate in the program the sex offender treatment program that he already completed, rather, he’s accused of refusing to submit to a polygraph exam to determine his compliance with the rules and conditions of the program.

9. While Mr. Davies is also accused of not maintaining employment, he has received education in fields such as paralegal and automotive technician while serving supervised release.

10. Furthermore, since August 15, 2018, he has (i) been employed by Travel Centers of America, an interstate “truck” stop, where he maintains the cleanliness of the inside and outside of the property, (ii) successfully completed the mental health and drug and alcohol assessments with conclusions that no further treatment or testing is needed, and (iii) successfully completed and passed the polygraph exam.

11. The final revocation hearing is currently scheduled for 2:00 p.m. on November 5, 2018. If the district court revokes Mr. Davies’ supervised release and forces him to serve a lifetime term of supervised release in the Western District of Pennsylvania, or imposes a term of imprisonment, he will need more time to prepare and file a petition for a writ of certiorari. On the other hand, the questions to be presented in the petition for a writ of certiorari may become moot if the district court, either *sua sponte* or on motion of a party, terminates supervised release.

12. For the foregoing reasons, Mr. Davies requests an extension of 60 days in which to file a petition for a writ of certiorari, if needed, to review the judgment of the court of appeals. Alternatively, Mr. Davies requests a temporary stay of the sentence or revocation proceeding.

Date: October 16, 2018

Respectfully submitted,



Robert Davies

Pro se

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Applicant