

No. _____

In the Supreme Court of the United States

PAUL LIGHT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

To the Honorable Ruth Bader Ginsburg, Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Second Circuit:

Petitioner Paul Light requests an extension of time of an extra 30 days, until May 18, 2019, to file his Petition for Writ of Certiorari. The Second Circuit decision affirming Mr. Light's child pornography-viewing sentence was decided on November 27, 2018 and is attached to this application. The judgment of the Second Circuit denying rehearing and rehearing *en banc*, also attached, was entered on January 18, 2019.

The Petition for Certiorari is currently due on April 18, 2019. This application is being filed 10 days prior to, and well in advance of the due date. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Counsel, a sole practitioner, anticipates the need for more time because of a physical disability. Two weeks ago, counsel had rotator cuff surgery and will have to wear a splint for yet an additional month's time. My primary hand/arm is affected, and I cannot type or write (except with assistance). I am told to not expect a fast recovery.

For 40 years I have written papers by typing them myself. I don't do dictation and work without a secretary. I am told to not expect to regain typing prowess for a long time.

I have a number of briefs coming due as I recuperate – trying to type one-handed requests for extensions of time, while waiting for the tendon in my typing arm is strong enough to use it. A number of my cases require responses or replies (including the grant of a 2255 hearing, for which I am preparing.) As to timing, because of the federal government shutdown, prosecutor/appellees are delaying filings. I anticipate other replies that will come due once the prosecutors file their responses.

I want to have the time necessary to give my clients effective assistance and ask for extra time in light of my physical disability.

Petitioner’s case raises two important sentencing issues for the criminal justice system. The facts are not in dispute.

This case first questions whether a sentence imposed pursuant to the child pornography Sentencing Guidelines, on a man whose crime was viewing pornography alone in his home, can be deemed reasonable when, as the Second Circuit recognized¹, those Guidelines have been

¹ “The United States Sentencing Commission has determined that the current non-production guideline warrants revision, Jenkins, 854 F.3d at 189–90 (citing U.S. Sentencing Comm’n, Report to the Congress: Federal Child Pornography Offenses (2012)3), and we concur.” (Second Cir. Op. p.6) (footnote omitted).

“While we do not find the 151-month sentence to be substantively unreasonable in this case, we take this opportunity to reiterate the concerns we raised with the child pornography Sentencing Guidelines in Dorvee and Jenkins. In Dorvee, we identified four enhancements in child pornography crimes that were “all but inherent” to these crimes. 616 F.3d at 186.” (Op. p. 5)

“Of particular concern are the enhancements meted out for offenses involving the use of a computer and for 600 or more images. We are aware of no end of the criminal justice system that is furthered by increasing the sentence for the use of a computer—an increase that applies even when the defendant does not utilize the internet in the course of committing the crime. See U.S.S.G. § 2G2.2 cmt. 1; 18 U.S.C. § 1030(e)(1).” (Op. p.7)

deemed flawed and not empirically based, and certain of the enhancements serve “no end of the criminal justice system”; and whether conditions of supervised release that include broad restrictive conditions precluding visits with defendant’s family and use of computers can be upheld as reasonable.

The second issue involves whether the sentencing judge should have disqualified himself because of his stated belief that pornography viewing behavior is genetically based and cannot be controlled by the offender. In a case 10 years ago, that judge sentenced a man to a Guideline sentence for viewing child pornography and indicated he did not believe experts who thought the defendant was not a high risk for re-offending – because, the sentencing judge said, viewing child porn springs from a genetic defect that would some day be discovered. In that case the Second Circuit reversed and vacated the sentence, and remanded to a different judge. It called the sentencing remarks inappropriate. *United States v. Cossey*, 632 F.3d 82 (2d Cir. 2011).

Here on appeal appellant argued that judge could be assumed to retain the *belief* about the nature of child porn viewers and should have recused himself – or counsel should have moved for recusal.

The Second Circuit ruled that the judge had not repeated his belief at this sentencing, so everything was fine: “Inappropriate comments about the genetic predisposition of child pornography offenders made by the district judge almost ten years ago ... cannot be said to indicate that the judge currently holds those views. The judge has sentenced child pornography defendants since he made those comments and we have upheld those sentences.”

No one had challenged the judge’s fairness in the cases in which the Second Circuit had upheld the sentencing judge’s child pornography sentences between the time the sentencing judge’s sentence was vacated due to his expression of beliefs, and the present.

There was no indication that the sentencing judge did *not* retain his beliefs that a child porn offender could not control himself.

I am requesting this extension of time due to a crush of other appellate and trial court commitments I face (as a sole practitioner) before or concurrently with the current due date, along with the fact that my arm will be in a sling for 4 ½ more weeks.

I therefore request the Court extend time for PAUL LIGHT to file his petition for a writ of certiorari until May 18, 2019, which is 30

days past the present due date.

Respectfully submitted,

Vivian Shevitz /s/_____
Attorney for Petitioner Paul Light (CJA appointment)
46 Truesdale Lake Drive
South Salem New York 10590
Tel. No.: (914) 763-2122
vivian@shevitzlaw.com

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