

App. No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

KENYON RAHEEN GADSDEN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondents.

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

PETITIONER'S APPLICATION TO EXTEND TIME TO
FILE A PETITION FOR A WRIT OF CERTIORARI

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To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and as Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

Petitioner, Kenyon Raheen Gadsden, respectfully requests that the time for a petition for writ of certiorari in this matter be extended for 60 days to and including April 18, 2019. The United States Court of Appeals for the Fourth Circuit issued its judgment and opinion denying Mr. Gadsden's request for a certificate of appealability on November 19, 2018 (see App. *infra*). Mr. Gadsden's time to petition for writ of certiorari in this Court would therefore expire on February 17, 2019, absent an extension. Mr. Gadsden is filing this application at least ten days before that date. This Court has jurisdiction over the judgment under 28 U.S.C. § 1254(1).

BACKGROUND

Mr. Gadsden was wrongly designated as a career offender under the then-mandatory U.S. Sentencing Guidelines (Sentencing Guidelines) in 1997 and is serving a life sentence in prison. This case concerns issues that have arisen in the wake of the Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015), which invalidated the residual clause of the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(2)(B)(i), as unconstitutionally vague and which was subsequently made retroactive on collateral review. *Welch v. United States*, 136 S. Ct. 1257, 1268 (2016).

After *Johnson*, Mr. Gadsden, proceeding *pro se*, timely filed a second or successive motion under 28 U.S.C. § 2255 seeking to vacate, set aside, or correct his sentence based on an unconstitutionally vague provision of the mandatory Sentencing Guidelines identical to the language held invalid in *Johnson*. The Court of Appeals for the Fourth Circuit granted Mr. Gadsden authorization to file his second or successive § 2255 motion, but the district court ultimately dismissed Mr. Gadsden's § 2255 motion as untimely following the Fourth Circuit's

decision in *United Sates v. Brown*, 868 F.3d 297 (4th Cir. 2017), which held that this Court’s decision in *Johnson* did not apply to the Sentencing Guidelines. The district court declined to issue Mr. Gadsden a certificate of appealability. Mr. Gadsden appealed the district court’s denial, which the Fourth Circuit dismissed in an order issued on November 19, 2018. The petition therefore addresses whether the constitutional right recognized in *Johnson* applies to inmates sentenced under the mandatory Sentencing Guidelines.

REASONS FOR GRANTING AN EXTENSION OF TIME

Good cause supports granting an extension of time. Mr. Gadsden is currently incarcerated at the United States Penitentiary (USP), Hazelton. USP Hazelton has been, and continues to be, on repeated prison lockdowns since November 2018 that have prevented counsel from effectively communicating with Mr. Gadsden. An operator at USP Hazelton informed counsel that as of February 5, 2019, the prison had been on lockdown for almost three weeks. Counsel has left five voicemails for Mr. Gadsden’s counselor at USP Hazelton on the following dates: January 11, 2019, January 16, 2019, January 22, 2019, February 1, 2019, and February 5, 2019. Mr. Gadsden’s counselor has not returned counsel’s phone calls. This lockdown, and others, have prevented Mr. Gadsden from being able to discuss and prepare a petition for writ of certiorari for filing with this Court. The sixty-day extension is needed for Mr. Gadsden and counsel to discuss these matters and to then file, if appropriate, a petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, the Court should extend the time to file a petition for a writ of certiorari in this appeal 60 days to and including April 18, 2019.

Dated: February 7, 2019

Respectfully submitted,

/s/ Elbert Lin

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APPENDIX

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-6526

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENYON RAHEEN GADSDEN, a/k/a Kenny R. Jones, a/k/a Todd Fuller, a/k/a Kenyon Gadsden, a/k/a Kenya,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, Chief District Judge. (2:96-cr-00182-RBS-1; 2:16-cv-00459-RBS)

Submitted: November 15, 2018

Decided: November 19, 2018

Before MOTZ and HARRIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Laura Colombell Marshall, HUNTON ANDREWS KURTH, LLP, Richmond, Virginia, for Appellant.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenyon Raheen Gadsden seeks to appeal the district court's order dismissing as untimely his authorized, successive 28 U.S.C. § 2255 (2012) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Gadsden has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

FILED: November 19, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6526
(2:96-cr-00182-RBS-1)
(2:16-cv-00459-RBS)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

KENYON RAHEEN GADSDEN, a/k/a Kenny R. Jones, a/k/a Todd Fuller, a/k/a Kenyon Gadsden, a/k/a Kenya

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK