No. A-

IN THE

Supreme Court of the United States

QUINTIN ANTONIO BELL,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH 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 CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT:

Pursuant to this Court's Rule 13.5, Quintin Antonio Bell ("Applicant") respectfully requests a 60-day extension of time, to and including July 7, 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 Fourth Circuit in this case, *United States v. Bell*, 901 F.3d 455 (4th Cir. 2018).

The judgment of the Fourth Circuit was entered on August 28, 2018. *Bell*, 901 F.3d at 455. The court of appeals denied rehearing and rehearing en banc on February 7, 2019. Unless extended, the time for filing a petition for a writ of certiorari would expire on May 8, 2019. Under this Court's Rules 13.5 and 30.2, this application is being filed at least ten days before that date.

This Court has jurisdiction under 28 U.S.C. § 1254(1). A copy of the court of appeals' opinion is attached as Exhibit A; the order denying rehearing and rehearing en banc is attached as Exhibit B.

1. This case presents an important question which now divides the courts of appeals: whether a subjective, officer-focused test applies to determine whether a suspect was interrogated for purposes of *Miranda v. Arizona*, 384 U.S. 436 (1966). Applicant was indicted in the District of Maryland on four counts including drug charges and possession of a firearm by a felon. Before trial, Applicant moved to suppress statements he made about a rifle recovered during the execution of a no-knock warrant at his residence. The district court denied the motion to suppress,

notwithstanding that Applicant answered an officer's question while in custody and without any of the warnings required by *Miranda*, 384 U.S. at 479. When the question was posed by the officer, Applicant was seated next to his wife, handcuffed. The officer did not state to whom of the two spouses the question was addressed. The district court denied the motion to suppress, resting its decision on whether Applicant was subject to interrogation entirely on the agent's "testimony that he did direct the question at Ms. Bell," not at Applicant. Ex. A, at 39 (Wynn, J. dissenting).

A divided panel of the Fourth Circuit affirmed. The panel majority also focused primarily on the agent's subjective intent while ignoring the objective circumstances of the questioning. Despite Applicant's close proximity behind his wife while both were shackled, the agent's failure to address Ms. Bell or instruct only her to answer, Applicant's confused state from the no-knock warrant, and the likelihood that an answer to the agent's question would implicate Applicant in the offense under investigation, the majority concluded there was no interrogation based on the agent's testimony that he "directed [his] question" to Ms. Bell, not Applicant. Ex. A, at 9; *see also id.* at 12 ("The question was not posed to [Applicant] and did not seek a response from him, nor was there any evidence that it was intended to."). The majority concluded that officer intent may have a bearing on the inquiry, Ex. A, at 11, but ignored this Court's admonition that the relevance of officer intent is limited to whether "the police should have known that their words or actions were reasonably likely to evoke an incriminating response," *Rhode Island*

v. Innis, 446 U.S. 291, 301 & n.7 (1980). The majority also affirmed Applicant's sentence, concluding that Applicant's Maryland robbery convictions qualified as predicate "violent felony" convictions under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1), and rejecting as "dicta" Applicant's arguments that Maryland case law made clear that the "fear" required to commit Maryland robbery could include injury to property. Ex. A, at 28 (internal quotation marks omitted).

Judge Wynn dissented. He criticized the *Miranda* analysis because the majority, like the district court, improperly focused on the officer's stated intent to direct his question to Ms. Bell, rather than an objective analysis from the "perspective of [the] Defendant." Ex. A, at 31 (emphasis omitted). Judge Wynn also took issue with the majority's application of the ACCA to Applicant's Maryland robbery convictions, concluding that published Maryland case law foreclosed applying the ACCA to Applicant. *Id.* at 32.

2. The Fourth Circuit's treatment of an officer's testimony about his intent as dispositive regarding whether a suspect was subject to interrogation for purposes of *Miranda* conflicts with this Court's precedent and the decisions of numerous courts of appeals. *Innis* made clear that the test for whether a suspect was subject to interrogation "focuses primarily upon the perceptions of the suspect, rather than the intent of the police." 446 U.S. at 301. The decision below violated that standard and ignored the objective circumstances of the encounter from Applicant's perspective. Until the decision below, other courts of appeals scrupulously adhered to the required objective test to determine whether a suspect

was subject to interrogation under *Innis*. *See*, *e.g.*, *United States v. Swanson*, 635 F.3d 995, 1002 (7th Cir. 2011) ("The test we employ in our application of *Innis* is whether a reasonable objective observer would have believed that the law enforcement officer's statements to the defendant were reasonably likely to elicit an incriminating response." (internal quotation marks omitted)); *United States v. Rambo*, 365 F.3d 906, 909 (10th Cir. 2004) ("The test of whether an interrogation has occurred is an objective one."); *United States v. Ventura*, 85 F.3d 708, 711 (1st Cir. 1996) ("[T]he inquiry is objective: how would the officer's statements and conduct be perceived by a reasonable person in the same circumstances?"); *United States v. Henley*, 984 F.2d 1040, 1043 n.3 (9th Cir. 1993) ("The standard for whether the question was likely to elicit an incriminating response is an objective one."). The panel majority's decision below, which gave dispositive weight to the officer's testimony about his subjective intent, is irreconcilable with those pronouncements.

3. The Fourth Circuit's decision also deepens a recognized circuit split on whether this Court's categorical approach in federal sentencing requires a defendant to point to an actual case prosecuting a state crime in a manner broader than the generic federal offense to conclude that a state crime is not a categorical match. The decision below affirmed a 15-year mandatory minimum sentence under the ACCA for crimes encompassing the use, attempted use, or threatened use of violent force against the "person" of another, 18 U.S.C. § 924(e)(2)(B)(i), notwithstanding two published Maryland appellate decisions concluding that Maryland robbery (the prior crimes of conviction) could be accomplished merely by

threats to property. Dismissing those decisions as "dicta," the decision below faulted Applicant for failing to "identify an[ ] *actual* defendant" prosecuted "in such circumstances" to show that there is a "realistic probability" the state would punish that conduct. Ex. A, at 27 (internal quotation marks omitted); *see also id.* at 29 (similar).

Similarly, in *United States v. Castillo-Rivera*, 853 F.3d 218, 223 (5th Cir. 2017), the en banc Fifth Circuit held that the "realistic probability" test requires a defendant to "provide actual cases where state courts have applied the statute in [the nongeneric] way" to demonstrate that a state crime was not a categorical match. In dissent, Judge Dennis explained that the majority's requirement to "in all cases point to a state court decision to illustrate the state statue's breadth" ignores "the holdings of several of our sister circuits." *Id.* at 241 (Dennis, J., dissenting).

In contrast, the Tenth Circuit has expressly rejected the argument that an offender must supply a case demonstrating that his state-law conviction is not a categorical match. *United States v. Titties*, 852 F.3d 1257, 1274-75 (10th Cir. 2017). That requirement, the Tenth Circuit explained, is not found in Supreme Court precedent: *Mathis v. United States*, 136 S. Ct. 2243, 2250-51 (2016) "did not seek or require instances of actual prosecutions." *Titties*, 852 F.3d at 1275.

Following *Mathis*, other circuits similarly have looked to the plain language of the statute or statements in state-court opinions without requiring an actual prosecution to show that the state offense is broader than the federal crime. *See*

Titties, 852 F.3d at 1275 n.23 (collecting cases); *see also* Ex. A, at 46-47 (Wynn, J., dissenting). For example, in *United States v. Vail-Bailon*, the Eleventh Circuit relied on descriptions of state law from Florida appellate courts when undertaking the categorical analysis, 868 F.3d 1293, 1302-04 (11th Cir. 2017) (en banc), notwithstanding criticism that those statements were "dicta," *id.* at 1321-23 (Rosenbaum, J., dissenting). By instead demanding that defendants identify an actual prosecution illustrating the breadth of a state statute, the decision below deepens the "confusion in the courts of appeals" on this issue. *Salmoran v. Att'y Gen.*, 909 F.3d 73, 81 (3d Cir. 2018).

4. Applicant respectfully requests an extension of time within which to file his petition for a writ of certiorari. Counsel has been and will continue to be engaged with the press of other matters in the federal courts.[*] Additional time is necessary, given other commitments, to permit counsel of record the opportunity to prepare and file a petition that would be helpful to the Court.

Accordingly, Applicant respectfully requests that his time to file a petition for a writ of certiorari be extended by 60 days, to and including July 7, 2019. Under this Court's Rule 30.1, because July 7, 2019 is a Sunday, the period for Applicant to file a petition would extend until Monday, July 8, 2019.

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[*] These matters include serving as counsel in numerous pending appeals in the Fourth Circuit, *see*, *e.g.*, *United States v. Dickson* (19-4226); *United States v. Williams* (19-4007); *United States v. Johnson* (18-4459); serving as counsel in district court on over 200 pending 28 U.S.C. § 2255 petitions involving challenges under *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), and *Johnson v. United States*, 135 S. Ct. 2551 (2015); and reviewing hundreds of cases under which clients may be potentially eligible for relief under the FIRST STEP Act.

Respectfully submitted.

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