

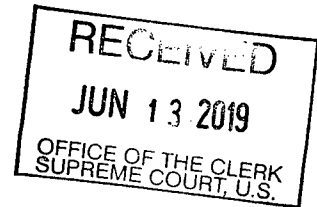
No. _____

THE SUPREME COURT OF THE UNITED STATES

JAMES HAMM, *Pro Se*,
PETITIONER

v.

LORIE DAVIS, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,
RESPONDENT



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

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June 4, 2019

DIRECTED TO THE HONORABLE SAMUEL ANTHONY ALITO, JR.,
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Pursuant to this Court's Rules 13.5 and 30.2, petitioner James Hamm prays for a 45-day Extension, or until August 1, 2019, to file his petition for writ of certiorari in this Court.

1. Timeliness, Jurisdiction, and Opinion Below. On March 18, 2019, the United States Court of Appeals for the Fifth Circuit issued a decision affirming Mr. Hamm's conviction for stalking. A petition for writ of certiorari would be due, pursuant to this Court's Rules 13.1, 13.3, and 30.1 on or before June 17, 2019. This application is being filed more than ten days before that date. See Rule 30.2. The jurisdiction of this Court is to be invoked under 28 U.S.C. § 1254(1).

2. Reasons for Granting the Extension.

a. Procedural History

The petitioner, James Hamm, was convicted of stalking under Texas Penal Code § 42.072. Mr. Hamm plead not guilty to the charges against him, and was sentenced to 6 years, Texas Department of Criminal Justice (TDCJ). He served 5 years of his sentence in TDCJ and is currently serving one year on parole. Mr. Hamm maintained his innocence throughout the appeals process on the basis that his 14th Amendment right to due process and equal protection under the law was violated at trial court. The judge at trial court had a sua sponte duty to instruct the jury applicable to law but failed to do so correctly. The United States Fifth Circuit Court of Appeals (Appendix A), United District Court (Appendix B), Texas Court of Appeals (Appendix C), the Fifth Circuit Court of Appeals of Texas (Appendix D),

and the Supreme Court of Texas (Appendix F) affirmed the trial court's decision (E).

As the United States Fifth Circuit Court of Appeals decided his case, Mr. Hamm was given a polygraph exam as a stipulation of his parole, also known as a polygraph test supervised release condition, by the TDCJ Parole Board. Results from the polygraph exam given to Mr. Hamm indicated no deception. The timing of the results from Mr. Hamm's polygraph exam crossed paths with the Fifth Circuit's decision so the results of Mr. Hamm's polygraph exam and supporting arguments could not be reviewed. Mr. Hamm will file his petition for writ of certiorari *Pro Se* in this Court. This request for an extension of time is based on good cause.

b. Grounds for Certiorari Exist

In *United States v. Posado*, 57 F.3d 428 (5th Cir. 1995), the Fifth Circuit applied *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), to polygraph evidence. *Posado* did away with the Fifth Circuit's per se rule against polygraph evidence but offers no other rule in its place. It suggests that polygraph evidence may be reliable under some circumstances. It offers an example of a Rule 403 analysis, in which it suggests that an offer to stipulate (and, a fortiori, an actual stipulation) may reduce the prejudicial effect of polygraph evidence. Although added after trial court, Mr. Hamm's polygraph exam stipulation may reduce the prejudicial effect of polygraph evidence. Most recently in *United States v. Washington*, No. 17-2841 (2d Cir. 2018), the Second Circuit ruled that a polygraph test supervised release condition can't be added after sentencing. In addition, it should be noted that in Texas polygraph examinations are not admissible in court.

3. The need for an Extension of time.

The petition is currently due June 17, 2019. Mr. Hamm has many restrictions as part of his parole conditions, including: not being able to operate a motor vehicle; electronic ankle monitoring; and not being able to leave the house on weekends. In addition, Mr. Hamm was injured while working under mandatory supervision at Segovia State Prison in Edinburg, Texas and still requires surgery. He is indigent and about to be homeless and relies on utilizing resources at his hometown library for gathering legal information on parole approved days. In addition, he is living with his 82-year-old mother who he helps look after. It should be noted that Mr. Hamm will be making a motion to file *in forma pauperis* in this Court.

WHEREFORE, the Petitioner requests that an Order be entered extending by 45 days the time within which he may petition this Court for certiorari, to and including August 1, 2019.

Respectfully submitted,

JAMES HAMM, *Petitioner*



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