No. 18A-_____

IN THE

Supreme Court of the United States

COREY YATES,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE DISTRICT OF COLUMBIA CIRCUIT:

Under Supreme Court Rule 13.5, Corey Yates respectfully requests a 46-day extension of time, to and including October 1, 2018, to file a petition for a writ of certiorari in this case. The D.C. Court of Appeals denied a timely petition for rehearing on May 18, 2018 (App. B). Without an extension, a petition for certiorari would be due on August 16, 2018. This Court has jurisdiction under 28 U.S.C. § 1257(a).

1. Corey Yates and two others were indicted for conspiracy and first-degree murder while armed for the shooting death of Darrel Hendy in September 2010. Yates and one co-defendant were also charged with accessory after the fact. After the trial of Yates and one co-defendant, the jury found Yates not guilty of both conspiracy to commit murder and first-degree murder while armed, but guilty of second-degree

murder while armed. The jury also found Yates and his co-defendant guilty of accessory after the fact, which includes the elements "that, knowing that [the offense of first or second degree murder while armed] had been committed, the defendant provided assistance to the person who committed it, and [] that the defendant did so with the specific intent to hinder or prevent that person's arrest, trial, or punishment." Op. 20 n.22 (quotation marks and citation omitted).

2. Three weeks after Yates' conviction, the prosecution disclosed exculpatory evidence for the first time to Yates—evidence that would have reinforced Yates's core defense at trial on the charge of accessory after the fact. Before the trial court and the D.C. Court of Appeals, Yates argued that the prosecution's suppression of this exculpatory evidence violated *Brady* v. *Maryland*, 373 U.S. 83 (1963). A panel of the D.C. Court of Appeals rejected Yates's *Brady* claim, and the full court of appeals denied rehearing.

3. The panel's decision implicates an established conflict among federal and state courts regarding whether a criminal defendant's knowledge of, or ability to independently acquire, exculpatory material suppressed by the prosecution prevents the defendant from prevailing under *Brady*. *Compare* Op. 31 & n.46, 32 & n.47 (citing decisions from the Second, Third, Fifth, Sixth, and D.C. Circuits); *with Dennis* v. *Secretary, Pa. Dep't of Corrections*, 834 F.3d 263, 291 (3d. Cir. 2016) (en banc) ("[T]he concept of 'due diligence' plays no role in the *Brady* analysis."); *Banks* v. *Reynolds*, 54 F.3d 1508, 1517 (10th Cir. 1995) ("[T]he prosecution's obligation to turn over the evidence in the first instance stands independent of the defendant's knowledge."); *People* v. *Chenault*, 845 N.W.2d 731, 736-737 (Mich. 2014). The decision below also

conflicts with this Court's precedent. *See, e.g.*, *Banks* v. *Dretke*, 540 U.S. 668, 695-696 (2004) (this Court's "decisions lend no support to the notion that defendants must scavenge for hints of undisclosed *Brady* material" and a "rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process").

4. Yates intends to seek this Court's review at least on the issue of whether, in order to establish a *Brady* violation due to the prosecution's failure to disclose exculpatory material, Yates also had to show that he neither possessed the material nor could obtain it with reasonable diligence.

5. This firm represented Yates at trial and on appeal. Due to the departures from the firm of the attorneys who directly handled those proceedings, new attorneys have joined the case at more recent stages and therefore request additional time to prepare a petition that most effectively presents the issues to this Court. Additional time is also warranted in light of other demands on counsel's time. Counsel of Record, for example, has briefing deadlines on August 6 (Ninth Circuit), August 24 (Ninth Circuit), and September 8 (Fifth Circuit). Mr. Speth also has a trial in another case scheduled for September 11, 2018, with summary judgment motions due in that proceeding on August 13, 2018.

6. Given the importance of the *Brady* issues in this case and the need for counsel to familiarize themselves with the facts and the law to most effectively present the issues to this Court, Yates respectfully requests a 46-day extension of time, to and including October 1, 2018, in which to file his petition for certiorari.

August 3, 2018

Respectfully submitted.

CATHERINE M.A. CARROLL
Counsel of Record
CHARLES SPETH
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006
(202) 663-6000
catherine.carroll@wilmerhale.com

APPENDICES