

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

LAMAR EADY, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN
WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI FROM THE
JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF
THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT
JUSTICE FOR THE ELEVENTH CIRCUIT

Pursuant to Supreme Court Rules 13.5, 22, and 30.3, Lamar Eady, Jr. respectfully requests a thirty-day extension of time, to and including May 23, 2019, within which to file a petition for a writ of certiorari from the judgment of the United States Court of Appeals for the Eleventh Circuit. Mr. Eady has not previously sought an extension of time from this Court.

Mr. Eady is filing this Application at least ten days before the filing date, which is April 23, 2019. *See* S.Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

Mr. Eady was convicted for being a felon in possession of a firearm, and sentenced as an Armed Career Criminal, based upon a prior conviction for felony battery in violation of Fla. Stat. §784.041(1). He appealed his sentence to the Eleventh Circuit, but the Eleventh Circuit affirmed his sentence and this Court denied certiorari. Within a year of the finality of his sentence, he filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255, arguing that in light of the intervening decision in *Johnson v. United States*, 135 S.Ct. 2551 (2015) which invalidated the ACCA's residual clause, he was not an Armed Career Criminal because his Florida felony battery conviction did not meet the elements clause. The district court, however, denied his § 2255 motion after a narrow majority of the Eleventh Circuit held in *United States v. Vail-Bailon*, 868 F.3d 1293 (en banc) that a Florida felony battery conviction under § 784.041(1) met the elements clause definition of "crime of violence" under the commentary to U.S.S.G. § 2L1.1.

On November 8, 2018, Mr. Eady sought a certificate of appealability from the Eleventh Circuit. He argued that particularly given the split decision and strong dissenting opinions in *Vail-Bailon*, reasonable jurists could debate whether: (1) the causation of bodily harm element of Florida felony battery necessarily entailed the use of "violent force" under *Curtis Johnson v. United States*, 559 U.S. 133 (2010), and also (2) whether a conviction under § 784.041(1) met the *mens rea* requirement of the elements clause since (unlike Florida aggravated battery), the great bodily

harm under § 784.041(1) is always caused *unintentionally*. On either ground, he argued, it was debatable whether he was properly sentenced as an Armed Career Criminal.

On January 23, 2019, Judge Robin Rosenbaum denied Mr. Eady a certificate of appealability, finding that reasonable jurists would not debate the district court's determination that Florida felony battery was an ACCA "violent felony" in light of *Vail-Bailon*. A copy of the order is attached as Exhibit A hereto.

Undersigned counsel will not have sufficient time to prepare a petition for writ of certiorari by April 23rd due to several competing obligations before this Court, a pre-scheduled annual leave in early April, and the holiday of Passover.

There will be no prejudice to any party from the requested extension.

Since the time within which to file a petition for writ of certiorari in this case will expire on April 23, 2019, unless extended, Mr. Eady respectfully requests that an order be entered extending his time to file a petition for writ of certiorari by thirty days, to and including May 23, 2019.

Respectfully submitted,

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FEDERAL PUBLIC DEFENDER

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