

No. 18A421

IN THE
SUPREME COURT OF THE UNITED STATES

WALLACE DIXON COX; LISA COX,
Petitioner,
versus

UNITED STATES OF AMERICA; UNITED STATES OF AMERICA, Beneficiary;
UNITED STATES ATTORNEY JOHN STUART BRUCE, Substitute Trustee,
Respondents,

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Motion To Have Clerk To File The Petition for a Writ of
Certiorari Out-Of-Time

William L. Davis, III
N.C. Bar No. 7685
101 N. Court Square, Suite 16
Post Office Box 1363
Lumberton, North Carolina 28359
Telephone: (910) 738-7776
E-mail: butch4775@aol.com

Attorney for Petitioner

Counsel for the Petitioner herein moves the court to have the clerk to file Petitioner's Writ of Certiorari Out-of-Time. As grounds for this motion counsel for Petitioners states:

1. On October 16, 2018, Counsel electronically filed an application to extend the time to file a Writ of Certiorari to the United States Supreme Court. In support for filing for extension less than 10 days before the period for filing a writ of Certiorari is due, Counsel reported that on August 8, 2018 he had eye surgery which impaired his vision.
2. Further that due to complications from his eye surgery, his doctor reported that he would have a second surgery on his eye because he could not see clearly. Also, during that period between August 8, 2018 and November 1, 2018, Counsel was treated in the emergency room at New Hanover Hospital in Wilmington, NC for vertigo for which he was given medication and prescriptions to fill. The hard copy of the application for the extension was received in the office of the clerk on October 19, 2018. (see Exhibit 1)
3. On Friday afternoon of October 26, 2018, (see exhibit 2) Counsel received a letter from the office of the Clerk dated October 22, 2018, that the extension had

been granted to, October 29, 2018. However, did not receive the Notice until Friday afternoon on October 26, 2018.

4. On October 29, 2018 Counsel electronically submitted a supplemental application by letter to further explain his medical impairments to his vision as a result of eye surgery on August 8, 2018 (exhibit 4) October 30, 2018 Counsel received an email that a new docket entry was added for Wallace Cox. (exhibit 5)
5. After counsel received correspondence by email from Jacob C. Travers of the Clerk's office on November 26, 2018(exhibit 6), Counsel left several messages on his voicemail, but he did not return my call to discuss his letter because I had mailed the hard copy of the application which the court received on October 19, 2018.(exhibit 1) Later, I talked to Mr. Atkin about the letter, he advised me to submit another hard copy of the original application, which I did by mail, although I had received a copy of the application that had been received by the Clerk's Office on October 19, 2018. (exhibit 1).
6. An email from the Clerk's Office noted that a new docket entry had been added for Wallace Cox, et.al, Applicants v. United States, ext.al (exhibit 7) and

that the application for further extension of time was submitted (exhibit 8).

7. On December 17, 2018 Counsel electronically filed the Petition for Writ of Certiorari (exhibit 10). The hard copy was mailed on December 18, 2018 because the Writ of Certiorari was not completed until after 7:00 p.m. on December 17, 2018.
8. On January 11, 2019 Counsel received a telephone call from Mr. Atkins reference the hard copy of the Writ of Certiorari which he said the court had not received. I informed Mr. Atkins that I mailed a hard copy, only the original of the Writ. He advised counsel to submit an affidavit of mailing the Petition for Writ of Certiorari, which I did (exhibit 12). Both the affidavit of mailing the Writ of Certiorari and 40 copies of the Writ of Certiorari were returned to my office on January 29, 2019.

Counsel for Petitioners respectfully request the court to allow Counsel's Motion to have the Clerk file the Writ of Certiorari out of time.

This the 31st day of January, 2019.

William L. Davis
/s/ William L. Davis, III
William L. Davis, III
N.C. Bar No. 7685
Attorney for Plaintiffs
Post Office Box 1363
Lumberton, North Carolina 28359
Telephone: (910) 738-7776

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of this Motion upon the Appellee by mailing to:

Matthew L. Fesah
Assistant U.S. Attorney
Civil Division
310 New Bern Avenue
Raleigh, NC 27601

Solicitor General of the United States
Department of Justice
Room 5614
950 Pennsylvania Avenue NW
Washington, D.C.

Respectfully submitted this the 31st day of January, 2019.

William L. Davis
/s/ William L. Davis, III
William L. Davis, III
N.C. Bar No. 7685
Post Office Box 1363
Lumberton, North Carolina 28359
Telephone: (910) 738-7776
Email: butch4776@gmail.com

EXHIBIT 1

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
WALLACE DIXON COX; LISA COX,
Defendants - Appellants.

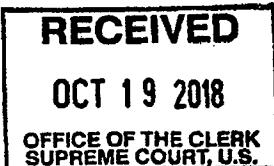
v.

UNITED STATES OF AMERICA; UNITED STATES OF AMERICA, Beneficiary;
UNITED STATES ATTORNEY JOHN STUART BRUCE, Substitute Trustee,

Plaintiffs - Appellees,

APPLICATION TO EXTEND THE TIME TO FILE A WRIT OF CERTIORARIS TO
THE UNITED STATES SUPREME COURT

COMES NOW PETITIONERS, by and through their undersigned counsel,
and moves for extension of time to file a Writ of Certioraris to
the United States Supreme Court. In support thereof, Petitioner
would state:



Procedural History

The United States brought a judicial foreclosure action on property securing promissory notes signed by Wallace Dixon Cox and Lisa Cox as part of the settlement of an earlier civil in rem forfeiture case. The district court granted the government's motion for judgment on the pleadings and the Coxes appealed alleging that an affidavit filed by Mr. Cox created a genuine issue of material fact that precluded judgment on the pleadings and that the promissory notes were the result of an unlawful settlement agreement and that the district erred by failing to rule on their Rule 12(b) (6) motion.

Nature of Case

The U.S. Government brought a civil in rem forfeiture action against the Petitioners as a result of their involvement in illegal gambling operations, seeking the forfeiture of "property constituting or derived from proceeds traceable to violations of 18 U.S.C. §§ 1955 and 1956." In December 2010, the Coxes attorney, without the Coxes consent and knowledge of the term of the settlement, signed settlement agreement with the government in which forfeit certain properties of the Coxes, including money in bank accounts, gambling machines, trucks, an airplane, and all their real property. The terms of the proposed settlement agreement, signed by their attorney, gave the Coxes three years to pay the required sum. In the event they failed to

pay, the government had "the right to immediately foreclose on" certain properties. The Coxes also agreed to waive their right to further contest the forfeitures.

Shortly after the settlement agreement was signed by the attorney in the civil forfeiture action, the government charged the Coxes with the criminal offense of conspiracy to commit money laundering. Both plead guilty. Wallace Cox was sentenced to thirty-three months' imprisonment and Lisa Cox to three years' probation. During this time, the Coxes, as a result of Coxes prison sentence, were unable to pay the entire amount before the three-year period expired.

B.

On September 3, 2015, the government filed a complaint seeking judicial foreclosure of the various properties securing the promissory notes. The Coxes filed a motion for extension of time to answer along, with an affidavit from Wallace Cox in support of their motion, which stated that the Coxes attorney had told them the settlement agreement in the civil forfeiture action would resolve their case without criminal or further civil charges and that "the proposed agreement was signed by their attorney, without their signature." The district court allowed their motion based on their affidavit showed Merit to their claim.

The Petitioners' answer and counterclaim, included Motions

to dismiss pursuant to Rule 12(b)(6), 12(c), as well as the claims that the forfeiture of all their property, both real property and personal violated the Excessiveness Clause of the 8th Amendment to the U.S. Constitution and that the civil forfeiture of proceeding constitutes punishment and the criminal proceeding based on the same transactions in which Petitioners received active criminal sentence constituted double jeopardy.

The District Court granted the Government Motion for Judgment on the pleadings and dismiss all of Petitioners claims alleged in their pleadings. The District Court stated that it could not find the Petitioners Affidavit "that their attorney signed the contract with the government without their consent or knowledge", although the Government, in its brief stated that the Coxes Affidavit was in the record, as reference by Petitioners in their pleadings and motions. The Court of Appeals affirmed the District Court decision in an unpublished opinion.

The Court should grant the extension based on extraordinary medical record and circumstances as follows:

- a. The undersigned counsel vision had been impaired because he under went surgery on August 8, 2018 to improve his vision.
- b. That counsel has to use a magnifying glass and other vision aids and to prepare these motions.

c. Since his surgery the undersigned counsel, has had complications from healing and is unable to read clearly due to his continued visual. As a result he is scheduled for additional surgery on November 7, 2018.

d. On October 12, 2018, the undersigned counsel was diagnosed with Vertigo which further complicated his problems.

The Writ of Certiorari should be granted because:

The District Court, in deciding and ruling on the Governments Motion for judgment on the pleadings, overlooked the Coxes affidavit in support of their response to the Governments Motion. There is a likelihood that the District Court would have ruled differently, if he had reviewed the Coxes Affidavit because the affidavit showed that there were disputed issues of material facts.

The District Court overlooked or disregarded the Coxes Motion in their answer and counterclaim to dismiss for failure to state a claim and the Governments Civil Forfeiture action complaint should be dismissed pursuant to 12(b) (6) for failure to state a claim, pursuant to 28 U.S.C. Rule 12(b). Such a motion may be made before judgment, to challenge the jurisdiction of the Court.

The granting of this motion for extension of time will not prejudice the rights of either party. The undersigned counsel respectfully requests this Court to grant the relief and allow

the Appellant's an extension of time of sixty (60) days to file their writ of certiorari.

This 16 day of October, 2018.

William L. Davis, III
William L. Davis, III
N.C. Bar No. 7685
Post Office Box 1363
Lumberton, North Carolina 28359
Telephone: (910) 738-7776
Email: butch4776@aol.com

EXHIBIT 2

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

October 22, 2018

Scott S. Harris
Clerk of the Court
(202) 479-3011

Mr. William L. Davis, III.
P.O. Box 1363
Lumberton, NC 28359

Re: Wallace Dixon Cox, et ux.
v. United States, et al.
Application No. 18A421

Dear Mr. Davis:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to The Chief Justice, who on October 22, 2018, extended the time to and including October 29, 2018. See Supreme Court Rule 13.5.

This letter has been sent to those designated on the attached notification list.

Sincerely,

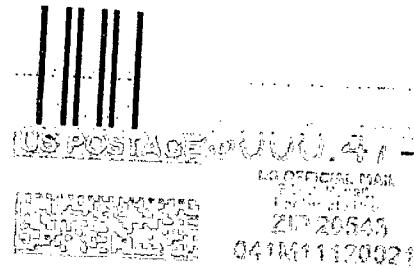
Scott S. Harris, Clerk

by 
Melissa Blalock
Case Analyst

EXHIBIT 3

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, DC 20543-0001
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

Envelope B



Received
10-26-02

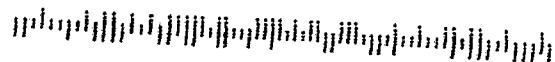


EXHIBIT 4

Mailing Address
P.O. Box 1363
Lumberton, N.C. 28359

William L. Davis, III
Attorney At Law
101-107 North Court Square, Ste., 16
Lumberton, N.C. 28359
(910) 738-7776
Fax: 671-9039
Email: butch4776@gmail.com

Chadbourn Office
P.O. Box 101
Chadbourn, N.C. 28431

October 29, 2018

Honorable Scott S. Harris
Clerk of The United States Supreme Court
Washington, D.C. 20545-0001

To the Attention of The Honorable
Chief Justice John G. Roberts, Jr.
Re: Wallace Dixon Cox et al.
v. United States, et al.
Application No. 18A421

Dear Mr. Harris:

I am submitting this letter as a supplement of the application for an Extension of Time to submit a Writ of Certiorari in the above referenced application.

The application for extension to file the Writ was due on October 8, 2018, 10 day before time for filing a Writ of Certiorari which was October 18, 2018. I am submitting this letter as a supplement or as on additional support to the Writ of Certiorari on behalf of the Coxes Application No. 18A421.

In the Application I did not clearly state the reasons for not requesting the extension to file the Writ within ten days before the ninety-day period had expired to file the Writ. The reasons in support of the extraordinary circumstances that contributed to not filing the application within 10 days before the 90-day period for filing a Writ of Certiorari was caused by my medical condition that impaired my ability to read and write.

I had surgery on my left eye on August 8, 2018, after which I could not see well enough to read or write except for large letters or numbers. I experienced pains in my left eye. As a result, on follow-up visit my physicians noted a problem that occurred from the surgery and scheduled additional surgery on November 1, 2018. (letter as attached as exhibit A.)

The undersigned counsel for the Coxes was also experiencing dizziness and emesis for several weeks prior to October 12, 2018 when he was treated in the New Hanover Emergency Department. The undersigned counsel was diagnosed with vertigo and an elevated blood pressure and prescribed medication (see attachment as exhibit B).

The United States Court of Appeals for the Fourth Circuit had granted the Coxes an extension for a Petition for rehearing to be filed by September 14, 2018, based on the undersigned counsel's medical impairment visions as described herein. However due to Hurricane Florence, the Governor of North Carolina ordered the evacuation of Robeson, Columbus and surrounding counties.

The undersigned evacuated to Durham N.C. and because of the flooding which destroyed roads and bridges the undersigned could not return to his office for several weeks. Due to the hurricane counsel could not meet the deadline of September 14, 2018 and could only make an oral request instead for an additional extension instead of a written motion to the Fourth Circuit Court of Appeals.

Because of the undersigned counsel for the Coxes medical problems that impaired his vision and ability to read normal size letters or numbers and his dizziness caused by his vertigo and the effect hurricane Florence are extraordinary circumstances that contributed to the application for Extension not being filed within the ten days before the expiration of the 90 day file period, but within the 90 day expiration period to file a Writ of Certiorari.

The undersigned counsel's vertigo symptoms have improved with medication and expect that the corrective surgery on his left eye will improve his vision.

The undersigned did not receive the letter from the Clerks Office until October 26, 2018, notifying the undersigned that an extension had been allowed and was due on October 29, 2018.

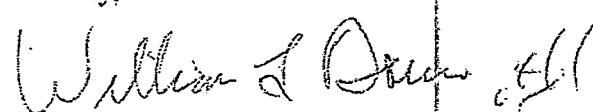
The undersigned counsel is requesting at least 30 days from October 18, 2018

This letter is being sent to the following:

Matthew L. Fesah
Assistant U.S. Attorney
Civil Division
310 New Bern Avenue
Raleigh, NC 27601

Solicitor General of the United States
Department of Justice
Room 5614
950 Pennsylvania Avenue NW
Washington, D.C.

Sincerely,



Attorney William L. Davis, III

WILMINGTON EYE, P.A.

Exhibit A

10/09/2018

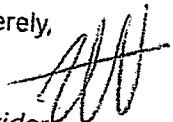
Re: William Davis
PO Box 101
Chadbourn, NC 28431-

To whom it may concern,

Mr. Davis underwent surgery in the left eye with me on 08/08/2018. Since that time, due to complications from surgical healing, he is unable to read clearly due to impaired vision. We are scheduling him for additional surgery to correct the problem on 11/1/2018.

Please do not hesitate to contact me with any questions.

Sincerely,



Provider,

Van Der Vaart MD, Robert Alan 10/09/2018 12:47 PM

Document generated by: Robert van der Vaart 10/09/2018

Toll Free-800-776-6645
www.wilmingtoneye.com

Exhibit B

AFTER VISIT SUMMARY

William L. Davis MRN: 12395841

10/12/2018

New Hanover Emergency Department 910-343-2440



Instructions

Your personalized instructions can be found at the end of this document.



Your medications have changed

- START taking:
meclizine (ANTIVERT)

Review your updated medication list below.



Read the attached information

Vertigo, Unspecified (English)



Pick up these medications from any pharmacy with your printed prescription

meclizine



Schedule an appointment with VA Clinic Fayetteville as soon as possible for a visit

Specialty: Community Agency
Contact: 2300 Ramsey Street
Fayetteville NC 28301
910-488-2120

What's Next

NOV 1 2018 **LEFT EYE AHMED TUBE REVISION** with Robert Van Der Vaart, MD

ASC MAIN OR
105 SCOTTS HILL
MEDICAL DRIVE
WILMINGTON NC
28411-7983

Today's Visit

You were seen by Max M. Palatnik, MD

Reason for Visit

- Dizziness
- Emesis

Diagnosis

Vertigo

Lab Tests Completed

Basic Metabolic Profile (BMP):
Glucose, BUN, CO₂, Na⁺, K⁺, Cl⁻, Ca⁺, Scr, Anion Gap
CBC with Differential
Hepatic Function Panel: Alb, Tpro, Dbili, Tbili, ALT, AST, ALP
Lipase
Urinalysis, Reflex with Scope

Imaging Tests

CAT SCAN HEAD WO CONTRAST
ECG 12 lead

Your End of Visit Vitals

Blood Pressure
161/72

Temperature (Oral)
97.7 °F

Pulse
65

Respiration
17

Oxygen Saturation
100%

MyChart

View your After Visit Summary and more online at <https://mychart.nhrmc.org/mychart/>. If you have questions, please e-mail <https://mychart.nhrmc.org/mychart/> or call (910)667-0667 to speak with our MyChart staff.

EXHIBIT 5



Search mail

Compose

Inbox

3

Starred

Snoozed

Sent

Drafts

17

Unwanted

473

wdavis11745@aol.com

Supreme Court Electronic Filing System

efilingsupport@supremecourt.gov

to me

To whom it may concern,

A new docket entry has been added for Wallace Dixon Cox, et al.[Reply](#)[Forward](#)

William

+

No recent chats

Start a new one



EXHIBIT 6



William Davis <butch4776@gmail.com>

Correspondence from The Supreme Court of the United States

1 message

No-Reply@supremecourt.gov <No-Reply@supremecourt.gov>
To: butch4776@gmail.com

Mon, Nov 26, 2018 at 10:03 AM

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

November 26, 2018

William Davis
Attorney at Law
101-107 North Court Square, Suite 16
Lumberton, NC 28359

RE: Cox, et ux. v. United States, et al.
No: 18A421

Dear Mr. Davis:

Dec. Inc.
Indent Indent

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was electronically filed on October 29, 2018. The notification is being sent for the following reason(s):

The paper filing remains the only official filing in this Court. If the application was originally mailed to the Court, please contact our Office with the tracking information of the mailing. If the application was not mailed to the Court, the deadline for filing the application has likely passed.

Sincerely,
Scott S. Harris, Clerk
By:

Jacob C. Travers
(202) 479-3039

EXHIBIT 7



William Davis <butch4776@gmail.com>

Supreme Court Electronic Filing System

1 message

efilingsupport@supremecourt.gov <efilingsupport@supremecourt.gov>
To: butch4776@gmail.com

Thu, Nov 29, 2018 at 11:32 AM

To whom it may concern,

A new docket entry has been added for Wallace Dixon Cox, et ux., Applicants v. United States, et al..

EXHIBIT 8

Welcome William Lee Davis | Sign Out

Summary

* Your Electronic Filing was submitted on 11/29/2018 11:25 AM.

Application - Application for Further Extension of Time

Docket/Application

18A421

Documents

Written Request - application to extend the time to file a writ wallace cox
part 1.pdf
Virus Scan Completed

Written Request - application to extend the time to file a writ part 2 wallace
cox.pdf
Virus Scan Completed

Supreme Court of the United States

EXHIBIT 9



William Davis <butch4776@gmail.com>

Supreme Court Electronic Filing System

1 message

efilingsupport@supremecourt.gov <efilingsupport@supremecourt.gov>
To: butch4776@gmail.com

Tue, Dec 11, 2018 at 11:02 AM

To whom it may concern,

A new docket entry has been added for Wallace Dixon Cox, et ux., Applicants v. United States, et al..

EXHIBIT 10

Welcome William Lee Davis | Sign Out

Summary

* Your Electronic Filing was submitted on 12/17/2018 7:43 PM.

Application Other - Writ of Certiorari

Docket/Application

18A421

Documents

Main Document - Wallace Cox -Writ with Appendix.pdf

Virus Scan in Progress

Supreme Court of the United States

EXHIBIT 12

IN THE
SUPREME COURT OF THE UNITED STATES

WALLACE DIXON COX; LISA COX,
Petitioners,
verses

UNITED STATES OF AMERICA; UNITED STATES OF AMERICA, Beneficiary;
UNITED STATES ATTORNEY JOHN STUART BRUCE, Substitute Trustee,
Respondents,

Affidavit of Mailing Petition for a Writ of Certiorari

William L. Davis, III, being duly sworn, deposes and says:
I am a member of the Bar of the Supreme Court of the United States. On December 18, 2018, I mailed the original Petition for Certiorari at the Chadbourn, North Carolina Post Office, in an envelope addressed to the Clerk of Supreme Court of the United States by first class postage prepaid. Today I am submitting 40 copies of the Petition for Certiorari.

William L. Davis, III
William L. Davis, III
Post Office Box 1363
Lumberton, North Carolina 28359
Telephone: (910) 738-7776
E-mail: butch4775@aol.com
Counsel for Petitioner

Sworn and subscribed before me on the 14th day of January, 2019.

Sherry S. Hartung

MCE: 1/28/2019