

IN THE SUPREME COURT OF THE UNITED STATES

---

No. A-\_\_\_\_\_

---

ANDRE G. DEWBERRY, APPLICANT

v.

UNITED STATES OF AMERICA

---

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

---

Pursuant to Rules 13.5 and 30.2 of this Court, counsel for Andre G. Dewberry respectfully requests a 45-day extension of time, to and including February 14, 2020, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case. The United States Court of Appeals for the Eighth Circuit entered its judgment on August 27, 2019. App., infra, at 1a. That court denied a timely petition for rehearing on October 2, 2019. App., infra, at 10a. Unless extended, the time for filing a petition for a writ of certiorari will expire on December 31, 2019. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. Andre G. Dewberry was denied his Sixth Amendment right to represent himself in court. In February 2015, Mr. Dewberry was indicted on one charge of being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Initially,

the federal magistrate judge allowed him to proceed pro se and also appointed a public defender as standby counsel. But during a pretrial conference, after a tense back-and-forth, the district court terminated Mr. Dewberry's pro se representation and reappointed the public defender as counsel. Mr. Dewberry subsequently pleaded guilty pursuant to a plea agreement that included 60 months' imprisonment. App., infra, at 2a.

2. In March 2017, Mr. Dewberry appealed. App., infra, at 3a. The Eighth Circuit appointed him new counsel under the Criminal Justice Act and ordered the parties to brief (1) whether Mr. Dewberry's guilty plea waived his right to challenge the denial of his Sixth Amendment right to self-representation and (2) whether the district court's denial of Mr. Dewberry's self-representation was justified by his conduct. App., infra, at 4a. On the second question, the parties agreed the denial was not justified by conduct. The government conceded the point in its briefing, arguing instead that Mr. Dewberry's request for self-representation was not sufficiently "unequivocal." App., infra, at 4a.

3. The Eighth Circuit denied Mr. Dewberry's appeal and affirmed his conviction. App., infra, at 7a-8a. The question of whether Mr. Dewberry waived his challenge by pleading guilty was a matter of first impression in the Eighth Circuit. The majority opinion noted the existence of a split among the courts of appeals on this issue: the Fourth, Sixth, Seventh, and Tenth Circuits all hold that defendants in Mr. Dewberry's position waive their challenge; the Ninth Circuit holds that they do not. App., infra, at 5a.

The court of appeals' opinion sided with the majority approach, holding that "[a]lthough the district court may have violated Dewberry's right to self-representation, Dewberry is barred from bringing his appeal on this record." App., infra, at 7a-8a.

4. Judge Kelly, concurring in the judgment, wrote that "the record makes clear that the district court violated Dewberry's right to self-representation when it reappointed counsel to represent him." App., infra, at 8a. She deemed that error "structural," but concluded that "structural errors can still be waived." App., infra, at 9a.

5. On October 2, 2019, the court of appeals denied a timely petition for rehearing en banc. App., infra, at 10a.

6. Counsel for applicant respectfully requests a 45-day extension of time, to and including February 14, 2020, within which to file a petition for a writ of certiorari. The court of appeals' decision in this case presents complex issues concerning the proper interpretation of the Sixth Amendment. The undersigned counsel is also in the process of retaining new counsel to assist with filing a petition in this Court, and new counsel will need additional time to review the record and decision below. Potential new counsel also has additional briefing and argument obligations, both before this Court and the courts of appeals between now and the proposed due date, necessitating this request.

RESPECTFULLY SUBMITTED,

SWIECICKI & MUSKETT, LLC

By: /s/ Christopher S. Swiecicki  
Christopher S. Swiecicki #295792  
16100 Chesterfield Parkway W, Ste. 308  
Chesterfield, MO 63017  
636.778.0209 Office  
314.341.5796 Cell  
636.238.4358 Fax  
Chris@SwiecickiLaw.com  
Attorney for Applicant

November 26, 2019