

IN THE SUPREME COURT OF THE UNITED STATES

No. 19A622

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 21-day extension of time, to and including February 20, 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. On motion from prior counsel of record, this Court previously extended the time within which to file the petition by 30 days. Unless extended, the time for filing a petition for a writ of certiorari will expire on January 30, 2020. 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]llthough 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. On December 4, 2019, this Court granted prior counsel of record's motion for an extension of time within which to file a petition for certiorari, granting a 30-day extension to and including January 30, 2020. In his motion, prior counsel of record represented that he was in the process of retaining new counsel for Dewberry.

7. On January 6, 2020, applicant retained undersigned counsel to prepare the petition for a writ of certiorari in this Court.

8. Counsel for applicant respectfully requests a 21-day extension of time, to and including February 20, 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. Undersigned counsel did not represent applicant below and was retained by applicant on January 6, 2020, only 24 days before the petition for certiorari in this case is due to be filed. Undersigned counsel is also in the process of preparing for argument and to file briefs in this Court and other courts, which will occupy virtually all of undersigned counsel's time between now and the current deadline. In particular, counsel is preparing to present argument in this Court in Romag Fasteners Inc. v. Fossil, Inc., No. 18-1233, on January 14, 2020, and preparing to submit respondent's brief in this Court in U.S. Patent & Trademark Office v. Booking.com B.V., No. 19-46, on February 12, 2020, necessitating this request.

Respectfully submitted.

/s/ Lisa S. Blatt
LISA S. BLATT
Counsel of Record
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000

January 10, 2020