

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL LUDWIKOWSKI, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

**APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE
THIRD CIRCUIT:

Pursuant to this Court's Rules 13.5 and 30.2, Applicant-Petitioner Michael Ludwikowski respectfully requests a sixty (60) day extension of time to file his petition for writ of certiorari in this Court, to and including May 4, 2020 (as the 60th day, May 3, will be a Sunday).

1. Timeliness and Jurisdiction. On December 5, 2019 the Third Circuit entered judgment affirming Mr. Ludwikowski's Judgment of Conviction and Sentence. *See* Appendix A. Pursuant to this Court's Rules 13.1 and 13.3, Mr. Ludwikowski's petition for writ of certiorari is presently due March 4, 2020. This application is being filed at least ten days before that date. Rule 30.2. The jurisdiction of this Court is to be invoked under 28 U.S.C. §1254(1).

2. Opinions Below. The Third Circuit issued a precedential opinion (per Fisher, J., with Ambro and Restrepo, J.J.) that is attached at Appendix A and published at 944 F.3d 123 (3d Cir. 2019). Pertinent to Mr. Ludwikowski's anticipated Petition, the Third Circuit affirmed, in light of this Court's binding precedent, the district court's use of conduct of which Mr.

Ludwikowski was acquitted at trial as “relevant conduct” when under the U.S. Sentencing Guidelines (“U.S.S.G.”).

3. Reasons for Granting the Extension.

a. Mr. Ludwikowski, a former pharmacist, was charged in a ten (10) count indictment in the District of New Jersey. He was found guilty after a trial by jury, and sentenced, on one count of violating 21 U.S.C. §856 (maintaining a premises for illegal distribution of a controlled substance); and five counts of violating 21 U.S.C. §§841(a)(1) and (b)(1)(C) (illegal distribution and dispensing and possession with intent to distribute and dispense a controlled substance; attempt; aiding and abetting). The jury acquitted him on the sole conspiracy count, which alleged a violation of 21 U.S.C. §846.

b. Despite the acquittal, at sentencing the district court included in its calculation of drug quantity, pursuant to U.S.S.G. §2D1.1, amounts attributable only to the conspiracy. As a result it calculated a base offense level of 38 and imprisonment range of 235 to 293 months, varying downward to impose 180 months’ imprisonment. Had the court sentenced only on counts of conviction, the base offense level would have been 24, yielding an imprisonment range of 51 to 63 months. Thus even with the variance, Mr. Ludwikowski’s sentence of imprisonment was nearly three times longer than the high end of the range that the counts of conviction yielded.

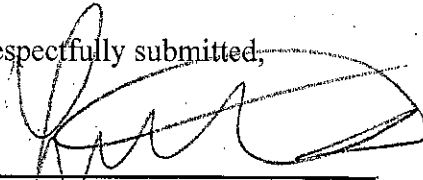
c. At sentencing Mr. Ludwikowski mounted a different challenge to the inclusion of the acquitted conduct, but he raised on plain error in the Third Circuit a Fifth and Sixth Amendment challenge to the use of acquitted conduct at sentencing. His counsel respectfully submits that his petition will present this important Fifth and Sixth Amendment issue for this Court’s consideration.

d. Unfortunately, counsel will be unable to complete the petition by March 4, 2020 for several reasons. After receiving the Third Circuit's opinion, counsel consulted with Mr. Ludwowski about his legal options, including (for example) whether to petition for rehearing or pursue relief in this Court. That consultation process consumed more time than usual because Mr. Ludwowski is incarcerated at a federal facility located approximately four hours from counsel's offices in Philadelphia, PA, and communications confront the logistical difficulties of prison legal mail and scheduling privileged consultations. Moreover, in the time since the opinion was issued counsel (who is a sole practitioner) has been occupied in preparing and filing of an opening brief in *United States v. Shulick*, Nos. 18-3305 & 19-1011 (3d Cir.), filed January 27, 2020; a reply brief in *United States v. Tartaglione*, Third Cir. Nos. 18-2638 & 18-3017 (3d Cir.), filed February 17, 2020; an opening brief in *United States v. Volkes*, No. 19-2788 (3d Cir.), due March 7, 2020; and in consulting as additional counsel on a reply brief in *United States v. Rakowski*, No. 19-1237 (3d Cir.), originally due February 24, 2020 and currently stayed. Counsel also expects to be preparing an opening brief in *United States v. Kousisis*, No. 19-3679 (3d Cir.) during March and April 2020. In addition to these appellate matters, counsel has several pre-indictment and district court matters that she expects will require her professional attention in the same time frame.

5. Mr. Ludwowski did not seek release pending appeal and is currently serving his term of imprisonment. He does not seek delay for any tactical reason, nor will the requested delay prejudice the government.

WHEREFORE, for the foregoing reasons of good cause, Applicant-Petitioner Michael Ludwikowski respectfully requests that the Circuit Justice enter an Order extending the time within which he may petition this Court for certiorari by sixty (60) days, to and including May 4, 2020.

Respectfully submitted,



Lisa A. Mathewson
The Law Offices of Lisa A. Mathewson, LLC
123 South Broad Street, Suite 810
Philadelphia, PA 19109
(215-399-9592 (phone); (215-600-2734 (e-fax)
lam@mathewson-law.com

Attorney for Petitioner Michael Ludwikowski

February 19, 2020

CERTIFICATE OF SERVICE

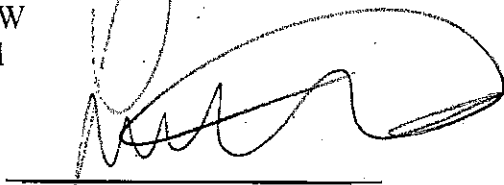
I certify that on this date I mailed an original and two copies of this Application for Extension of Time for Filing Petition for Writ of Certiorari via United States first-class mail to the electronically filed this through the Electronic Filing System of the Supreme Court of the United States and served copies upon the following:

Via email and first class U.S. mail:

Norman Gross, Assistant U.S. Attorney
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

Via first class U.S. mail:

Noel Francisco, Solicitor General of the United States
United States Department of Justice, Room 5616
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

A handwritten signature in black ink, appearing to read 'Noel Francisco', is written over a horizontal line. The signature is stylized and cursive.

February 19, 2020