

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

MICHAEL ST. HUBERT

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, Michael St. Hubert respectfully requests a thirty-day extension of time, to and including July 18, 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 issued on November 15,

2018, rehearing of which was *sua sponte* denied by the *en banc* court on March 19, 2019.

Mr. St. Hubert is filing this Application at least ten days before the filing date, which is June 18, 2018. *See* S.Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

Mr. St. Hubert was charged in 2015, *inter alia*, with two counts of using and carrying a firearm during and relation to a crime of violence, and possessing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c). The alleged “crime of violence” in the first count was a substantive Hobbs Act robbery in violation of 18 U.S.C. § 1951, and in the second count, it was an attempted Hobbs Act robbery. Mr. St. Hubert moved to dismiss those counts, arguing that the charged crimes were not “crimes of violence” under either the elements or residual clause definitions in § 924(c)(3). However, the district court summarily denied that motion, and Mr. St. Hubert ultimately pled guilty to the above charges. He was sentenced to 84 months on the first § 924(c) conviction, and a consecutive 300 months on the second.

Mr. St. Hubert appealed to the Eleventh Circuit, and that court issued a published opinion rejecting his “crime of violence” challenges to both substantive Hobbs Act robbery and attempted Hobbs Act robbery, under both the elements and residual clauses of 18 U.S.C. § 924(c)(3). *United States v. St. Hubert*, 883 F.3d 1319 (11th Cir. Feb. 28, 2018). With particular regard to Mr. St. Hubert’s challenge to substantive Hobbs Act robbery as a “crime of violence” within § 924(c)(3)(A), the

Eleventh Circuit noted that it had already held in *In re Saint Fleur*, 824 F.3d 1337, 1340-41 (11th Cir. 2016) that Hobbs Act robbery qualified as a a “crime of violence” within that provision. *Id.* at 1328. The Court rejected Mr. St. Hubert’s argument that *In re Saint Fleur* was not binding precedent in a direct appeal, since that decision was issued in the context of a *pro se* application for leave to file a second or successive § 2255 motion. The panel clarified: “Lest there be any doubt, we now hold in this direct appeal that law established in published three-judge orders issued pursuant to 28 U.S.C. § 2244(b) in the context of applications for leave to file second or successive § 2255 motions are binding precedent on *all* subsequent panels of this Court, including those reviewing direct appeals and collateral attacks, ‘unless and until [they are] overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting en banc.’” *Id.* at 1329 (citation omitted).

Mr. St. Hubert sought certiorari to review that decision (on other grounds), but the court denied review. *St. Hubert v. United States*, 139 S.Ct. 246 (Oct. 1, 2018). Then, after this Court’s decision in *Sessions v. Dimaya*, 138 S.Ct. 1204 (2018), and the Eleventh Circuit’s own decision applying *Dimaya* in *Ovalles v. United States*, 905 F.3d 1231 (11th Cir. Oct. 4, 2018) (en banc), the panel – which had held the mandate all through this time – issued an amended published opinion consistent with the en banc court’s reasoning in *Ovalles*. *United States v. St. Hubert*, 909 F.3d 335 (11th Cir. Nov. 15, 2018). Mr. St. Hubert sought certiorari to review the amended decision, but it was denied as well. *St. Hubert v. United States*, 139 S.Ct. 1394 (March 25, 2019).

Just prior that second denial of certiorari, the Eleventh Circuit issued a third published decision in Mr. St. Hubert's case, narrowly denying rehearing en banc after (unbeknownst to him) a member of the court in active service had requested a poll on whether the case should be reheard on banc. *United States v. St. Hubert*, 918 F.3d 1174 (11th Cir. Mar. 19, 2019). The six separate opinions issued with respect to the denial of rehearing en banc exposed a deep fracture within the Eleventh Circuit on whether orders issued by three-judge panels on applications for leave to file second or successive motions to vacate should resolve the merits of open issues, whether such orders should be published, and if they are, whether those published orders should have precedential value in cases on direct appeal like the instant one. And, as indicated by Judge Jill Pryor's dissent, joined by two other Eleventh Circuit judges, there was also a widening fracture within the court on whether an attempt to commit an offense that qualifies as a "crime of violence" or "violent felony" within the elements clause "itself necessarily constitutes an elements clause offense." *Id.* at 1210.

Pursuant to Supreme Court Rule 13(3), "[t]he time for filing a petition for writ of certiorari runs from the date of entry of the judgment . . . But . . . if the lower court . . . *sua sponte* considers rehearing, the time to file the petition for certiorari for all parties (whether or not they requested rehearing) runs from the date of the denial of rehearing." According to Rule 13(3), the due date for Mr. St. Hubert's petition for writ of certiorari from the denial of rehearing en banc, is June 18th.

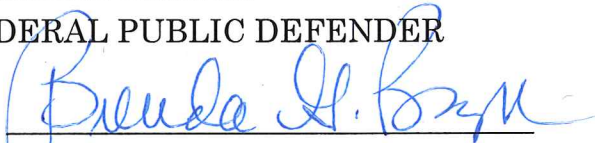
Due to other case commitments, undersigned counsel will not have sufficient time to prepare a petition for writ of certiorari on the issues addressed upon denial of rehearing by June 18th. There will be no prejudice to any party from the grant of a thirty-day extension.

Since the time within which to file a petition for writ of certiorari in this case will expire on June 18, 2019, unless extended, Mr. St. Hubert respectfully requests that an order be entered extending his time to file a petition for writ of certiorari by thirty days, to and including July 18, 2019.

Respectfully submitted,

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FEDERAL PUBLIC DEFENDER

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