

No. 19-5501

IN THE SUPREME COURT OF THE UNITED STATES

MANDRAIL JAMAR WOODBERRY, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 5-7) that his conviction for possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2), is infirm because the courts below did not recognize that knowledge of status is an element of that offense. In Rehaif v. United States, 139 S. Ct. 2191 (2019), this Court held that the mens rea of knowledge under Sections 922(g) and 924(a)(2) applies “both to the defendant’s conduct and to the defendant’s status.” Id. at 2194.

The petition for a writ of certiorari was filed substantially out of time. The court of appeals issued its opinion and judgment

affirming petitioner's sentence on March 11, 2019. Pet. App. 1-4.¹ This Court's Rules provide in pertinent part that a petition for a writ of certiorari "is timely when it is filed * * * within 90 days after entry of the judgment." Sup. Ct. R. 13.1. Based on the date of the judgment, petitioner's deadline for filing a petition for a writ of certiorari was June 10, 2019, and he did not file his petition for a writ of certiorari until July 19, 2019.

Petitioner, now acting pro se, claims (Pet. 6) that he asked his appellate counsel no later than March 2019 to file a petition for a writ of certiorari. Petitioner's counsel provided a different account in a motion to withdraw as attorney, filed in the court of appeals on June 24, 2019. In the motion, counsel stated that he sent petitioner a letter in March 2019 enclosing the court of appeals' decision, informing petitioner of his right to file a petition for a writ of certiorari, and advising that counsel believed that any petition would be frivolous. C.A. Mot. to Withdraw 1. Counsel reported that petitioner later sent counsel a letter postmarked June 14, 2019 -- four days after the deadline for filing a petition for a writ of certiorari -- in which petitioner asked counsel to file a petition on his behalf. Id. at 2. Counsel also told the court of appeals that, in counsel's

¹ The appendix to the petition for a writ of certiorari is not paginated. This brief refers to the pages in the appendix in consecutive order.

opinion, any petition for a writ of certiorari would be frivolous. Ibid. On July 12, 2019, the court of appeals granted counsel's motion to withdraw.

This Court has discretion to consider an untimely petition if "the ends of justice so require," Schacht v. United States, 398 U.S. 58, 64 (1970); see Bowles v. Russell, 551 U.S. 205, 212 (2007). Petitioner's factual assertions, which conflict with his counsel's, would not ordinarily meet that standard, particularly given the availability of collateral review to resolve any relevant factual disputes. See 28 U.S.C. 2255. In this specific case, however, the most expedient course would be to allow the lower courts simply to determine whether petitioner's forfeited Rehaif claim would even provide the basis for relief. The Court should accordingly grant the petition for a writ of certiorari, vacate the decision below, and remand the case for further consideration in light of Rehaif.²

Respectfully submitted.

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Solicitor General

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² The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.