

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

TYLAN TREMAINE AUTREY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**APPLICATION FOR EXTENSION OF TIME IN WHICH TO
FILE PETITION FOR A WRIT OF CERTIORARI**

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the Fourth Circuit:

Petitioner Tylan Tremaine Autrey, by his counsel, respectfully makes application pursuant to Supreme Court Rule 13.5 and Rule 22 to extend the time in which to file a petition for writ of certiorari from the judgment entered by the United States Court of Appeals for the Fourth Circuit. In support thereof, counsel states the following.

1. Mr. Autrey pled guilty in 2000 in the Eastern District of Virginia to federal kidnapping, in violation of 18 U.S.C. § 2113. Pursuant to the then-mandatory Sentencing Guidelines, he was deemed to be a career offender, in part because the kidnapping conviction qualified as a “crime of violence.” The district court sentenced him to 262 months’ imprisonment, at the bottom of the career offender sentencing range.

2. In 2015, after Mr. Autrey’s conviction became final, the Supreme Court held in *Johnson v. United States* that the so-called residual clause in 18 U.S.C. § 924(e)(2)(B), the Armed Career Criminal Act’s definition of the term “violent felony,” was unconstitutionally vague. Mr. Autrey filed a motion pursuant to 28 U.S.C. § 2255 in which he challenged his career offender designation, asserting that (1) because the residual clause in § 924(e) was now invalid, the identical provision in U.S.S.G. § 4B1.2 (Nov. 1998) was also invalid; (2) his instant offense of federal kidnapping and his prior convictions did not otherwise qualify as crimes of violence under § 4B1.2; and, therefore, (3) his designation as a career offender and resulting sentence were unconstitutional and he should be resentenced.

In a memorandum opinion, the district court denied Mr. Autrey’s motion as time-barred under § 2255(f)(3). The court, however, granted a certificate of appealability as to the timeliness question. The court also included the question of whether federal kidnapping qualifies as a crime of violence, noting the differing views of several circuits and that the Fourth Circuit would be considering the issue in *United States v. Walker*, No. 15-4301, which was in abeyance at that time.

3. Mr. Autrey appealed. In a one-paragraph unpublished per curiam opinion issued on December 3, 2018, the Fourth Circuit affirmed the district court’s ruling:

Tylan Autrey appeals the district court’s order denying as untimely his 28 U.S.C. § 2255 (2012) motion. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *United States v. Autrey*, Nos. 1:99-cr-00467-TSE-1, 1:16-cv-00788-TSE (E.D. Va. filed June 19, 2017 & entered

June 20, 2017). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

744 F. App'x 165 (4th Cir. 2018); *see* Appendix A (slip opinion).

The court also denied Mr. Autrey's petition for rehearing on June 4, 2019. *See* Appendix B. This Court has jurisdiction over Mr. Autrey's case pursuant to 28 U.S.C. § 1254(1). His petition for a writ of certiorari is due on September 3, 2019 (September 2, the 90th day, being a federal holiday).

3. Subsequent to denying rehearing in Mr. Autrey's case, the Fourth Circuit decided the *Walker* case on August 9, 2019, after having held the case in abeyance, first for *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), then for *United States v. Simms*, 914 F.3d 229 (4th Cir. 2019) (en banc), and finally for *United States v. Davis*, 139 S. Ct. 2319 (2019). In *Walker*, the Fourth Circuit ruled that federal kidnapping is not a crime of violence for purposes of violating 18 U.S.C. § 924(c). The court held that federal kidnapping meets neither § 924(c)(2)'s force clause, nor its residual clause in light of *Davis*. Because the force clauses of § 924(c)(3)'s and U.S.S.G. § 4B1.2's definitions of "crime of violence" are worded nearly identically, the only way that Mr. Autrey's kidnapping conviction could be used as the basis of his career offender designation is if it qualifies under the residual clause of the mandatory Guideline's "crime of violence" definition.

In addition, the Fourth Circuit may revisit its decision in *United States v. Brown*, 868 F.3d 297 (4th Cir. 2017), *cert. denied*, 139 S. Ct. 14 (2018), in another mandatory Guidelines

§ 2255 appeals being handled by undersigned counsel. *See United States v. Rumph*, 4th Cir. 17-7080, ECF Doc. 26 (4th Cir. July 25, 2019) (notice of tentative oral argument session); *see also United States v. Sarratt*, 4th Cir. No. 19-6075, ECF Doc. 8 (4th Cir. Aug. 1, 2019) (defense motion to grant certificate of appealability, order formal briefing, and schedule oral argument *seriatim* with *Rumph* case).

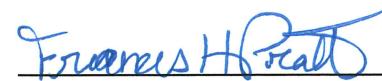
4. Undersigned counsel is responsible for her office’s *Johnson* § 2255 litigation in the Fourth Circuit. As a result of the court’s decision in *United States v. Mathis*, ____ F.3d ____, 2019 WL 3437626 (4th Cir. July 31, 2019) (*inter alia*, holding that Hobbs Act robbery qualifies as a crime of violence under § 924(c)(3)’s force clause), she has over 30 informal preliminary briefs currently due on September 3, the same day the petition for certiorari is due in this case. In addition, counsel has due in the district court more than 15 motions seeking sentence reductions in light of the Fair Sentencing Act of 2010, as made retroactive by § 404 of the First Step Act of 2018, and several First Step Act § 404 cases now on appeal. Finally, as chief of her office’s appellate section, counsel has various supervisory and administrative responsibilities that also require her attention.

5. In light of counsel’s briefing deadlines and other obligations, counsel requests an extension of 60 days, from September 2, 2019, to November 2, 2019, in which to file the petition for writ of certiorari in Mr. Autrey’s case.

Wherefore, Petitioner prays that this application be granted.

Respectfully submitted,

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