

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

BRYSHUN GENARD FURLOW,

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
FOURTH CIRCUIT**

**TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF
THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT
JUSTICE FOR THE FOURTH CIRCUIT**

Pursuant to Supreme Court Rules 13.5, 22, and 30.3, Bryshun Genard Furlow respectfully requests an extension of time, to and including December 17, 2019, within which to file a petition for a writ of certiorari from the judgment of the United

States Court of Appeals for the Fourth Circuit. Mr. Furlow has not previously sought an extension of time from this Court.

Petitioner is filing this Application at least ten days before the filing date, which is October 31, 2019. *See* S.Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. §1254(1).

Mr. Furlow pled guilty in the District of South Carolina to one drug count, in violation of 21 U.S.C. §§841(a)(1) and 841(b)(1)(C), and to being a felon in possession of firearms and ammunition, in violation of 18 U.S.C. §§922(g)(1), 924(a)(2), and 924(e). The Presentence Report (“PSR”) designated Furlow to be both an armed career criminal and career offender, identifying Furlow’s 2003 Georgia drug convictions, 2008 Georgia arson convictions and 2016 South Carolina drug conviction as ACCA predicates and identifying the 2008 arson convictions and 2016 South Carolina drug conviction as career offender predicates.

Furlow’s primary argument at sentencing and on appeal was that his South Carolina drug conviction under S.C. Code §44-53-375(B) did not qualify as either a serious drug offense or controlled substance offense because the statute is overbroad, including both manufacturing and possession with intent to distribute type crimes, as well as mere purchasing. South Carolina indictments usually list all the alternatives from S.C. Code §44-53-375(B), which is exactly how Furlow was indicted by the state. However, the district court, affirmed by the Fourth Circuit, held that the modified categorical approach applied, and the plea colloquy showed Furlow’s conviction was for distribution of crack. Under the holding of the Fourth Circuit,

Furlow and numerous other defendants in South Carolina have been indicted and convicted under duplicitous indictments, and these infirm convictions have been and continue to be used to enhance these defendants' federal sentences. Furlow was sentenced to 180 months on each count to be served concurrently and a six-year term of supervised release.

A copy of the Opinion from the Court of Appeals for the Fourth Circuit is attached as Appendix A hereto, in which the Court affirmed the sentence and criminal judgment of the district court. The Court held that Furlow's South Carolina state conviction for distribution of crack cocaine, S.C. Code §44-53-375(B)(1), is divisible and subject to the modified categorical approach, therefore qualifying it as an ACCA and career offender predicate. App. A. The Fourth Circuit denied Mr. Furlow's Petition for Rehearing and Rehearing En Banc on August 2, 2019 and the Order is attached as Appendix B.

Undersigned counsel will not have sufficient time to file the petition for writ of certiorari for Mr. Furlow by October 31, 2019 for several reasons. Since the time the Fourth Circuit denied the petition for rehearing, counsel was on medical leave for over three weeks recovering from surgery. The deadlines for four briefs that counsel had due during her medical leave were extended, and all are now due on October 18, 2019. See *United States v. Abdin*, Fourth Circuit Case No. 19-4453; *United States v. Rivers*, Fourth Circuit Case No. 19-4215; *United States v. Sitton*, Fourth Circuit Case No. 18-4831; *United States v. Al Qatamin*, Fourth Circuit Case No. 19-4282. Since returning to the office on September 9, 2019, counsel has filed at least nine briefs,

reply briefs, an opposition to a motion and a supplemental 28 U.S.C. §2255 motion in various Fourth Circuit and District of South Carolina cases.

Additionally, counsel had oral argument before the Fourth Circuit Court of Appeals in *United States v. Muslim*, Fourth Circuit Case No. 16-4304, on September 20, 2019. Counsel has oral argument scheduled in *United States v. Lewis*, Fourth Circuit Case No. 18-4487 on October 30, 2019 and will need to prepare for that argument in the weeks preceding the date Mr. Furlow's petition is due.

Accordingly, additional time will be necessary for the careful preparation of the petition for writ of certiorari in Mr. Furlow's case.

No party will be prejudiced by the granting of an extension.

Since the time within which to file a petition for writ of certiorari in this case will expire on October 31, 2019 unless extended, Petitioner respectfully requests that an order be entered extending his time to file a petition for writ of certiorari, to and including December 17, 2019.

Respectfully submitted,

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October 4, 2019