

OCTOBER TERM 2019

IN THE
SUPREME COURT OF THE UNITED STATES

ERIC MACK,
Petitioner,

v.

UNITED STATES,
Respondent

On Petition for a Writ of Certiorari
to the Court of Appeals for the Eleventh Circuit

APPLICATION TO THE HONORABLE JUSTICE CLARENCE THOMAS
FOR EXTENSION OF TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

* * * * *

To the Honorable Justice Clarence Thomas, Associate Justice of the Supreme
Court of the United States and Circuit Justice for the United States Court of
Appeals for the Eleventh Circuit:

Petitioner, Mr. Eric Mack, by undersigned counsel, pursuant to Supreme
Court Rules 13.5 and 30.2, respectfully requests that this Court grant him a sixty
(60) day extension within which to file a Petition for a Writ of Certiorari to the

Court of Appeals for the Eleventh Circuit. Mr. Mack was represented by the Federal Defender's Office in the District Court and the Court of Appeals.¹

The Eleventh Circuit's order in this case was issued on May 22, 2019,² rendering the petition for writ of certiorari due on or before August 20, 2019. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

Supreme Court Rule 13.5 permits a Justice of this Court, "for good cause" to extend the time to file a petition for a writ of certiorari for a period not exceeding sixty (60) days. The application must be received by the Clerk at least ten (10) days before the petition is due, except in extraordinary circumstances.³ This request for an extension of time is being filed through the Court's electronic filing system eleven (11) days before the petition is due.

Undersigned counsel believes that there is good cause to justify the requested extension of time. Undersigned counsel is the only attorney in the trial unit assigned to work on appellate and post-conviction matters. As a result, counsel currently represents a number of clients with cases pending in both the Eleventh Circuit and the United States District Court for the Middle District of Alabama. Presently, counsel has another certiorari petition due in this Court on August 12, 2019, and oral argument in the 11th Circuit Court of Appeals on August 21, 2019. Due to the convergence and proximity of the deadlines in these and other cases,

¹ See Exhibit A.

² See Exhibit B.

³ Rule 30.2.

undersigned counsel needs additional time to research and prepare a petition for a writ of certiorari in this case.

Petitioner respectfully requests that an order be entered extending his time to petition for certiorari by sixty (60) days, up to and including October 20, 2019.

Respectfully submitted,

/s/ Mackenzie S. Lund

Mackenzie S. Lund

Counsel of Record

Assistant Federal Defender

Federal Defenders

Middle District of Alabama

817 S. Court Street

Montgomery, Alabama 36104

CERTIFICATE OF SERVICE

I, Mackenzie S. Lund, Counsel of Record, hereby certifies that on August 9, 2019, this pleading was filed with the Court through its electronic filing system and served on previous counsel for the United States via Electronic Mail.

/s/ Mackenzie S. Lund

Mackenzie S. Lund

Counsel of Record

Assistant Federal Defender

Federal Defenders

Middle District of Alabama

817 S. Court Street

Montgomery, Alabama 36104

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALAIN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMAIN RE: JOHNSON V. UNITED
STATES, 135 S. Ct. 2551 (2015))
)Civil Misc. No. 2:16-mc-3744-WKW**STANDING ORDER**

Pursuant to 18 U.S.C. §§ 3006A(a)(1) and (c) of the Criminal Justice Act and the discretion of the Court, the Office of the Federal Defender for the Middle District of Alabama ("Federal Defender's Office") is hereby appointed to represent any defendant sentenced in this district who was previously determined to have been entitled to appointment of counsel, or who is now indigent, to determine whether the defendant may qualify for federal habeas relief under 28 U.S.C. § 2255 or 28 U.S.C. § 2241 in light of Johnson v. United States, 135 S. Ct. 2551 (2015).

The U.S. Probation Office for the Middle District of Alabama and the U.S. District Court Clerk's Office for the Middle District of Alabama are authorized to disclose Presentence Investigation Reports, Statements of Reason, and Judgments to the Federal Defender's Office for the purpose of determining eligibility for relief under Johnson.

DONE this the 21ST day of April, 2016.W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-11138-H

ERIC MACK,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Alabama

ORDER:

Erik Mack is a federal prisoner who is serving a 96-month sentence after pleading guilty in 2014 to brandishing a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii). As background, Mack also was charged with aiding and abetting a Hobbs Act robbery, in violation of 18 U.S.C. § 1951. That count was dismissed under his plea agreement, but it served as the companion “crime of violence” for Mack’s § 924(c) conviction. Mack thereafter filed a 28 U.S.C. § 2255 motion to vacate his sentence, arguing that, under *Johnson v. United States*, 135 S. Ct. 2551 (2015) (striking down the residual clause of the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e)(2)(B)(ii), as unconstitutionally vague), aiding and abetting Hobbs Act robbery no longer was a “crime of violence” to support his § 924(c)

conviction.¹ The district court denied the § 2255 motion, finding that aiding and abetting Hobbs Act robbery qualified as a crime of violence under § 924(c)(3)(A)'s elements clause. Mack now moves this Court for a certificate of appealability ("COA") to appeal the district court's denial of his § 2255 motion.

To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The petitioner satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted).

Reasonable jurists would not debate the district court's denial of Mack's § 2255 motion. Mack's § 924(c) conviction was tied to his conviction for aiding and abetting Hobbs Act robbery. This Court has held that aiding and abetting Hobbs Act robbery categorically qualifies as a crime of violence under § 924(c)(3)(A)'s elements clause. *In re Colon*, 826 F.3d 1301, 1305 (11th Cir. 2016). Even though this holding was made in the context of a second or successive application, it remains binding precedent. *United States v. St. Hubert*, 909 F.3d 335, 346 (11th Cir. 2018), *cert. denied*, 139 S. Ct. 1394 (2019). Accordingly, Mack's motion for a COA is DENIED.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE

¹ Mack also argued that his predicate offense could not be considered a crime of violence under § 924(c)(3)(B)'s residual clause. This Court need not address this issue, as the district court addressed only whether Mack's predicate offense qualified under § 924(c)(3)(A).

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

May 22, 2019

Clerk - Middle District of Alabama
U.S. District Court
PO BOX 711
MONTGOMERY, AL 36101-0711

Appeal Number: 19-11138-H
Case Style: Eric Mack v. USA
District Court Docket No: 2:16-cv-00487-WKW-SRW
Secondary Case Number: 2:13-cr-00072-WKW-SRW-2

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gerald B. Frost, H
Phone #: (404) 335-6182

Enclosure(s)

DIS-4 Multi-purpose dismissal letter