

NO:
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2019

ERIC HANNA,

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, Eric Hanna respectfully requests a sixty-day extension of time from October 24, 2019 to and including December 23, 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. *See* S.Ct. R. 13.5.

Mr. Hanna is filing this Application at least ten days before the filing date, which is October 24, 2019. *See* S.Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

In 2011, Mr. Hanna was convicted after a jury trial of conspiracy to commit Hobbs Act robbery, two counts of Hobbs Act robbery/aiding and abetting that crime, and two counts of using/carrying/possessing a firearm in relation to a “crime of violence” (as set forth in the Hobbs Act robbery/aiding and abetting counts), in violation of 18 U.S.C. § 924(c). He was sentenced to a total term of 435 months imprisonment. That term consisted of 51 months concurrent on the Hobbs Act robbery and conspiracy counts; a consecutive 84 months on the first 924(c) count; and a consecutive 300 months on the second 924(c) count, followed by 5 years supervised release.

After this Court issued its decision in *Johnson v. United States*, 135 S.Ct. 2551 (2015), Mr. Hanna filed a motion to vacate under 28 U.S.C. § 2255 (his first such motion), arguing that his two § 924(c) convictions should be vacated since § 924(c)’s residual clause was unconstitutionally vague in light of *Johnson*, and Hobbs Act robbery was not otherwise a “crime of violence.” The district court denied that motion citing the Eleventh Circuit’s decision in *In re Saint Fleur*, 824 F.3d 1337 (11th Cir. 2016) (holding that Hobbs Act robbery was a “crime of violence” within § 924(c)’s elements clause). The district court also denied Mr. Hanna a certificate of appealability (“COA”).

On August 3, 2017, Mr. Hanna sought a certificate of appealability from the Eleventh Circuit, arguing that reasonable jurists could debate whether (1) Hobbs Act robbery is a “crime of violence” within the elements clause; (2) aiding and abetting a Hobbs Act robbery is a “crime of violence” within the elements clause; and (3) *Johnson* invalidated § 924(c)’s residual clause. The court of appeals held his case in abeyance pending this Court’s resolution of the latter issue in *United States v. Davis*, 139 S.Ct. 2319 (2019).

After this Court declared § 924(c)’s residual clause unconstitutionally vague in *Davis*, Judge Julie Carnes of the Eleventh Circuit denied Mr. Hanna a certificate of appealability, holding that reasonable jurists could not debate the denial of relief even though the residual clause was now invalid. Specifically, she held, Hanna “could not show the prejudice necessary to overcome his procedural default” given that “based on [Eleventh Circuit] precedent,” both Hobbs Act robbery and aiding and abetting that offense continued to qualify as “crimes of violence” under the elements clause of § 924(c)(3)(A). A copy of the order denying the COA is attached as Exhibit A hereto.

Undersigned counsel will not be able to file Mr. Hanna’s petition by the current October 24 due date due to a number of competing case commitments, as well as family commitments which have required counsel to be out of the office for the last two weeks, and will necessitate another absence from October 14th-24th. In order to render effective assistance to Mr. Hanna and other clients with matters

due in this same time period, counsel is requesting an additional sixty (60) days until December 23, 2019 to file Mr. Hanna's petition.

Neither the government nor Mr. Hanna would be prejudiced by such an extension.

Since the time within which to file a petition for writ of certiorari in this case will expire on October 24, 2019 unless extended, Mr. Hanna respectfully requests that an order be entered extending his time to file a petition for writ of certiorari by sixty days, to and including December 23, 2019.

Respectfully submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

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October 8, 2019
Ft. Lauderdale, Florida