

No. ____

**IN THE
SUPREME COURT OF THE UNITED STATES**

AARON BOGGS

Petitioner,

v.

THE STATE OF INDIANA,

Respondent.

**APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI
TO THE INDIANA COURT OF APPEALS**

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To the Honorable Justice Brett Kavanaugh, as Circuit Justice for the United States Court of Appeals for the Seventh Circuit, in which the Indiana Court of Appeals sits:

The Petitioner, Aaron Boggs, respectfully requests a 61-day extension of time, to and including Monday, April 6, 2020, to file a petition for a writ of certiorari. In support of this application, the Petitioner says:

1. The Indiana Court of Appeals issued its decision affirming Petitioner's sentence for three counts of burglary and one count of theft. *Boggs v. State*, 123 N.E.3d 725 (Ind. Ct. App. 2019) (Table), *reh'g denied, trans. denied*. A copy of that decision is attached to this application. The Petitioner sought rehearing in the Indiana Court of Appeals, which was denied; he then sought review by the Indiana

Supreme Court. The Indiana Supreme Court denied review on November 7, 2019. A copy of the order denying review is attached to this application. Absent an extension of time, the petition for a writ of certiorari would therefore be due on Monday, February 5, 2020. The Petitioner is filing this application by deposit in the United States mail at least ten days before the petition's due date. *See* Sup. Ct. R. 13.5.

2. The court to which certiorari would be directed is the Indiana Court of Appeals. This Court has jurisdiction to review the judgment of the Indiana Court of Appeals under 28 U.S.C. § 1257(a).

3. On April 3, 2003, Boggs was sentenced to a total of 70 years for convictions of three counts of burglary and one count of theft. The trial court appointed appellate counsel for Boggs but later vacated that appointment on May 8, 2003. In 2015, Boggs filed a *pro se* petition to file a belated notice of appeal under Indiana Post-Conviction Rule 2. The court denied the petition. On July 27, 2018, the Indiana State Public Defender filed a second petition on behalf of Boggs; that petition was granted, and the appeal followed. *Boggs*, 123 N.E.3d 725 (Table).

4. The Petitioner will be raising in this Court whether he is entitled to the benefit of *Blakely v. Washington*, 542 U.S. 296 (2004) in his 2019 direct appeal of his sentence. To enhance Petitioner's sentence, the trial court relied aggravating factors that were not facts of prior conviction, had not been charged and proven to a jury beyond a reasonable doubt, and which Petitioner had not admitted. *See id.*, 542 303–04 (2004) (citing *Apprendi v. New Jersey*, 530 U.S. 483, 488 (2000)).

The Indiana Court of Appeals said that Petitioner was not entitled to the benefit of *Blakely*, decided in 2004, in his 2019 direct appeal, because of a decision of the Indiana Supreme Court that carved out a special rule for belated appeals, making *Blakely* claims unavailable. *See generally Guteruth v. State*, 868 N.E.2d 427 (2007). The *only* reason Petitioner's appeal was "belated" was that the trial court, after Petitioner's sentencing and after having appointed appellate counsel for Petitioner, vacated that appointment, leaving Petitioner lawyerless. Which is to say, but for the trial court's interference with Petitioner's right to counsel in his direct appeal of his May 2003 sentence, *see Evitts v. Lucey*, 469 US 387 (1985), in all likelihood, a timely direct appeal by Petitioner in May or June 2003 would still have been pending when the Court decided *Blakely* on June 24, 2004. *See Griffith v. Kentucky*, 479 U.S. 314, 328 (1987) (a new rule of constitutional procedure to be applied in cases pending on direct review when the new rule is announced).

5. Petitioner is requesting an extension of time to file a petition for a writ of certiorari, because this case was referred to undersigned counsel only last week. Additionally, undersigned counsel has been occupied almost exclusively with preparing a petition for certiorari due March 22, 2020, in *Kimbrough v. Neal*, Supreme Court Application No. 19A803, and my teaching duties at the Indiana University Maurer School of Law, where I direct the law school's federal habeas litigation clinic.

6. Petitioner is requesting an extension of time to file a petition for a writ of certiorari so that that question described above may be properly presented to the Court.

CONCLUSION

Wherefore, the Petitioner, Aaron Boggs, respectfully requests a 61-day extension of time, to and including Monday, April 6, 2020, to file a petition for a writ of certiorari.

Respectfully submitted,



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