No. 22-_____

IN THE

SUPREME COURT OF THE UNITED STATES

PHILIP HUGH WENTZEL,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Seventh Circuit

APPLICATION TO EXTEND TIME TO FILE PETITION FOR A WRIT OF CERTIORARI

Submitted By:
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IN THE
SUPREME COURT OF THE UNITED STATES

APPLICATION TO EXTEND TIME TO FILE PETITION FOR WRIT OF CERTIORARI

To The Honorable Amy Coney Barrett, Supreme Court Justice:

Comes now, Philip Hugh Wentzel, "applicant" herein now respectfully makes application requesting a minumum of sixty (60) days extension of time in which to file a Petition for Writ of Certiorari in this Court.

JURISDICTION

The date on which the United States Court of Appeals for the Seventh Circuit decided applicant's case was September 17, 2021 (No. 21-1285). A copy of the order is attached per Rule.

A timely petition for rehearing was denied by the United States Court of Appeals on October 14, 2021, and a copy of the order denying rehearing is attached to this application per Rule.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

REASONS

Pursuant to the Rules of the Supreme Court of the United States 13.5, 22, and 30, applicant presents the following reasons of good cause to the Court in support of his request for an extension of time:

1. Applicant expects the primary question of law in his petition to be whether a circuit split or conflict exists in relation to his case and that of the defendant/appellee in United States v. Trenkler, #21-1441 in the First Circuit.

On May 6, 2021 the District Court in the District of Massachusetts (Boston) reduced Trenkler's sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) based solely on a legal issue presented by him. At the same time, this applicant had filed his own § 3582(c) motion in his district court, the basis of which was primarily legal reasons. The district court denied applicant's motion, as did the Seventh Circuit upon appeal indicating legal issues could not be brought under Section 3582(c) - now contrary to the court's reasoning in Trenkler. The United States appealed the decision in Trenkler and to date, only the appellant (United States) has filed a brief (November 5, 2021, #21-1441, Ist Cir.). Initially the court there set December 6, 2021 as the due date for Trenkler's brief, but that time has now been extended.

The last information available to this applicant regarding the Trenkler

matter indicated that court could hear oral arguments in their March 2022 session.

Should Trenkler ultimately prevail, a circuit split would then exist as the basis for this applicant to file his petition with this Court. However, that will not occur prior to the January 14, 2022 deadline applicant currently faces to file his petiton for certiorari.

2. This applicant is a pro-se, incarcerated person serving a sentence at the Federal Correctional Institution in Otisville, NY. ("FCI OTISVILLE"). FCI Otisville's response to the global Covid-19 pandemic remains extremely aggressive and restrictive, as the institution is located in a national Covid "hot spot" near New York City, with Orange County, NY. where Otisville is located experiencing significantly higher Covid positivity rates than any other surrounding county since the pandemic began. In August 2021, the Bureau of Prisons ("BOP") established a 3-tiered operations system for each of its facilities ("Red," "Yellow," and "Green"), leaving it to each warden to determine what level to operate at based on local conditions.

FCI Otisville remains on "Red" operations status to this day. FCI Otisville has never been on any other "color's" operating conditions. The only other operations experienced by inmates at the facility were the complete lock-downs in early 2020. "Red" status is the most restrictive operating level. Inmates are still locked in cells approximately 16-20 hours a day. Nearly all programs remain cancelled. Inmate movement is severely curtailed, and inmate access to legal materials, the law library, and the courts in general remain almost non-existent, making it nearly impossible for this applicant to file his petition timely.

CONCLUSION

For the foregoing reasons, applicant respectfully requests an extension of time of at least sixty (60) days to file his petition for Writ of Certiorari in this Court. Applicant has been working with due diligence and good faith to file timely other other delays and restrictions beyond his control affect his ability to file by the normal deadlines.

Applicant respectfully prays the Court find good cause and issue an extension of time as requested.

Dated this 5th day of January, 2022.

Respectfully submitted,

PHILIP HUGH WENTZEL, pro-se

CERTIFICATE OF SERVICE

I, PHILIP HUGH WENTZEL, do swear or declare that on this date, January 5, 2022, as required by Supreme Court Rule 29 I have served the enclosed APPLICATION TO EXTEND TIME TO FILE PETITION FOR A WRIT OF CERTIORARI, with attachments on each party to the proceeding by depositing an envelope containing the above documents in the United States mail properly addressed to each party with First Class postage prepaid, via the Bureau of Prisons "Special Mail" procedures, entitling the undersigned the benefit of the 'prison mailbox rule.'

The other party served is as follows:

United States of America,
Solicitor General of the United States
Room 5616
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 5, 2022.

PHILIP HUGH WENTZEL, pro-se
Petitioner

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted September 15, 2021*
Decided September 17, 2021

Before

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 21-1285

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*	Appeal from the United States District Court for the Eastern District of Wisconsin.
v.	No. 12-CR-116
PHILIP H. WENTZEL, *Defendant-Appellant.*	Lynn Adelman, *Judge.*

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

ORDER

Philip Wentzel, a federal prisoner, appeals the district court's denial of his motion for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i). Because the district court acted within its discretion, we affirm.

Wentzel pleaded guilty in 2012 to seven counts of producing child pornography. *See* 18 U.S.C. § 2251(a). Federal agents learned that Wentzel, then a deputy sheriff of Milwaukee County, drugged and sexually abused six children entrusted to his care. He recorded and distributed videos and photographs of the assaults, and the agents traced them to Wentzel's property in Wisconsin. Authorities also discovered on Wentzel's laptop chat logs in which he described how he drugged his victims. And they found in Wentzel's home the drugs that he used. Wentzel initially pleaded guilty to six counts of producing child pornography, but on the day of sentencing, the government identified a seventh victim and filed an information for a seventh count. Wentzel consented to proceed by information, waived indictment on the seventh charge, and pleaded guilty to all seven charges. The additional charge did not affect the district court's calculation under the Sentencing Guidelines; the guidelines already recommended life in prison regardless of the seventh charge.

At sentencing, the district court rejected Wentzel's request for 25 years in prison. After considering the sentencing factors under 18 U.S.C. § 3553(a)—particularly the seriousness of the offenses and the need to protect the public—the court sentenced him to 40 years' imprisonment. That sentence reflected 300 months for each of the original six counts, running concurrently, plus an additional 180 months for the late-added seventh count, running consecutive to the other counts. On appeal, Wentzel's lawyer requested to withdraw, and Wentzel voluntarily dismissed the appeal.

After dismissing his appeal, Wentzel collaterally attacked his conviction. He invoked 28 U.S.C. § 2255 and raised two legal claims relevant to this appeal: the government had breached a plea agreement and violated his rights under the Double Jeopardy Clause by adding a seventh charge on the day of sentencing. He also raised a factual argument, maintaining that he did not drug his victims, even though he had not objected to the presentence report's assertion that he had. The district court rejected these arguments, and we denied his request for authorization to relitigate them in a successive § 2255 motion.

Wentzel then unsuccessfully moved for relief under § 3582(c)(1)(A)(i). This law allows a court to reduce a sentence for "extraordinary and compelling reasons."

Prisoners often request relief under this provision because of serious health or family issues. But Wentzel instead repeated his arguments about double jeopardy and a "breached" plea agreement from his prior postconviction filings. He also insisted that the government had withheld recordings of its interviews with his victims. This "new evidence," he contended, refuted the government's assertion that he had drugged his victims. Finally, he argued that his efforts at rehabilitation in prison warranted relief.

The district court denied relief on three grounds. First, it reasoned that under § 3582(c)(1)(A)(i) it lacked discretion to grant relief based on Wentzel's legal challenges to his conviction and sentence or based solely on his rehabilitation. Second, even if it had discretion, on their merits Wentzel's legal challenges and argument about new evidence were not extraordinary and compelling reasons for relief. Finally, even if they were, a sentence reduction would nonetheless be unwarranted based on the factors under § 3553(a): Wentzel's offense was serious, and at sentencing, his own expert diagnosed him with pedophilia and suggested he might reoffend.

On appeal, Wentzel first argues that the court erred when it ruled that arguments regarding the legality of a sentence could never be "extraordinary and compelling reasons" for a sentence reduction. But in *United States v. Thacker*, 4 F.4th 569, 574 (7th Cir. 2021), we warned that district courts should not use § 3582(c)(1)(A)(i) to erode the limits on postconviction relief in 28 U.S.C. § 2255. That statute bars successive collateral attacks on the legality of a sentence unless the inmate obtains prior approval under § 2255(h), which Wentzel has not. Wentzel insists that his motion falls outside § 2255 because he seeks only a discretionary reduction of his sentence, rather than an order vacating his conviction. The district court, however, was not required to accept arguments (about double jeopardy and a "breached" plea agreement) that it had already rejected in his prior postconviction filings.

Moreover, the district court also correctly explained why Wentzel's arguments that were not explicitly raised in his prior postconviction motions were meritless. The district court appropriately ruled that Wentzel's rehabilitation did not warrant a reduction, because "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." 28 U.S.C. § 994(t). And it appropriately rejected his claim that "new evidence" refutes the presentence report's assertion that he drugged his victims during the assaults. Wentzel did not object to the presentence report at sentencing, nor did he provide the recordings that he says support this argument now. And as the district court explained, the presentence report listed ample evidence that Wentzel drugged his victims: he made statements about using specific drugs on his

victims, kept the same drugs in his home, and recorded videos of his victims while they were unconscious or semi-conscious. The court thus reasonably concluded that Wentzel drugged his victims and that his attempt to relitigate this issue did not establish an extraordinary and compelling basis for relief.

AFFIRMED

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

September 17, 2021

Before

DAVID F. HAMILTON, *Circuit Judge*
MICHAEL Y. SCUDDER, *Circuit Judge*
THOMAS L. KIRSCH II, *Circuit Judge*

No. 21-1285	UNITED STATES OF AMERICA, Plaintiff - Appellee v. PHILIP H. WENTZEL, Defendant - Appellant
Originating Case Information:	
District Court No: 2:12-cr-00116-LA-1 Eastern District of Wisconsin District Judge Lynn Adelman	

The judgment of the District Court is **AFFIRMED**, in accordance with the decision of this court entered on this date.

form name: **c7_FinalJudgment** (form ID: **132**)

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

November 2, 2021

Before

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 21-1285

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*	Appeal from the United States District Court for the Eastern District of Wisconsin.
v.	No. 2:12-cr-00116-LA-1
PHILIP H. WENTZEL, *Defendant-Appellant.*	**Lynn Adelman,** *Judge.*

ORDER

On consideration of defendant Philip H. Wentzel's petition for rehearing with suggestion for rehearing en banc, filed October 14, 2021, no judge in active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to deny the petition for panel rehearing.

Accordingly, the petition for rehearing with suggestion for rehearing en banc filed by defendant Philip H. Wentzel is DENIED.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PHILIP HUGH WENTZEL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

DECLARATION OF INMATE FILING

I am an inmate in a federal prison. Today, January 5, 2022, I am depositing "APPLICATION TO EXTEND TIME TO FILE PETITION FOR WRIT OF CERTIORARI", with attachments, in the above matter into the institution's internal mail system via Bureau of Prisons mailroom staff. The appropriate First-Class postage has been affixed to the sealed envelope.

This institution has a system designed for inmate legal mail and this application and attachments was delivered to mailroom staff in compliance with outgoing Legal/Special Mail procedures, entitling the undersigned to the benefit of the 'prison mailbox rule' (pro-se prisoner filings are deemed filed on the date that prisoner delivered them to prison authorities for forwarding to the court). See, Houston v. Lack, 1010 L.Ed.2d 245 (1988).

This petitioner-applicant hereby invokes the provisions of the aforementioned prison mailbox rule for the enclosed documents and respectfully requests the clerk note a filing date as today's date: January 5, 2022.

I declare under penalty of perjury that the foregoing is true and that I am the undersigned pro-se petitioner-applicant in this matter. (28 U.S.C. § 1746).

Dated this 5th day of January, 2022.

Respectfully submitted,

PHILIP HUGH WENTZEL
Pro-se

PHILIP HUGH WENTZEL
REG. #11686-089
F.C.I. OTISVILLE
P.O. BOX 1000
OTISVILLE, NY. 10963-1000

January 4, 2022

Clerk of Court,
United States Supreme Court
1 First Street N.E.
Washington, D.C. 20543

To The Clerk of Court:

Enlclosed please find my Application to Extend Time To File Petition For a Writ of Certiorari. Per Supreme Court: Rule 13, 22, and 30 this application must be submitted to the Justice assigned to the Circuit where my criminal case originates - the Seventh Circuit. As such, it is my understanding that Justice Amy Coney Barrett is assigned that district. Would you kindly transmit the enclosed to Justice Barrett for a decision?

If anyhting further is required of me, please contact me at the name and address above, or via E-Mail at PWENTZEL11686089@aol.com.

Thank you.

Sincerely,

PHILIP HUGH WENTZEL

Enclosures