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In the Supreme Court of the United States

PINKNEY CLOWERS, III,

PETITIONER-APPELLANT,

v.

UNITED STATES OF AMERICA,

RESPONDENT-APPELLEE.

**APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE PETITION FOR WRIT
OF CERTIORARI FROM THE JUDGMENT OF THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT**

To the Honorable Clarence Thomas, Justice of the United States and Circuit
Justice for the Eleventh Circuit:

Petitioner, by his attorney and based on Supreme Court Rule 13.5 and Rule
22, respectfully requests a thirty-day extension of time, up to and including July 12,
2023, within which to file a petition for writ of certiorari from the judgment entered
by the United States Court of Appeals for the Eleventh Circuit, issued on March 14,
2023. See *United States v. Clowers*, 62 F.4th 1377 (11th Cir. 2023) (attached hereto

as Attachment 1). Mr. Clowers has not previously sought an extension of time from this Court. He files this Application at least ten days before his current deadline, which is June 12, 2023. See S.Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

The Decision Below. This petition results from the Eleventh Circuit’s holding that Mr. Clowers was ineligible for a reduced sentence under Section 404 of the First Step Act of 2018. Notwithstanding that he was serving a sentence for a “covered offense” under the Act, the Eleventh Circuit held that he remained subject to a mandatory life sentence based on a pre-*Apprendi* judicial finding of drug quantity. *Clowers*, 62 F.4th at 1380-1381. It reasoned “[i]f the jury – or the court, acting before *Apprendi* – made a drug-quantity finding that could have been used at the time of sentencing to determine the defendant’s statutory penalties, the district court must use the same quantity to decide what the defendant’s statutory penalties would have been if § 2 of the Fair Sentencing Act had been in effect at the time of the offense.” *Id.* at 1382. It “reiterate[d] that ‘the Constitution does not prohibit district courts, in deciding motions for reduced sentences under the First Step Act, from relying on earlier judge-found facts that triggered statutory penalties that the Fair Sentencing Act later modified.’ ” *Id.* at 1381 n.2 (quoting *United States v. Jones*, 962 F.3d 1290 (11th Cir. 2020), *vacated sub nom by Jackson*

v. United States, 143 S.Ct. 72 (2022), and reinstated on remand by *United States v. Jackson*, 58 F.4th 1331 (11th Cir. 2023)).

A month prior to its decision in this case, the Court, based on the same reasoning – that courts determining their discretion to reduce a sentence under the First Step Act are bound by pre-*Apprendi* judicial drug quantity findings – reinstated its decision in *United States v. Jackson*, 58 F.4th 1331 (11th Cir. 2023), which was originally vacated by this Court in *Concepcion v. United States*, 142 S.Ct. 1289, 2402 (2022). In the decision below, it concluded “Clowers is in the same boat as Jackson.” *Clowers*, 62 F.4th at 1383.

Good Cause for the Extension. The Eleventh Circuit’s decision in this case conflicts with decisions in other circuits and has resulted in significant prejudice to multiple defendants in Mr. Clowers’s position. Moreover, Clowers’s petition will present an ideal vehicle for review, since it follows from a published opinion in the Eleventh Circuit resolving a preserved and thoroughly briefed legal issue with constitutional implications, and involving stark prejudice to Clowers – his inability to obtain relief from a mandatory life sentence.

Since the Eleventh Circuit’s March 14, 2023, decision affirming the District Court’s judgment, undersigned counsel has been unable to give this petition the time and thought it deserves. He has been busy with other professional

commitments including filing initial briefs on appeal in *United States v. Carlton Volz*, No. 22-13436 (11th Cir. Mar. 20, 2023), *United States v. Willie McCoy*, No. 22-13451 (11th Cir. Mar. 22, 2023), and *United States v. Jason Jones*, No. 22-13442 (11th Cir. Jun. 2, 2023), a jurisdictional brief (filed Apr. 16, 2023), and an initial merits brief (filed May 3, 2023), in *United States v. Durante Nimmons*, No. 13-10933 (11th Cir.), reply briefs in *United States v. Demetrius Nelson*, No. 22-12511 (11th Cir. Mar. 15, 2023), *United States v. Steven Sherwood*, No. 22-12585 (11th Cir. Apr. 13, 2023), and *United States v. Anthony Roan*, No. 22-13443 (11th Cir. Apr. 14, 2023), a brief on remand in *United States v. Robert Woods*, No. 4:09-cr-32 (M.D.Ga. Apr. 21, 2023), a motion for *en banc* rehearing in *United States v. Idris Shamsid-Deen*, No. 20-11877 (11th Cir. May 26, 2023), a motion for rehearing in *United States v. Frankie Shearry*, No. 22-10849 (11th Cir. May 23, 2023), and briefing and arguing a complicated categorical approach issue in District Court in *United States v. Barry Daise*, No. 7:21-cr-7 (M.D.Ga.) (Apr. 19, 2023 – objection, May 23, 2023 – reply, May 25, 2023 – sentencing). In addition, undersigned counsel has responsibilities in District Court handling initial appearances, and in assisting the trial attorneys of the Federal Defenders of the Middle District of Georgia, Inc. Given these time constraints, undersigned counsel has struggled to prepare by June 12, 2023, a

petition for writ of certiorari worthy of this Court's attention and Mr. Clowers's cause.

Wherefore, since the time within which to file a petition for writ of certiorari in this case will expire on June 12, 2023, unless extended, Mr. Clowers requests that an order be entered extending his time to file a petition for writ of certiorari by thirty days, to and including July 12, 2023.

Respectfully submitted this 2nd day of June, 2023.

s/ Jonathan Dodson
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