

No. _____

In the Supreme Court of the United States

GUY COLESTON MCDONALD,
Applicant,

v.

UNITED STATE OF AMERICA,
Respondent.

**APPLICATION FOR EXTENSION OF TIME TO
FILE PETITION FOR WRIT OF CERTIORARI**

To the Honorable Neil M. Gorsuch
Associate Justice of the United States Supreme Court
And Circuit Justice for the Tenth Circuit

Respectfully submitted,
Keith Bradley

Counsel of Record

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Attorney for Applicant

GUY COLESTON MCDONALD

Pursuant to Rule 13.5 of the Rules of this Court, with the good cause set forth below, applicant Guy Coleston McDonald respectfully requests a 30-day extension of time to file a petition for writ of certiorari up to and including December 7, 2022. This is petitioners' first request for an extension of time.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *United States of America v. Guy Coleston McDonald*, No. 20-7052 (10th Cir. Aug. 9, 2022) (App.). The judgment of the United States Court of Appeals for the Tenth Circuit affirmed the district court's judgment sentencing Mr. McDonald to more than 24 years in prison. Mr. McDonald specifically argued that because he had entered a guilty plea, there was no evidence supporting either the drug quantity or the sentence enhancements advanced by the government. Despite his strenuous objections to the findings of the Presentence Investigation Report ("PSR") and the government's failure to present any witnesses or other evidence at his sentencing, the district court adopted the findings of the PSR in its entirety. The Tenth Circuit held that the district court did not err in adopting the facts in the PSR because Mr. McDonald had only objected to the reliability of the sources cited in the PSR, rather than affirmatively denying the truth of the asserted PSR facts. Despite conflicting decisions from other Circuits, the Tenth Circuit held that a "defendant must assert that the facts alleged in the PSR are false" to trigger a district court's obligation, under Federal Rule of Criminal Procedure 32, to resolve factual disputes pertinent to sentencing. A challenge to the reliability of the government's evidence in the PSR is insufficient, in the Tenth Circuit.

JURISDICTION

This Court's jurisdiction over a timely filed petition for certiorari would be invoked pursuant to 28 U.S.C. § 1254(1). Under this Court's Rules 13.1, 13.3, and 30.1, the deadline for Mr. McDonald to file a petition for a writ of certiorari is November 7, 2022. This Application is filed more than ten (10) days in advance of that date, in accordance with this Court's Rule 13.5.

REASONS JUSTIFYING AN EXTENSION OF TIME

In accordance with this Court's Rule 13.5, Mr. McDonald states that the "specific reasons why an extension of time is justified" are as follows:

1. This case involves substantial questions about what is required to trigger a sentencing court's fact-finding obligation. In this case, the district court's wholesale adoption of the PSR, despite Mr. McDonald's strenuous objections to the reliability of the PSR (which was riddled with inconsistencies, double-counting, and unreliable sources) was contrary to law and conflicts with decisions of other Circuits.

2. Lead counsel for the filing of the petition for writ of certiorari was appointed by the Tenth Circuit to handle Mr. McDonald's appeal, under the Criminal Justice Act. Counsel has a substantial workload that includes numerous deadlines between now and the petition deadline of December 7, 2022. To properly research and address the issues for presentation to the Court, lead counsel requires an extension of time.

CONCLUSION

For the foregoing reasons, Guy Coleston McDonald respectfully requests a 30-day extension, to December 7, 2022, to file a petition for writ of certiorari in this case.

Respectfully submitted,

/s/ Keith Bradley

Keith Bradley

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GUY COLESTON MCDONALD

CERTIFICATE OF SERVICE

I, Keith Bradley, a member of the Bar of this Court, certify, in compliance with Supreme Court Rules 29.3 and 29.5(b), that on this 28th day of October, 2022, I caused to be served by first-class mail, postage prepaid, a copy of the foregoing Application for Extension of Time to File Petition for Writ of Certiorari to the U.S. Court of Appeals for the Tenth Circuit in the above proceeding on:

Elizabeth Prelogar
Solicitor General of the United States
Room 5616
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington DC 20530-0001

Counsel for Respondent United States of America

I further certify that all parties required to be served have been served.

/s/ Keith Bradley
Keith Bradley

Dated: October 28, 2022