

No. _____

IN THE
Supreme Court of the United States

ERISTON WILSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(7), Petitioner Eriston Wilson requests leave to file the accompanying Application to Extend the Deadline to File a Petition for Certiorari without prepayment of costs and to proceed in forma pauperis. A United States District Judge for the Eastern District of Louisiana appointed the Federal Public Defender to represent him in the proceedings below. *See United States v. Wilson*, No. 2:19-cr-34, Dkt. No. 54 (E.D. La. Aug. 12, 2019) and Dkt. No. 255 (E.D. La. Sept. 27, 2021) (attached hereto).

WHEREFORE, Petitioner respectfully moves this Honorable Court for leave to proceed *in forma pauperis* and to file the accompanying Application to Extend the Deadline to File a Petition for Certiorari without prepayment of costs.

Respectfully submitted this 26th day of January, 2023.

/s/ Samantha J. Kuhn
SAMANTHA J. KUHN
Assistant Federal Public Defender
Counsel of Record
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New Orleans, Louisiana 70130
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samantha_kuhn@fd.org

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

CR.NO. 19-034 I

VERSUS

ORDER

ERISTON WILSON

 X Appointing Counsel
Substituting Counsel For:

Ratifying Prior Service

Extending Appointment For Appeal

CHARGE: VIOLATIONS OF THE HOBBS ACT, BANK ROBBERY, AND THE FEDERAL GUN CONTROL ACT

 X FELONY MISDEMEANOR

 X The defendant, having satisfied this Court that he/she: (1) is financially unable to employ counsel, and (2) does not wish to waive counsel, and because the interests of justice so require, the Federal Public Defender named below is hereby appointed to represent this defendant in the above designated case until relieved by order of the District Court:

CLAUDE KELLY, FEDERAL PUBLIC DEFENDER, HALE BOGGS FEDERAL BLDG., RM 318, 500 CAMP ST, NEW ORLEANS, LA 70130 PHONE: (504)589-7930

 Federal Public Defender is appointed for the limited purpose of:

 It appearing to the Court that although the defendant is financially unable to employ counsel, he/she is totally indigent.

 IT IS FURTHER ORDERED that the defendant pay to the Clerk, U. S. District Court for services of counsel, the total amount of \$ _____ to be paid within 10 working days or by _____.

 IT IS FURTHER ORDERED that the defendant is to pay to the Clerk, U.S. District Court, for services of counsel, \$ _____ per month. This amount is to be paid, beginning on _____, 20____, until further orders of the Court.

Dated at New Orleans, Louisiana, on AUGUST 12, 2019



UNITED STATES MAGISTRATE JUDGE

Copy to Financial Unit Clerk (*Only if defendant is ordered to pay*)

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

CRIMINAL ACTION

VERSUS

No. 19-34

ERISTON WILSON

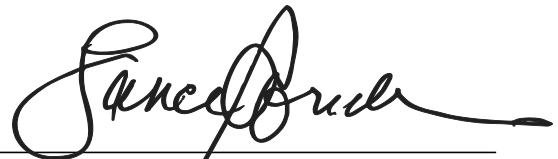
SECTION I

ORDER

Considering defense counsel's motion¹ requesting to withdraw as counsel and for the appointment of an attorney from the Office of the Federal Public Defender for the defendant's appeal, for which a notice² of appeal has been filed,

IT IS ORDERED that the motion is **GRANTED**. Warren McKenna III is withdrawn as counsel of record in this matter, and the Federal Public Defender shall appoint counsel to represent defendant on appeal.

New Orleans, Louisiana, September 27, 2021.



**LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE**

¹ R. Doc. No. 253.

² R. Doc. No. 250.

No. _____

IN THE
Supreme Court of the United States

ERISTON WILSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI**

To: The Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court and Circuit Justice for the Fifth Circuit.

Pursuant to Title 28, United States Code, Section 2101(c) and Supreme Court Rule 13.5, Petitioner Eriston Wilson respectfully requests that the time to file a Petition for a Writ of Certiorari in this case be extended for 59 days, to and including Friday, March 31, 2023.

Basis for Jurisdiction

The district court had original jurisdiction over this criminal action pursuant to 18 U.S.C. § 3231. Following a four-day jury trial, Petitioner was found guilty of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a), and aiding and abetting the brandishing of a firearm in furtherance of a robbery, in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii) and 2.

The Fifth Circuit had jurisdiction over the direct appeal under 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291. The Fifth Circuit issued its unpublished decision on

September 21, 2022, affirming Petitioner’s convictions but vacating his sentence and remanding the matter for resentencing. Petitioner filed a timely petition for rehearing en banc, seeking further review of issues related to the validity of Petitioner’s convictions. The petition was denied on November 2, 2022.

This Court has the power to grant or deny this motion pursuant to 28 U.S.C. § 2101(c), and it will have jurisdiction to review the Fifth Circuit’s judgment under 28 U.S.C. § 1254(1). The current deadline for a petition for writ of certiorari is January 31, 2023.

Judgment to be Reviewed and Opinion Below

The Fifth Circuit panel’s opinion is available at *United States v. Weldon*, No. 21-30474, 2022 WL 4363831 (5th Cir. 2022), reprinted as the appendix (1a–17a).

Reasons for Granting an Extension

Petitioner requests an extension primarily because Petitioner’s resentencing has not yet occurred and recently was moved. That resentencing hearing originally was scheduled to take place this month but has been continued to March 22, 2023. The outcome of that resentencing, as well as other district court proceedings and litigation that may take place beforehand, may dictate the issues on which Petitioner decides to seek further review by this Court. Those proceedings also may dictate whether Petitioner decides to request a writ of certiorari at all in this case. Accordingly, an extension of the deadline for filing the petition is warranted in order to adequately determine which, if any, issues should be raised and also to conserve judicial resources.

Although applications for extensions are ordinarily required to be filed at least 10 days before the petition is due, extraordinary circumstances exist in this case to grant an extension of the current deadline. In particular, undersigned counsel previously anticipated that Petitioner's sentencing would occur this month, leaving ample time to evaluate and discuss the issues to be raised in any Petition for Writ of Certiorari. The continuance of that sentencing proceeding prompted the need for an extension of time.

Petitioner additionally requests an extension because the trial errors for which he may seek further involve complex issues and nuanced circuit splits and because Petitioner's counsel has been fully occupied with other assigned matters. The ruling in this case has far-reaching implications, and the legal landscape of the various circuit precedents requires extensive review. For example, the Fifth Circuit held in this case that police officers who have no personal familiarity with a defendant may identify the defendant in surveillance footage at trial based solely on their review of evidence available to the jury. That holding directly conflicts with other Courts of Appeals and has broad implications for future litigants in the Fifth Circuit.

Given the importance of this and other potential issues to be raised, Petitioner's counsel needs additional time to research the full landscape of precedent in order to adequately present to this Court the reasons it should review the issues. Counsel has been unable to devote significant time in recent weeks to further investigate the issues due to the press of work and numerous recent deadlines in other cases. Accordingly, an extension of time would ensure that counsel has

sufficient time to fully brief the relevant issues and caselaw in any petition that Petitioner determines to file following his resentencing.

CONCLUSION

For all these reasons, Petitioner and undersigned counsel respectfully request that the Court grant an extension 59 days to file the petition for writ of certiorari, to and including March 31, 2023.

Respectfully submitted this 26th day of January, 2023.

/s/ Samantha J. Kuhn
SAMANTHA J. KUHN
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