
In the Supreme Court of the United States

TYSHON BOOKER,

Petitioner-Applicant

vs.

STATE OF TENNESSEE,

Respondent.

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

To The Honorable Brett Kavanaugh, Associate Justice, and Circuit Justice for the United States Court of Appeals for the Sixth Circuit: Pursuant to Supreme Court Rules 13.5 and 22, Applicant Tyshon Booker respectfully applies for a forty-five (45) day extension of time, to and including April 1, 2023, within which to file a petition for writ of certiorari. In support of this application, Mr. Booker states:

1. This is an appeal from a conviction on a charge of felony murder. Without an extension, the petition for writ of certiorari would be due on February 15, 2023. With the requested extension, the petition will be due on April 1, 2023. This application is being filed more than ten days prior to the due date of the petition.

2. Undersigned counsel has contacted opposing counsel, Associate Solicitor General Zachary Hinkle, who has indicated that the State of Tennessee does not oppose the requested extension.
3. The court's jurisdiction will be based on 28 U.S.C. § 1257.
4. The Tennessee Court of Criminal Appeals issued an opinion in this case on April 8, 2020, affirming Mr. Booker's conviction. A copy of that opinion is attached hereto as *Appendix A*. Following an application for discretionary review, including review of the claims discussed herein, the Tennessee Supreme Court issued an order granting further review but limiting it to a single sentencing claim, unrelated to the claim discussed herein. After further review, the Court issued an opinion granting relief as to that sentencing claim on November 18, 2022. A copy of the *Judgment* issued at that time is attached hereto as *Appendix B*.
5. This case raises an issue relating to the procedure for transferring a prosecution from juvenile court to adult criminal court. Under Tennessee law, any prosecution against a juvenile begins in juvenile court. By filing a notice, the State may seek to have the case transferred to criminal court and for the juvenile to be treated and punished as an adult. Before a case can be transferred, the juvenile is entitled to a transfer hearing, at which a juvenile court judge will determine whether there is probable cause that the juvenile committed the offense, whether

the juvenile is not committable to an institution for the mentally ill, as well as whether it is in the interests of the public that the juvenile be transferred. Only if all three are proven can the juvenile be transferred to adult criminal court. If transfer is denied (or never sought), then the juvenile remains within the juvenile justice system. Such a juvenile within the juvenile system can be punished, including by incarceration, only until he or she reaches the age of 19.

6. In Mr. Booker's case, after he was transferred, he became subject to a potential life sentence (calculated as sixty years with parole eligibility after twenty-five years) for the charge of felony murder.
7. Mr. Booker argued, to the juvenile court, criminal court, and Tennessee Court of Criminal Appeals, that this transfer procedure violated the holding of *Apprendi v. New Jersey*, 530 U.S. 466 (2000): the transfer decision subjected him to a dramatically enhanced maximum punishment based merely on a judge's findings under a preponderance standard rather than a jury's findings on a reasonable doubt standard. *See* 530 U.S. at 490 (“[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt”). The Court of Criminal Appeals rejected that argument on what it characterized as the majority position across the country. *Appendix A* at 27.

8. This Court has not yet addressed the application of *Apprendi* to juvenile transfer or certification procedures.
9. This application is not filed for purposes of delay.
10. Undersigned counsel is an Assistant Public Defender in the Sixth Judicial District. Counsel is the head of the appellate division at the Public Defender's Community Law Office. Counsel is responsible for monitoring the court's appellate caseload and drafting and filing briefs in many of the office's cases. In addition, counsel is involved in a number of serious cases pending in the trial courts.
11. Counsel has had numerous pending deadlines and has filed numerous briefs in the appellate courts of Tennessee over the last three months. Further, counsel has litigated several substantial motions in the criminal courts of Knox County. Finally, counsel took a scheduled family break over the winter holidays.
12. For these reasons, counsel has been unable to draft and finalize a petition for writ of certiorari within the ninety-day limit provided by law. A forty-five day extension will be adequate for that purpose.

Wherefore, the Applicant respectfully requests that an order be entered extending the time for filing a petition for writ of certiorari to and including April 1, 2023. A *Certificate of Service* is enclosed herewith.



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February 3, 2023