

No. ___-____

IN THE SUPREME COURT OF THE UNITED STATES

GREGORY ALLEN OAKS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT**

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and
Circuit Justice for the Fourth Circuit:

Under 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30 of this Court, petitioner
Gregory Allen Oaks respectfully requests a 45-day extension of time, up to and
including June 2, 2023, in which to file a petition for a writ of certiorari in this Court.
The Fourth Circuit entered final judgment against Oaks on November 9, 2022, and
denied his timely rehearing petition on January 18, 2023. Without an extension, Oaks's
time to file a petition for certiorari in this Court expires on April 18, 2023. This
application is being filed more than 10 days before that date. A copy of the Fourth

Circuit’s unpublished opinion in this case is attached as Exhibit 1, and a copy of the Fourth Circuit’s denial of the petition for rehearing *en banc* is attached as Exhibit 2. This Court has jurisdiction under 28 U.S.C. § 1254(1).

This case presents a recurring issue that the Court expressly left open in *Borden v. United States*, 141 S. Ct. 1817, 1825 n.4 (2021): whether a mental state of “extreme recklessness” falls within the elements clause of the Armed Career Criminal Act. In *United States v. Manley*, 52 F.4th 143, 150-51 (4th Cir. 2022), the Court of Appeals for the Fourth Circuit held that a mens rea of extreme recklessness “necessarily requires conduct that uses physical force *against* another” so as to qualify as a crime of violence under the elements clause of § 924(c)(3)(A) and *Borden*. In short order, another Fourth Circuit panel relied on *Manley* to dismiss Gregory Oaks’s § 2255 appeal of his ACCA sentence, which depended on Oaks’s prior conviction for Tennessee reckless aggravated assault under Tenn. Code Ann. § 39-2-101(b)(1) (1986 Supp.). That offense occurs when a person “[a]ttempts to cause or causes serious bodily injury to another willfully, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life.” Oaks was convicted under a Tennessee assault statute that requires proof of an elevated level of recklessness, yet has been used to prosecute drunk and reckless drivers—two categories of offenders whom this Court has specifically singled out as not deserving of the ACCA’s extreme sentencing enhancement. *Borden*, 141 S. Ct. at 1835, 1831 (plurality opinion); *Begay v. United States*, 553 U.S. 137, 1586-87 (2008), *abrogated on other grounds by Johnson v. United States*, 576 U.S. 591 (2015).

In addition to preparing the petition, counsel has also been responsible for meeting deadlines in numerous other cases, including *United States v. Parks*, W.D.N.C. Docket No. 5:05-CR-257-2 (reply in support of compassionate release filed March 9, 2023); *United States v. Vongphakdy*, Fourth Circuit No. 22-4593 (opening brief filed March 21, 2023); *United States v. Podbielski*, Fourth Circuit No. 22-4084 (oral argument held in West Virginia on March 22, 2023); *United States v. McDaniel*, Fourth Circuit No. 20-7579 (reply brief due April 5, 2023); *United States v. Taylor*, Fourth Circuit No. 21-4601 (reply brief due April 6, 2023); *United States v. Solis-Rodriguez*, Fourth Circuit No. 22-4654 (opening brief due April 13, 2023); *United State v. Allen*, Fourth Circuit No. 22-4739 (opening brief due April 27, 2023). Counsel is also responsible for presenting a Supreme Court and Fourth Circuit update to the Criminal Justice Act panel of appointed attorneys at a training event on April 28, 2023.

For these reasons, counsel respectfully requests that an order be entered extending the time to petition for certiorari up to and including June 2, 2023.

Respectfully submitted,

John G. Baker
FEDERAL PUBLIC DEFENDER FOR THE
WESTERN DISTRICT OF NORTH CAROLINA

/s/ Ann L. Hester
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March 29, 2023

Exhibit 1

United States

v.

Oaks,

2022 WL 16835642

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7602

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GREGORY ALLEN OAKS,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Martin K. Reidinger, Chief District Judge. (1:02-cr-00089-MR-1; 1:16-cv-00151-MR)

Submitted: October 31, 2022

Decided: November 9, 2022

Before AGEE, and HARRIS, Circuit Judges, and MOTZ, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Ann Loraine Hester, Assistant Federal Public Defender, FEDERAL DEFENDERS OF WESTERN NORTH CAROLINA, INC., Charlotte, North Carolina, for Appellant. Amy Elizabeth Ray, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Gregory Allen Oaks seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 motion. On appeal, Oaks challenges the district court's finding that his Tennessee aggravated assault conviction qualifies as a violent felony under the Armed Career Criminal Act (ACCA), 18 U.S.C § 924(e).

The district court's order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the motion states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Oaks has not made the requisite showing because Oaks' aggravated assault conviction, which at minimum can be committed with a mens rea of extreme recklessness, satisfies the mens rea of a "violent felony" under 18 U.S.C. § 924(e). *See United States v. Manley*, __ F.4th __, __, No. 20-6812, 2022 WL 14725226, at *1, *5 (4th Cir. Oct. 26, 2022) (concluding that offense with mens rea of extreme recklessness satisfies mens rea of a "crime of violence" under 18 U.S.C. § 924(c), a term "materially similar" to "violent felony" under 18 U.S.C. § 924(e)).

Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

Exhibit 2

Denial of petition for panel rehearing and rehearing en banc entered in
United States v. Oaks, Fourth Cir. No. 19-7602

FILED: January 18, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7602
(1:02-cr-00089-MR-1)
(1:16-cv-00151-MR)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

GREGORY ALLEN OAKS

Defendant - Appellant

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under [Fed. R. App. P. 35](#). The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk