

No. 23A-

IN THE SUPREME COURT OF THE UNITED STATES

RONELL WHITEHEAD, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

**APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE
FOR THE THIRD CIRCUIT:

Pursuant to Supreme Court Rules 13.5, 22.1–22.3, and 30.3, petitioner Ronell Whitehead prays for a 60-day extension of time to file his petition for certiorari in this Court to and including December 16, 2023.

1. Timeliness. The judgment of the United States Court of Appeals for the Third Circuit affirming the applicant’s conviction and sentence was initially entered on November 29, 2022, accompanied by a precedential opinion. Appx A. A timely petition for rehearing was denied on March 6, 2023. By order filed July 19, 2023, for good cause shown to the court of appeals, the Third Circuit recalled its mandate, vacated the order denying rehearing, and re-entered the rehearing denial as of that date. Appx. B. Pursuant to Rule 13.3 any petition for certiorari would therefore be due for filing within 90 days of July 19, that is, on or before October 17, 2023. This application is being filed on or before the tenth day prior to the due date, as required by this Court’s Rule 30.2.

2. Opinions Below and Jurisdiction. A copy of the opinion of the Court of Appeals (per Restrepo, J., with Jordan & Porter, JJ.), is published sub nom. *United States v. Womack*, 55 F.4th 219. Appendix A. There is no published decision of the district court on any question to be presented. The jurisdiction of this Court is to be invoked under 28 U.S.C. § 1254(1).

3. Reasons for Granting the Extension.

a. The applicant was named as one of 22 co-defendants named in a 261-count, 310-page second superseding indictment filed on April 1, 2015, in the U.S. District Court for the Eastern District of Pennsylvania. The superseding indictment charged him with selling crack cocaine in connection with what the indictment characterized as neighborhood-based conspiracy to distribute controlling substances in Chester, Pa., in violation of 21 U.S.C. § 846.

(i) Whitehead pleaded guilty before trial to three counts, charging particular sales of crack, all within 1000 feet of Widener University, in violation of 21 U.S.C. §§ 841(b)(1)(C), 860. After a nearly month-long trial, Whitehead and four others were convicted of participated in the larger conspiracy. The jury found that Whitehead conspired in violation of 21 U.S.C. § 846 to distribute at least 280 grams of crack and 500 grams or more of powder cocaine.

(ii) Labeled under the sentencing guidelines as a “career criminal,” the applicant was sentenced to serve 22 years’ imprisonment. .

(iii) The applicant appealed to the Third Circuit. He challenged both the fairness of his trial and the legality of the sentence. In particular, he challenged the jury instructions delivered at trial to guide the jury in determining whether the threshold drug quantities had been met to justify a

level of conviction under 21 U.S.C. § 841(b)(1) that would support a higher mandatory minimum sentence for conspiracy. After argument, the panel issued a precedential opinion rejecting all of the applicant’s contentions, except for his argument that he had been denied the right of allocution at sentencing. Appx. A. His challenge to the jury instructions on drug quantity was rejected under the Third Circuit’s controlling precedent, *United States v. Williams*, 974 F.3d 320, 362–67 (3d Cir. 2020). *See* 55 F.4th at 231–34.

(iv) On petition for rehearing *en banc*, the applicant argued that *Williams* should be overruled, because the formula announced there is “unmoor[ed]’ from the text” of 21 U.S.C. § 846, the governing statute, *Maslenjak v. United States*, 582 U.S. 335, ___ (2017), it is gravely erroneous. He had preserved that point in his opening brief.

b. Counsel is concerned that he will not be able to complete the petition prior to the current October 17 deadline for several reasons: counsel has had to devote dozens of hours (all voluntary) to his responsibilities as president of the directors of a state-wide non-profit organization which has been conducting a search for a new executive director; and undersigned counsel’s pre-existing professional deadlines (coupled with greatly reduced staff support as counsel transitions to retirement) and family-related obligations. In light of the severity of the applicant’s sentence, which he is presently serving, neither the applicant nor the government would be prejudiced by an extension of up to 60 days.

c. In counsel’s professional opinion, the case presents one or more issues worthy of presentation to this Court in a petition for certiorari, including:

(1) How is the quantity of controlled substances “involved” in drug distribution determined for purposes of sentencing for conspiracy under 21 U.S.C. § 846, when the offense of distribution is the object of the conspiracy?

The circuits are deeply divided in their answers to this question, and the Third Circuit’s position is unsupported by the governing statutory language.

d. For the reasons stated, the Applicant cannot file a petition meeting counsel’s own and this Court’s high standards prior to the existing due date.

WHEREFORE, the Applicant-Petitioner prays that an Order be entered extending the time within which he may petition this Court for certiorari by sixty days, to and including Monday, December 18, 2023, as the 60th day would be Saturday, December 16.

Dated: October 6, 2023

Respectfully submitted,

By: PETER GOLDBERGER
Counsel of Record
50 Rittenhouse Place
Ardmore, PA 19003-2276
(610) 649-8200
peter.goldberger@verizon.net