

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES


STEPHEN CHRISTOPHER PLUNKETT - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

MOTION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI

Submitted By:

 12/15/23
Stephen Christopher Plunkett
Petitioner, Pro Se
36265-177
FCC FOX - MEDIUM
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Forrest City, AR 72335

COMES NOW the Petitioner in the above-styled cause, Stephen Christopher Plunkett, pro se, and moves this Honorable Court to extend the time for filing a Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit for good cause shown. In support of the motion, Petitioner Plunkett would show the Court as follows:

I. BACKGROUND

Mr. Plunkett, the biological son of Joseph Robinette Biden, Jr., is being currently held in a facility which purports to be FCI Forrest City, Arkansas - Medium and which is, in fact, an undisclosed Communications Management Unit in an effort to impede Mr. Plunkett's legitimate access to the courts, the press, counsel, and Congress. Such obstruction has already been applied and has worked.

Mr. Plunkett pled guilty, pursuant to advice of counsel, to two counts of 18 U.S.C. §2113(a) in the Northern District of Texas in Case No. 3:14-CR-00239-L. Mr. Plunkett's first counsel refused to file a Motion to Withdraw Mr. Plunkett's guilty plea after the stipulation in Mr. Plunkett's guilty plea, made pursuant to advice of counsel, to additional counts under U.S.S.G. §1b1.2(c) was objected to by the government upon the return of Mr. Plunkett's Pre-sentence Investigation Report. Although the United States Probation Office upheld the initial report as written in the First Addendum to that report, ultimately, after back channel communications by the government, United States Probation, in the Second Addendum to the report, agreed with the government in accord with an Unpublished Fifth Circuit case, United States v. Harrier, 229 Fed.Appx. 299 (5th Cir. 2007). Probation then wrote the report to recommend that the instant sentence be treated, instead, under U.S.S.G.

§5g1.3(d).

Plunkett asked Mr. Morris to file a Motion to Withdraw his guilty plea. Mr. Morris, despite his emails to the prosecutor, AUSA Lisa Dunn, stating that he was going to so file a motion at Mr. Plunkett's request, and admitting his own ineffectiveness and representations and advice to Mr. Plunkett, refused to file the Motion to Withdraw. Mr. Plunkett sought, and was granted, substitute counsel. Mr. Lewis then investigated Mr. Plunkett's claims of Mr. Morris's ineffectiveness and found them to be valid. Mr. Lewis then prepared a Motion to Withdraw the plea. Mr. Lewis submitted a copy of excerpts from this Motion to the District Court and to AUSA Dunn.

In response, AUSA Dunn made an offer concerning sentencing agreement in order to avoid the Withdrawal issue. Mr. Lewis, just prior to sentencing, visited Mr. Plunkett at the Federal Detention Center at FCI Seagoville, TX and reported the offer to Mr. Plunkett. Mr. Lewis recommended Mr. Plunkett reject the offer. In addition, Mr. Lewis also recommended Mr. Plunkett NOT file a Motion to Withdraw his guilty plea and, instead, proceed to sentencing with Mr. Lewis's arguments concerning sentencing and other issues. Mr. Plunkett followed Mr. Lewis's advice. On December 11, 2017, Mr. Plunkett was sentenced to 116 months imprisonment ordered to run fully consecutively to Mr. Plunkett's undischarged Georgia Bank Robbery Sentence of 20 years to serve 10 years as the district court found Mr. Lewis's ineffective, and off-point, arguments unavailing.

Mr. Plunkett, through ineffective counsel, filed a direct appeal to the United States Court of Appeals for the Fifth Circuit. See United States v. Plunkett, 749 Fed. Appx. 306 (5th Cir. 2019). Appellate Counsel Hooks, despite letters and phone calls urging him to do so, would not appeal the reasonableness of the fully consecutive sentence or any of the other issues urged by Mr. Plunkett. Instead, Mr. Hooks chose to argue the issue on appeal with the least likelihood of success; the district court's application of a firearm enhancement. Mr. Hooks did not argue there was no evidence to support the district court's finding which there was not. The government submitted only argument in support of this enhancement. Mr. Hooks knew the standard on appeal, or should have known, was the "any evidence" standard. The Fifth Circuit affirmed. See *Id.*

In February, 2020, Mr. Plunkett placed his §2255 Motion for mailing by prison authorities in Georgia. The §2255 Motion was docketed by the district court on March 10, 2020. Except for a re-statement of a Napue claim and one other claim, all of Mr. Plunkett's claims in his §2255 action were submitted prior to AEDPA's 1-year statute of limitations. However, the post-AEDPA statute claims related back to timely-filed claims. Accordingly, all of Mr. Plunkett's claims should have been heard and adjudicated on the merits. They were not.

Mr. Plunkett, in relation to his §2255 action, 3:20-CV-00640-L, in the Northern District of Texas, filed a motion to recuse the district court judge, motion for evidentiary hearing, and a motion for discovery related to emails in possession of the government which would be considered Brady material and which were previously turned

over to Mr. Morris and viewed with Mr. Plunkett. These emails showed illegal collusion by the FBI and Georgia state authorities in Mr. Plunkett's arrest and prosecution. Copies of the emails were never provided to Mr. Plunkett by either Mr. Morris or Mr. Lewis. Mr. Plunkett submitted evidence of the existence of this Discovery material to the district court. Despite this, all motions were denied contrary to law.

After multiple extensions granted to the government, in October, 2020, the government filed its response to which it appended emails which support Mr. Plunkett's claims. The government falsely claimed no sentencing offer was ever made. Mr. Plunkett timely filed his Reply in November, 2020. The 2020 election occurred in which Mr. Plunkett's biological father, Joseph Robinette Biden, Jr. was ultimately declared the winner. For the next two years, Mr. Plunkett's §2255 Motion went nowhere.

In September, 2022, Plunkett filed a Petition for Writ of Mandamus with the United States Court of Appeals for the Fifth Circuit. See In re: Stephen Christopher Plunkett, No. 22-10936, U.S. App. LEXIS 36053 (5th Cir. December 21, 2022). Amazingly, after filing of the Mandamus petition, the Magistrate Judge issued her R&R on October 3, 2022. Plunkett filed three sets of timely objections. The district court overruled all of Plunkett's objections and issued his MO&O denying §2255 relief to Plunkett on December 30, 2022 without hearing and without affidavits from any of Plunkett's counsel despite evidence in support of Plunkett's claims.

The district court denied Certificates of Appealability despite clear evidence that jurists of reason could disagree with the

district court's disposition of Mr. Plunkett's valid constitutional claims. Further, the district court falsely certified that Mr. Plunkett's appeal would have no merit and denied IFP status on appeal.

Accordingly, Mr. Plunkett sought COA in the United States Court of Appeals for the Fifth Circuit. See United States v. Plunkett, No. 23-10139, U.S. App. LEXIS 21532 (5th Cir. July 26, 2023). In an "Unpublished Order," the Fifth Circuit denied COA in violation of Buck v. Davis and denied Mr. Plunkett the ability to proceed In Forma Pauperis on appeal.

Pointing the Fifth Circuit to its procedural errors and binding United States Supreme Court precedent, Mr. Plunkett sought rehearing En Banc. Mr. Plunkett's Petition for Rehearing was additionally treated as a "Motion for Reconsideration" and denied in both respects summarily without poll. See United States v. Plunkett, No. 23-10139, U.S. App. LEXIS 27988 (5th Cir. October 19, 2023).

Mr. Plunkett called the Office of the Clerk of this Court on several occasions requesting the proper forms for filing a Petition for Writ of Certiorari to this Court in order to correct the Fifth Circuit's errors and find guidance as to the applicable professional norms required of attorneys providing advice about guilty pleas in the era of the United States Sentencing Guidelines in addition to challenging the constitutionality of the Fifth Circuit's "test" to determine if an attorney made a client a promise on equal protection grounds.

On each occasion, Mr. Plunkett spoke to a receptionist or operator and was put through to the Clerk's Office voicemail box.

Mr. Plunkett was informed that the Clerk's Office does not take live calls. On approximately December 4, 2023, Mr. Plunkett received a Priority Mail package with the Tracking Number 9205 5902 4503 8800 0067 58 from the Office of the Clerk, Supreme Court of the United States (no Official letterhead). The cover letter is executed for Scott S. Harris, Clerk by Redmond K. Barnes with a phone number of (202) 479-3022. The required forms were enclosed.

Mr. Plunkett has calculated that he has until January 17, 2024 to file his Petition for Writ of Certiorari based upon the Fifth Circuit's denial of rehearing on October 19, 2023.

II. REASON FOR MOTION

As noted in the preceding section, Mr. Plunkett is housed at a very restrictive facility which, it is believed based upon observable evidence, is not what or where it purports to be. This facility is currently holding Mr. Plunkett outside of DOJ and BOP policy at a purported "Medium" security facility when Mr. Plunkett has minimum security custody points in an effort to deny Mr. Plunkett needed medical treatment in addition to the aforementioned access to the courts, counsel, the press and Congress. See Plunkett v. Warden Garrett, et al., No. 2:23-CV-00116, Eastern District of Arkansas; Plunkett v. Ward, Garland, Wray, et al., No. 5:23-CV-00065, Southern District of Georgia; Plunkett v. DOJ, et al., 1:21-CV-1232.

This facility is frequently locked down and access to the law library is restricted. Being a "medium" security facility, during lockdowns, there is no access even to the Electronic Law Library as this facility does not provide such access in the housing units. Moreover, this facility is particularly prone to lockdown during holidays. As Christmas and the New Year both approach in succession,

based upon the conditions in 2022 under which the facility was locked down for Christmas except meal times, and the reasonable belief that this facility will experience multiple lockdowns over the next few weeks either due to violence, drug overdoses, or holidays, it is unlikely that Mr. Plunkett will be able to spend the time necessary to prepare such an important filing within the time allowed under the Rules of this Court. See USSC Rule 13.

Moreover, Plunkett reasonably believes the government will attempt to prevent Mr. Plunkett from filing his Petition in this Court. As an example, on the date that Mr. Plunkett was to file by Mailbox Rule his Petition for Rehearing En Banc, September 11, 2023, Mr. Plunkett was prevented from going to the institution mail room during the Legal Mail Open House hours of 7:00 - 7:30 AM. Upon Mr. Plunkett's attempt to go to the mailroom during those posted hours, Mr. Plunkett was forced to the Special Housing Unit and his Certified Court mailing was confiscated from him by a corrections officer. Ultimately, it appears that the Fifth Circuit mail did make it as rehearing was denied. Mr. Plunkett was later released the same day from SHU and was not issued an incident report.

What is more, Mr. Plunkett has been completely prevented from filing a state civil action in the Fulton County (GA) Superior Court against Fani Willis, Patrick Labat, and others employed by The United States Department of Justice by the United States Postal Service working in conjunction with the United States Department of Justice through rerouting of Mr. Plunkett's mail. This has caused the statute of limitations on the claims to lapse. Mr. Plunkett is currently in possession of all of the evidence of these claims and actions.

Lastly, as evidenced by Appendix Pages 22-27 attached here and as argued, supra, in the Background section, Mr. Plunkett is not being held at a facility which is commensurate with his actual security level and is currently awaiting transfer from this illegal facility. While the chances that the government will actually transfer Mr. Plunkett from this facility are quite low based upon its prior conduct in this regard, there is a slight chance that the government may attempt to use a transfer as a ruse to prevent Mr. Plunkett from timely filing his Petition for Writ of Certiorari as it would be impossible to do so while in transit and without any of his legal documents. Accordingly, this also adds weight to Mr. Plunkett's argument for extension of time to so file.

III. CONCLUSION

Mr. Plunkett understands that Applications for Extension of Time to Petition for Certiorari are disfavored. However, under the specific set of difficult circumstances faced by Mr. Plunkett in the custody of the government, an extension of time is necessary in the event the government attempts funny business as it has in the past. To prevent Mr. Plunkett from seeking Certiorari in this Court, which after the Fifth Circuit's summary disposition, without explanation or reasoning, is Mr. Plunkett's last judicial stop, would lead to a complete miscarriage of justice not only for Mr. Plunkett, but also for any similarly situated prisoners or defendants who have also suffered gross ineffective assistance of counsel due to affirmative misadvice concerning application of the United States Sentencing Guidelines. To avoid any such possibility of any such miscarriage, the Court should, respectfully, GRANT this Motion.

Wherefor, premises considered, for all of the reasons in law and in fact stated herein, Mr. Plunkett respectfully prays this Honorable Court GRANT the relief requested herein and extend Mr. Plunkett's filing deadline to seek Certiorari from this Court to March 16, 2024 which results in an extension of 59 days.

Respectfully, submitted this 15th day of December, 2023.

I do hereby declare that all of the foregoing is true and correct under penalty of perjury. (See 28 U.S.C. §1746; 18 U.S.C. §1621).

Respectfully,

In Blue Ink
 12/15/23

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