
In the Supreme Court of the United States

JOEL MICHAEL GUY, JR.,

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 Joel Michael Guy, Jr., respectfully applies for a forty-five (45) day extension of time, to and including April 1, 2024, within which to file a petition for writ of certiorari. In support of this application, Mr. Guy states:

1. This is an appeal from convictions on two sets of charges of first-degree murder and abuse of a corpse. Without an extension, the petition for writ of certiorari would be due on February 14, 2024. With the requested extension, the petition will be due on Monday, April 1, 2024. This

application is being filed more than ten days prior to the due date of the petition.

2. Undersigned counsel has contacted opposing counsel, Assistant Attorney General Garrett Ward, 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 28, 2023, affirming Mr. Guy's convictions. *State v. Guy*, 679 S.W.3d 632, 643 (Tenn. Crim. App. 2023). A copy of that opinion is attached hereto as *Appendix A*. A timely petition to rehear was denied by order on May 17, 2023, 2022. A copy of that *Order* is attached hereto as *Appendix B*. Following an application for discretionary review, including review of the claims discussed herein, the Tennessee Supreme Court issued an order denying further review on November 16, 2023. A copy of the *Order* issued at that time is attached hereto as *Appendix C*.
5. This case raises constitutional issues relating to standing and exigent circumstances. On several such issues, there is a split of authority.
6. The Tennessee Court of Criminal Appeals concluded that, even if Mr. Guy was an overnight guest in the house where the challenged search took place, he lost that status due to his actions inside the house (allegedly killing his parents). In doing so, it followed a strand of authority developed in other jurisdictions suggesting that "standing"

(meaning a reasonable expectation of privacy) could be extinguished based on actions taken within a residence. This approach, however, conflicts with this Court's firm guidance, in cases such as *Mincey v. Arizona*, 437 U.S. 385 (1978), that analysis of expectation of privacy cannot depend on a determination of whether the defendant is guilty of the charged crimes or not. In that case the Court rejected "reasoning [which] would impermissibly convict the suspect even before the evidence against him was gathered." *Id.* at 391. That is exactly what happened here -- standing was rejected because the Court concluded that Mr. Guy had murdered his parents while in the house.

7. The Court of Criminal Appeals also concluded that law enforcement had exigent circumstances sufficient to enter into the residence. It concluded that, on the facts in the case, the so-called emergency aid exception was appropriate. It did so even though, in this case, there was no direct evidence of any harm or ongoing emergency inside the house. Rather, officers knew only that one of the residents had not shown up at work that day, alarming a co-worker, and that no one was answering the door even though cars were present. In expanding the emergency aid situation to cover a mere hunch by officers that something was wrong, rather than objective information establishing a need to act with urgency to provide aid to someone in danger, the state court departed from this Court's precedent. *See Illinois v. McArthur*, 531 U.S. 326, 331

(2001) (exigent circumstances involve “specially pressing or urgent law enforcement need”); *cf. Brigham City v. Stuart*, 547 U.S. 398, 403 (2006).

8. The case also raises the issue of whether the emergency aid exception provides an exception only to the warrant requirement or whether it also allows entry in the absence of probable cause. One Justice of this Court recently observed the lack of clarity in this area. *See Caniglia v. Strom*, 593 U.S. 194, 203 (Alito, J., concurring).
9. These issues were raised to the Tennessee Court of Criminal Appeals and in the Application for Permission to Appeal to the Tennessee Supreme Court.
10. This application is not filed for purposes of delay.
11. 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.
12. 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 motions in the criminal courts of Knox County. Finally, counsel spent time with family over the holidays.

13. 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, 2024. A *Certificate of Service* is enclosed herewith.

_____/s/ Jonathan Harwell_____
JONATHAN HARWELL
COUNSEL OF RECORD
Assistant District Public Defender
Knox County Public Defender's
Community Law Office
1101 Liberty Street
Knoxville, TN 37919
Phone: (865) 594-6120

January 31, 2024