

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2023

PIKERSON MENTOR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI FROM THE ORDER OF THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF
THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT
JUSTICE FOR THE ELEVENTH CIRCUIT

Pursuant to Supreme Court Rules 13.5, 22, and 30, Pikerson Mentor respectfully requests a sixty-day extension of time, up to and including May 17, 2024, within which to file a petition for a writ of certiorari from the order of the United States Court of Appeals for the Eleventh Circuit entered on December 19, 2023. *See*

Mentor v. United States, No. 23-11572 (11th Cir. Dec. 19, 2023). Mr. Mentor has not previously sought an extension of time from this Court.

Mr. Mentor is filing this Application at least ten days before the filing date, which is March 18, 2024. *See* S. Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

Following this Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (2019), Mr. Mentor filed an authorized second or successive motion to vacate under 28 U.S.C. § 2255 . On March 10, 2023, the district court denied Mr. Mentor's motion to vacate and declined to issue a certificate of appealability ("COA"). *Mentor v. United States*, 1:20-cv-20470-DLG (S.D. Fla. Mar. 10, 2023) (Dkt. # 39). Mr. Mentor filed a timely notice of appeal, and subsequently moved the United States Court of Appeals for the Eleventh Circuit to issue a COA. The Eleventh Circuit denied Mr. Mentor's motion on December 19, 2023. A copy of the Court of Appeals' Order is attached as Appendix A hereto.

The undersigned counsel will not have sufficient time to prepare and file the petition for writ of certiorari for Mr. Mentor by March 18, 2024, as she is currently working on a number of other matters, including filing the initial brief in *United States v. Saldana*, 11th Cir. No. 23-12858 (due Mar. 4, 2024), and a motion for a reduction in sentence (commonly referred to as "compassionate release") in the district court on or before March 13, 2023. *United States v. Franklin*, No. 95-00787-CR-Graham (S.D. Fla.). Additionally the undersigned will be travelling out of state for an important family event, between March 5th through 9th, 2024. The

undersigned also anticipates filing a reply to the Solicitor General's brief in opposition in *United States v. Herrera Pastran*, No. 23-6161, in this Court, on or before April 18, 2024.

The undersigned counsel believes that additional time is important to ensure the effective representation of Mr. Mentor. No party will be prejudiced by the granting of a sixty-day extension.

Accordingly, since the time within which to file a petition for writ of certiorari in this case will expire on March 18, 2024 unless extended, Mr. Mentor respectfully requests that an order be entered extending his time to file a petition for writ of certiorari by sixty days, to and including May 17, 2024.

Respectfully submitted,

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FEDERAL PUBLIC DEFENDER

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March 1, 2024

APPENDIX A

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11572

PIKERSON MENTOR,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:20-cv-20470-DLG

ORDER:

Pikerson Mentor is a federal prisoner serving a life plus 42-year total imprisonment sentence for several convictions arising from the robbery and killing of a U.S. postal worker, which included convictions for carrying, using, and possessing a firearm during, in relation to, and in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A) and 2, and carrying, using, and possessing a firearm during, in relation to, and in furtherance of a crime of violence resulting in death, in violation of § 924(c)(1)(A), (j)(1), and 2. He seeks a certificate of appealability (“COA”) to appeal the district court’s dismissal of his counseled, amended, authorized successive 28 U.S.C. § 2255 motion, challenging the validity of his convictions under § 924(c) and (j), in light of *United States v. Davis*, 139 S. Ct. 2319 (2019).

To obtain a COA, a movant must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The movant satisfies this requirement by demonstrating that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong,” or that the issues “deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000) (quotations omitted). Moreover, “no COA should issue where the claim is foreclosed by binding circuit precedent because reasonable jurists will follow controlling law.” *Hamilton v. Sec’y, Fla. Dep’t of Corr.*, 793 F.3d 1261, 1266 (11th Cir. 2015).

A criminal defendant who fails to object at trial, or to raise an issue on direct appeal, is procedurally barred from raising the

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claim in a § 2255 motion, absent a showing of cause and prejudice, or a fundamental miscarriage of justice. *United States v. Frady*, 456 U.S. 152, 167-68 (1982). “[T]he Supreme Court held ‘that where a constitutional claim is so novel that its legal basis is not reasonably available to counsel, a defendant has cause for his failure to raise a claim . . .’” *Howard v. United States*, 374 F.3d 1068, 1072 (11th Cir. 2004) (quoting *Reed v. Ross*, 468 U.S. 1, 16 (1984)).

Here, reasonable jurists would not debate the district court’s denial of Mentor’s claim as procedurally defaulted. *See Slack*, 529 U.S. at 484. Because Mentor did not raise this claim on direct appeal, the claim is procedurally defaulted unless he can establish cause and prejudice or actual innocence. *See Frady*, 456 U.S. at 167-68. The district court did not err in concluding that Mentor failed to establish cause and prejudice because this Court’s binding precedent has held that a *Davis* challenge does not constitute a novel constitutional rule that excuses procedural default, and Mentor conceded in his petition that binding precedent foreclosed his argument that there was acceptable cause for the default. *See Granda v. United States*, 990 F.3d 1272, 1287-88 (11th Cir. 2021). Since Mentor cannot establish cause, the cause and prejudice exception does not apply.

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Further, Mentor cannot establish actual innocence, as his motion only challenges his legal innocence and raised no arguments or evidence concerning his factual innocence. Accordingly, his motion for a COA is DENIED.

/s/ Robin S. Rosenbaum

UNITED STATES CIRCUIT JUDGE