No. A-_____

In the Supreme Court of the United States

SEAN GARVIN,
Applicant,

v.

NEW YORK,
Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicant Sean Garvin respectfully requests a 60-day extension of time, to and including Friday, March 23, 2018, within which to file a petition for a writ of certiorari in this case.

The New York Court of Appeals issued its decision on October 24, 2017. Unless extended, the time to file a petition for a writ of certiorari will expire on January 22, 2018. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257. The opinion of the Court of Appeals is not yet published in the Northeast Reporter but is available in the Westlaw database at 2017 WL 4779544.

A copy of the opinion is attached.

1. Applicant was convicted of third-degree robbery and attempted third-degree robbery. Prior to his conviction, he was arrested without a warrant inside the doorway of his home. After having been convicted, he was sentenced as a repeat

offender. The questions that are likely to be presented in the petition are (1) whether the Fourth Amendment permits officers to make a warrantless arrest of a suspect who remains inside the doorway to his home, absent exigent circumstances; and (2) whether New York's persistent offender sentencing scheme violates the Sixth Amendment. The lower court was deeply fractured on both issues, each of which implicates an intractable division of authority.

2. Concerning the first question, the Court of Appeals held that it was "irrelevant" whether defendant was standing outside or inside his home during his arrest; what mattered, instead, was that "the police never entered the defendant['s] home[]." Slip op. 8-9. That holding conflicts with authoritative decisions of several federal courts of appeals. See *United States* v. *Allen*, 813 F.3d 76, 82 (2d Cir. 2016) ("where law enforcement officers have summoned a suspect to the door of his home, and he remains inside the home's confines, they may not effect a warrantless 'across the threshold' arrest in the absence of exigent circumstances"); *United States* v. *Reeves*, 524 F.3d 1161, 1165 (10th Cir. 2008) ("Reeves was inside his room at the time he opened his door and we analyze this encounter as occurring within his home."); *United States* v. *Morgan*, 743 F.2d 1158, 1166 (6th Cir. 1984) (holding that it was the location of the arrested person, and not the arresting agent, that determined where the arrest occurred).

The lower court's sanction of arrests of individuals in their homes strikes "[a]t the very core [of the Fourth Amendment]," which protects "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman* v. *United States*, 365 U.S. 505, 511 (1961). Because the facts pre-

sented here recur frequently, the conflict on this question has substantial implications for law enforcement practices throughout the Nation.

3. Concerning the second question, the Court of Appeals held in *People* v. *Prindle*, 80 N.E.3d 1026 (N.Y. 2017), that New York's repeat-offender statute does not violate the Sixth Amendment. That is so despite that application of the statute requires the trial court to take evidence, hold a hearing, and make findings of fact by "a preponderance of the evidence" (N.Y. Crim. P. Law § 400.20) to determine whether "the history and character of the defendant and the nature and circumstances of his criminal conduct indicate that extended incarceration and life-time supervision will best serve the public interest" (N.Y. Penal Law § 70.10).

The New York Court's decision to uphold this statutory scheme—which it applied in this case—is out of step with this Court's instruction that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi* v. *New Jersey*, 530 U.S. 466, 490 (2000). Several other state supreme courts, reviewing the constitutionality of substantially similar state recidivism laws, have held that they violate the Sixth Amendment under the *Apprendi* line of cases. See *State* v. *Price*, 171 P.3d 1223 (Ariz. 2007); *State* v. *Bell*, 931 A.2d 198 (Conn. 2007); *State* v. *Maugaotega*, 168 P.3d 562 (Haw. 2007); *State* v. *Foster*, 845 N.E.2d 470 (Ohio 2006). See also *Kaua* v. *Frank*, 436 F.3d 1057 (9th Cir. 2006) (invalidating Hawaii statute on habeas review).

Resolution of this question, too, is a matter of significant practical importance. Recidivism laws are ubiquitous throughout state criminal codes and are applied with

regularity. Whether an individual may be subjected to a lengthy mandatory minimum sentence without the input of a jury should not turn on the State in which he was convicted.

4. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Undersigned counsel was retained to prepare the petition only recently and has not yet had an opportunity to familiarize himself with the full trial or appellate record. Undersigned counsel also has several other matters with proximate due dates, including the merits brief for appellants in *Benisek* v. *Lamone*, No. 17-333, due January 22, 2018; and a brief in opposition to certiorari in *D.T.* v. *W.G.*, No. 17-A-463 (petition for cert. filed Dec. 26, 2017), due on or around January 25, 2018. In addition, counsel for applicant have intervening holiday plans.

For the foregoing reasons, the application for a 60-day extension of time, to and including Friday, March 23, 2018, within which to file a petition for a writ of certiorari should be granted.

December 26, 2017

Respectfully submitted.

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