

No. _____

In the Supreme Court of the United States

DAVID GILL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

To the Honorable Ruth Bader Ginsburg, Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Second Circuit:

Petitioner David Gill requests an extension of time of thirty days, until February 16, 2018, to file his Petition for Writ of Certiorari. The Second Circuit decision affirming Mr. Gill's convictions was decided on August 30, 2017 and is attached to this application. The judgment of the Second Circuit denying rehearing and rehearing *en banc*, also attached, was entered on October 19, 2017. The Petition for Writ of Certiorari is

currently due on January 17, 2018. This application is being filed 10 days prior to the due date. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Petitioner's case raises two important issues that will recur in the criminal justice system and require clarification. The facts related to both these issues are not in dispute.

First, this case questions how to determine admissibility of a purported statement against penal interest offered against a criminal defendant pursuant to Fed. R. Evidence 804(b)(3) – part of which is not self-inculpatory of the declarant but is inculpatory of the defendant (at some point “the Gill brothers beat me up and stole my drug money”) -- and specifically, what corroboration is required, in order to satisfy Rules against hearsay after *Williamson* and *Crawford* changed the landscape concerning “reliability.” (There was no corroboration that a beating or larceny had occurred).

The Second Circuit stated that the statement required corroboration but did not note any. The standard of corroboration needed to satisfy the federal rule, with its 2010 requirement that the government also supply corroboration in a criminal case, is a subject about which the Supreme

Court should give guidance.

The last time the Supreme Court discussed statements against interest, it did so under the rubric of the Confrontation Clause, ruling that the “veracity of hearsay statements is sufficiently dependable to allow the untested admission of such statements against an accused when the evidence falls within a firmly rooted hearsay exception or it contains particularized guarantees of trustworthiness such that adversarial testing would be expected to add little, if anything, to the statements' reliability.” *Lilly v. Va.*, 527 U.S. 116, 120 (1999). In 2004, *Crawford v. Washington*, 541 U.S. 36 (2004), dramatically changed Confrontation Clause jurisprudence, and abandoned the “reliability” jurisprudence stemming from *Ohio v. Roberts*, 448 U.S. 56, (1980), that had been used for many years.

The Supreme Court should weigh in on the statement against penal interest – because its use is widespread and the “exemption” is swallowing the rule.

The second issue in this case involves a matter of seeming first impression. In a criminal case requiring “knowledge” of drug quantity, the Second Circuit ruled the evidence was sufficient to show that

Petitioner Gill (convicted along with his two brothers) “knew or should have known” of quantities involved in a business in which the brothers were involved. The constitutionality and propriety of affirming a conviction requiring knowledge and intent to join a conspiracy on a “should have known” standard is at issue.

I am requesting this extension of time due to a crush of other appellate and trial court commitments I face (as a sole practitioner) before or concurrently with the current due date. Alas, facing this load, I also came down with a bout of bronchitis that kept me out of the game, so to speak, for some three weeks in November. I now have to complete, aside from this certiorari petition, a sentencing memorandum in a high-profile case, a Second Circuit brief in a child pornography case, a reply to the government’s (expected and scheduled) opposition to a 2255 petition to which the Court directed a government response, and a mandamus petition.

I therefore request the Court extend time for DAVID GILL to file his petition for certiorari until February 16, 2018.

The person I spoke to on the phone at the Solicitor General’s office said “it is no problem”.

Respectfully submitted,

Vivian Shevitz /s/_____

Attorney for Petitioner David Gill
(CJA appointment)
46 Truesdale Lake Drive
South Salem New York 10590
Tel. No.: (914) 763-2122
vivian@shevitzlaw.com

December 13, 2017
