
NO. 17-8153

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL EDWARD MOORE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

SUPPLEMENTAL BRIEF FOR THE PETITIONER

Erin P. Rust
Assistant Federal Community Defender
FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.
835 Georgia Avenue, Suite 600
Chattanooga, Tennessee 37402
(423) 756-4349

Counsel for Petitioner


Mr. Moore files this supplemental brief to notify the Court that the burglary statute at issue here, Tennessee Code § 39-14-402, is also at issue in *Ferguson v. United States*, No. 17-7496. The *Ferguson* case has been distributed for conference on June 13, 2019, the same date at this case. Both this case and *Ferguson* argued that the Tennessee burglary statute is overbroad under the categorical approach because subsection (a)(3) of that statute does not require the defendant to have an intent to commit a further crime at the exact moment he first unlawfully remains within a building. This argument was addressed and rejected by the Court in *Quarles v. United States*, No. 17-778.

Mr. Ferguson, however, also argued an alternative basis for review: that subsection (a)(3) of the Tennessee burglary statute, Tenn. Code Ann. § 39-14-402, does not require proof that a defendant *ever* developed an intent to commit a further crime. (Ferguson Pet. 32-34); (Ferguson Reply, 5-9). The Court specifically withheld addressing a similar claim made by Mr. Quarles regarding the Michigan statute, because “Quarles offers no support for his suggestion that there is no *mens rea* requirement. In any event, Quarles did not preserve that argument, and we do not address it.” *Quarles v. United States*, __ S. Ct. __, 2019 WL 2412905, *6 n.2 (June 10, 2019). Unlike in *Quarles*, Mr. Ferguson has supported this position, as he has presented both statutory and case law showing that the further crime can be committed recklessly. (Ferguson Pet. 32-34); (Ferguson Reply, 5-9).

This alternative argument was not presented in Mr. Moore's case. However, because *Ferguson* raises these arguments with respect to the exact same statute at issue here, Mr. Moore respectfully asks this court to withhold any decision in this case pending the outcome of *Ferguson*.

Respectfully submitted,

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

By: 

Erin P. Rust

Assistant Federal Community Defender
835 Georgia Avenue, Suite 600
Chattanooga, Tennessee 37402
(423) 756-4349

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Reply has been served upon Noel J. Francisco, Counsel of Record with the Solicitor General, Department of Justice, 10th Street and Constitution Avenue, Washington, D.C., 20530, by placing a true and exact copy of same with Federal Express, with sufficient postage thereon to carry the same to its destination, and via e-mail.

This the 12th day of June, 2019.

A handwritten signature in black ink, appearing to read "ERUST", written over a horizontal line.

Erin Rust
Assistant Federal Community Defender
835 Georgia Avenue, Suite 600
Chattanooga, Tennessee 37402
(423) 756-4349