

IN THE
Supreme Court of the United States

ISHMAEL BAITH FORD-BEY,

Petitioner,

v.

UNITED STATES,

Respondent.

**APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED STATES AND
CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT:

1. Pursuant to Supreme Court Rule 13.5, Ishmael Baith Ford-Bey respectfully requests a 30-day extension of time, to and including March 29, 2018, to file a petition for a writ of certiorari in this case. Applicant has not previously requested an extension. The Fourth Circuit issued its decision on November 29, 2017. *See App.* Absent an extension of time, the petition for a writ of certiorari would be due on February 27, 2018. This application complies with Rules 13.5 and 30.2 because it is being filed ten days or more before the petition is due.

2. This appeal raises significant questions regarding the presumption of reasonableness accorded to within-Guidelines sentences. The “presumption is not binding” and is intended to reflect “the fact that, by the time an appeals court is considering a within-Guidelines sentence on review, *both* the sentencing judge and the

Sentencing Commission will have reached the *same* conclusion as to the proper sentence in the particular case.” *Rita v. United States*, 551 U.S. 338, 347 (2007).

3. Here, Ford-Bey raised a significant question on which the Guidelines provide sentencing judges no guidance at all—rehabilitation between his original sentence and his resentencing. In *Pepper v. United States*, 562 U.S. 476 (2011), this Court struck down a previous Guideline that prohibited consideration of such evidence. In assessing “deterrence, protection of the public, and rehabilitation” under § 3553(a), “there would seem to be no better evidence than a defendant’s post-incarceration conduct.” *Id.* at 491. Rather than give guidance to district judges in applying *Pepper*, however, the Commission eliminated the only on-point Guideline. *See* USSG Amendment 768 (eff. Nov. 1, 2012).

4. Ford-Bey highlighted the absence of an on-point Guideline in requesting oral argument on his claim that the sentencing judge gave unreasonably low weight to his extraordinary post-sentencing rehabilitation. Instead, the Fourth Circuit affirmed without argument. This point highlights that, in practice, rebuttability under *Rita* has proven more theoretical than real.

5. This Court, including in *Rita*, has granted certiorari in cases where the Fourth Circuit issued an unreported per curiam opinion without argument. *See, e.g., Benisek v. Mack*, 584 F. App’x 140, 141 (4th Cir. 2014), *rev’d and remanded sub nom. Shapiro v. McManus*, 136 S. Ct. 450 (2015); *Chen v. Mayor & City Council of Baltimore*, 546 F. App’x 187, 188 (4th Cir. 2013) (summary affirmance), *cert. granted*, 135

S. Ct. 475 (2014), *cert. dismissed*, 135 S. Ct. 939 (2015); *United States v. Rita*, 177 F. App'x 357 (4th Cir.), *cert granted*, 549 U.S. 1016 (2006).

6. Counsel has diligently been preparing a draft petition, but requires further time to refine the question presented and the argument in support of the petition. Counsel intends to use the time to consult with other members of the Court's bar and with subject-matter experts.

7. This Court would have jurisdiction under 28 U.S.C. § 1254(1).

8. The requested extension would not result in unfair prejudice to the Government.

For the foregoing reasons, Ford-Bey respectfully requests that the time for filing a petition for a writ of certiorari in this case be extended to and including March 29, 2018.

Respectfully submitted:

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