

IN THE SUPREME COURT OF THE UNITED STATES

No. A-_____

ROSS WILLIAM ULBRICHT, APPLICANT

v.

UNITED STATES OF AMERICA

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

Pursuant to Rules 13.5 and 30.2 of this Court, counsel for Ross William Ulbricht respectfully requests a 30-day extension of time, to and including December 28, 2017, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case. The United States Court of Appeals for the Second Circuit entered its judgment on May 31, 2017. App., infra, 1a-139a. It denied a petition for rehearing on August 30, 2017. Id. at 140a. Unless extended, the time for filing a petition for a writ of certiorari will expire on November 28, 2017. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. In 2009, applicant, a 25-year-old college graduate and committed libertarian, began working to create an online marketplace that would allow users to buy goods anonymously and securely. Applicant's efforts culminated in 2011 in the creation of a website called the Silk Road, which allowed individual users to create

accounts anonymously to buy and sell a wide range of goods and services. Users bought and sold a variety of illegal goods on the Silk Road website, including drugs, false identification documents, and computer hacking software. App., infra, 4a, 15a.

In 2012, the lead administrator of the Silk Road website adopted the username "Dread Pirate Roberts," a reference to the novel and film The Princess Bride (in which Dread Pirate Roberts was a pseudonym periodically passed from one individual to another). Applicant's theory at trial was that he abandoned his interest in the Silk Road website in 2011, but was lured back by a successor administrator toward the end of the site's operation so that he would take the blame for the site. App., infra, 5a, 15a-16a, 22a.

In its investigation of the Silk Road website, the government was able to locate applicant and eventually to monitor his Internet traffic and location in real time. The government seized applicant's private Internet traffic information without a warrant or probable cause, using pen registers and tap and trace devices. A pen register is a device that records the dialing, routing, addressing, or signaling information transmitted to a particular device, such as a telephone, computer, or e-mail account. A trap and trace device is like a pen register, only it collects incoming (rather than outgoing) data. Together, the combination of a pen register and a trap and trace device is known as a "pen/trap." App., infra, 6a, 36a-37a. The government used the devices pursuant to pen/trap orders under the Electronic Communications Privacy Act. Under the Act, the government need only submit an application

in which a government attorney certifies that the information "likely to be obtained" by the device is "relevant" to an ongoing criminal investigation. 18 U.S.C. 3122. The application does not require a showing of probable cause. After extensive surveillance with the pen/trap devices, applicant was arrested. App., infra, 6a-7a, 12a-14a, 37a-38a.

2. A grand jury in the Southern District of New York indicted applicant on numerous counts of drug trafficking and related offenses. Before trial, applicant moved to suppress evidence gathered in the course of the government's warrantless pen/trap surveillance, contending that a warrant was required. App., infra, 7a. The district court denied the motion. Id. at 35a, 38a.

After a highly publicized trial, applicant was convicted on all counts. Under the relevant statutes, applicant's convictions exposed him to a mandatory minimum sentence of 240 months in prison and a maximum sentence of life in prison. App., infra, 32a-33a. Under the Sentencing Guidelines, applicant's offenses and complete lack of criminal history should have resulted in a Guidelines range substantially below the statutory maximum. But the district court sentenced applicant to life imprisonment without the possibility of parole -- a sentence almost unheard of for a first-time offender charged with the offenses at issue. The district court imposed that sentence by resolving several disputed issues of fact; absent those judge-found facts, applicant's sentence would have been unreasonable. Id. at 32a-33a, 137a-138a.

3. Applicant appealed. As is relevant here, he argued that the district court erred in denying his motion to suppress the

evidence from the pen/trap devices and that his life sentence was both procedurally and substantively unreasonable.

The court of appeals affirmed. App., infra, 1a-139a. As to the denial of applicant's motion to suppress, the court noted at the outset that the collected information about Internet traffic was "akin to data captured by traditional telephonic pen registers and trap and trace devices." Id. at 38a (internal quotation marks and citation omitted). Relying on the so-called "third-party doctrine" developed in the context of telephone calls in Smith v. Maryland, 442 U.S. 735 (1979), the court concluded that applicant had no reasonable expectation of privacy in his Internet traffic information because he voluntarily conveyed it to his Internet service provider and to third-party servers. App., infra, 39a-40a. Although the court acknowledged that "questions have been raised about whether some aspects of modern technology * * * call for a re-evaluation" of the rule of Smith, it nevertheless viewed itself as "bound * * * by [Smith] until and unless it is overruled by the Supreme Court." Id. at 40a-41a.

As to the reasonableness of the sentence, the court of appeals ultimately upheld the sentence, although it "did not reach [its] conclusion lightly." App., infra, 138a. Even though a "life sentence for selling drugs alone would give pause," the court of appeals differentiated this case from the typical drug-trafficking case based on the district court's factual findings at sentencing. Id. at 129a. In particular, the court reasoned that the district court's finding that applicant had "[c]ommission[ed] * * * mur-

ders significantly justified the life sentence," rendering it substantively reasonable. Id. at 129a n.68; see id. at 131a. Petitioner was never charged for allegedly commissioning these murders, and at trial the government acknowledged that the alleged murders-for-hire did not actually occur. See id. at 19a.

The court of appeals likewise upheld applicant's sentence as procedurally reasonable, despite the district court's decision to take into account six allegedly "drug-related" deaths it concluded were "in some way[] related to" the Silk Road. App., infra, 33a, 112a-124a. At the outset, the court of appeals stated that there was "no need" for the government to introduce such "emotionally inflammatory" evidence at sentencing, "let alone to hammer the point home with unavoidably emotional victim impact statements by parents of two of the decedents." Id. at 117a. But the court of appeals ultimately concluded that the district court was permitted to consider the uncharged conduct, found by a preponderance of evidence, as long as the facts did not increase the statutory maximum sentence for the crimes for which applicant was found guilty. Id. at 113a-116a, 119a, 123a.

The court of appeals rejected applicant's constitutional argument (supported by various opinions by members of this Court) as having "no support in existing law." App., infra, 137a n.72. Although the court of appeals "might not have imposed the same sentence [itself] in the first instance" in this case, it determined that the district court's factual findings brought applicant's sentence within a permissible range. Id. at 137a-138a.

Based on those findings, the court of appeals upheld what it described as the district court's exercise of its "power to condemn a young man to die in prison" in this case. Id. at 138a.

4. The court of appeals subsequently denied a petition for rehearing without recorded dissent. App., infra, 140a.

5. Counsel for applicant respectfully requests an extension of time, to and including December 28, 2017, within which to file a petition for a writ of certiorari. The court of appeals' lengthy decision in this case presents complex issues concerning the constitutional protection for privacy rights in the digital age and the role of a jury in resolving factual disputes that affect the amount of time a criminal defendant serves in prison. The undersigned counsel did not represent applicant below. In addition, the undersigned counsel is currently preparing to present argument in this Court in Digital Realty Trust, Inc. v. Somers, No. 16-1276, on November 28. Additional time is therefore needed to prepare and print the petition in this case.

Respectfully submitted.


KANNON K. SHANMUGAM
Counsel of Record
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000

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