

No. 17A

IN THE SUPREME COURT OF THE UNITED STATES

JOSEPH A. FERRIERO, Petitioner,

v.

UNITED STATES, Respondent.

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

TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE
FOR THE THIRD CIRCUIT:

Pursuant to this Court's Rules 13.5 and 30.2, applicant-petitioner Joseph A. Ferriero prays for a 30-day extension of time to file his petition for a writ of certiorari in this Court to and including January 11, 2018.

1. Timeliness and Jurisdiction. On August 4, 2017, the United States Court of Appeals for the Third Circuit filed its opinion and judgment affirming the applicant's convictions and sentence. Appx. A. The applicant filed a timely petition for rehearing, which was denied by Order filed September 13, 2017. Appx. E. As a result, pursuant to this Court's Rules 13.1 and 13.3, a petition for certiorari would be due on or before December 12, 2017. This application is being filed less than ten days before that date (to wit, seven days) for reasons explained below. See Rule 30.2. The jurisdiction of this Court is to be invoked under 28 U.S.C. § 1254(1).

2. Opinions Below. The Third Circuit's precedential opinion (per Scirica, J., with Hardiman, J. & Rosenthal, D.J.), dated August 4, 2017, is attached as Appendix A. It is published at 866 F.3d 107. The United States District Court for the District of New Jersey (Salas, J.) wrote a memorandum opinion, filed on January 15, 2015, addressing the pretrial motion to dismiss. That opinion is not published in the Federal Supplement, but is available at 2015 WL 225806. A copy is Appendix B. The district court also wrote opinions with respect to the applicant's post-trial motions for judgment of acquittal or for a new trial, and in support of its denial of bail pending appeal. Again, these are not published, but are available at 2015 WL 7737341 (Dec. 1, 2015), and 2016 WL 1030849 (March 14, 2016), respectively. Copies are attached as Appx. C and D.

3. Reasons for Granting the Extension.

a. The applicant was found guilty after a 26-day jury trial on counts 1, 3, and 5 of a five-count indictment arising out of his conduct as a political party chairman. The indictment charged that Mr. Ferriero had accepted bribes and committed wire fraud under various federal statutes, with the government's bribery theory based on incorporation of state law.

(i) Count One charged the applicant with RICO, in violation of 18 U.S.C. § 1962(c), by conducting the affairs of the Bergen County (NJ) Democratic Organization ("BCDO") through a pattern of racketeering activity, between December 2001 and October 2008, in three separate schemes. As to the only scheme on which Mr. Ferriero was convicted, the indictment charged racketeering acts that allegedly

constituted the commission of New Jersey State bribery, by accepting and agreeing to accept a benefit consisting of a percentage share of the gross revenues from contracts to adopt a “reverse-911” communications product (“C3”) being offered to municipal governments, in exchange for his recommendations as a party official, and the decisions of public officials over whom he held apparent and actual influence, in five municipalities.

(ii) Count Three charged a substantive violation of the Travel Act, 18 U.S.C. §§ 1952(a)(1) and (3), and § 2, by knowingly and intentionally causing the U.S. Mail to be used with intent to establish and distribute the proceeds of the same alleged bribery offense in April 2008.

(iii) Finally, Count Five charged wire fraud in violation of 18 U.S.C. § 1343, from August 2007 until October 2008, in connection with an alleged scheme to defraud and obtain money from the borough of Cliffside Park (Count Five) by materially false and fraudulent representations concerning the ownership of C3.

b. The applicant was sentenced on December 4, 2015, to serve concurrent terms of 35 months’ imprisonment, and to pay \$11,875 each in restitution and forfeiture. He has completed his term of imprisonment and has recently commenced service of a term of supervised release.

c. Applicant Ferriero filed a timely, counseled appeal from his convictions. He argued that the evidence was insufficient to prove any of the counts of conviction, properly construed. He also argued in particular that bribery of a political party official was not “bribery” within the meaning of either RICO or the Travel Act, and

thus not within the scope of state laws incorporated into those federal crimes. He also argued that the statutory construction theories supporting his convictions were inconsistent with this Court's recent case law narrowing the scope of federal laws criminalizing activity in the state political arena. In a precedential opinion, the court of appeals rejected those arguments and affirmed. Appx. A.

d. In undersigned counsel's professional opinion, this case presents at least two issues of statutory construction, concerning provisions under which the applicant was convicted, which meet the criteria outlined in this Court's Rule 10 for a grant of certiorari. Counsel anticipates that the petition will present the following questions:

(1) Does the term "bribery" as used in either the Travel Act, enacted in 1961, or RICO, enacted in 1970, include "bribery" of a local political party official, where such bribery is prohibited by state law, in light of the fact that no such offense was known to general American criminal law in the 1960s?

(2) Does extending the incorporation of state law "bribery" under federal criminal laws such as the Travel Act, wire fraud and RICO to reach local volunteer political party leaders, violate the principles of federalism, Due Process vagueness, and First Amendment associational rights enforced by this Court's recent decisions, including *McDonnell v. United States*, 579 U.S. —, 136 S.Ct. 2355 (2016)?

e. Undersigned counsel has been trying repeatedly to reach the applicant, since his release from prison, in every way he knew how (including telephone, email, and through intermediaries), to discuss with Mr. Ferriero the option of petitioning

this Court for a writ of certiorari, and to emphasize the deadlines associated with that process (including the ten-day advance rule for extensions of time). Mr. Ferriero did not respond until today, and in that conversation seemed not to have appreciated the significance of the deadlines included in counsel's communications. Mr. Ferriero advised counsel that he has been severely depressed and nearly dysfunctional over his recent reversal of fortune, due to his convictions and imprisonment, and was embarrassed at his inability to pay an appropriate fee. At the same time he strongly expressed his desire that the case be pursued in this Court, in light of the strong issues presented. In response, undersigned counsel advised that he was willing to file this Application immediately, but that no assurance could be given that the Circuit Justice would grant the requested extension. Counsel informed the applicant, however, that if an extension is granted, counsel was willing to prepare and file a petition for a fee that is less than half of what he normally charges.

f. Undersigned counsel briefly considered whether it might be possible to prepare and file a compliant and competent petition within the seven days remaining before the deadline, but quickly realized he could not. Counsel's two-lawyer practice focuses on federal criminal appeals. We already have two reply briefs due early next week. Counsel is also committed to presiding over a Board of Directors meeting all day Saturday for a nonprofit, public interest organization whose board he chairs. As a result of these circumstances, counsel cannot manage to file the petition in this case by the initial December 12, 2017, due date and still satisfy his own or this Court's high standards.

g. Applicant Ferriero has completed service of the term of incarceration imposed as part of the sentence in this case. He does not seek delay for any tactical reason. For the same reason, the government would not be prejudiced by the requested extension.

WHEREFORE, the Applicant-Petitioner prays that the Circuit Justice enter an Order extending the time within which he may petition this Court for certiorari by 30 days, to and including January 11, 2018.

Dated: December 5, 2017

Respectfully submitted,

By: PETER GOLDBERGER
50 Rittenhouse Place
Ardmore, PA 19003-2276
(610) 649-8200
peter.goldberger@verizon.net
Counsel for the Applicant