

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ANTONIO MINNIS

Applicant

v.

UNITED STATES OF AMERICA

Respondent

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

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Dated: February 2, 2018

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APPLICATION

To the Honorable Neil M. Gorsuch, Associate Justice of the United States Supreme Court and Circuit Justice for the Eighth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, Applicant Antonio Minnis respectfully requests a 30-day extension, to and including March 16, 2018, of the time within which he may file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

Mr. Minnis makes the following statement in support of this request.

1. The Court of Appeals issued its decision in this case on October 6, 2017. Appendix A. Mr. Minnis filed a petition for rehearing by the appellate panel. Appendix B. The Court of Appeals denied that petition on November 16, 2017. Appendix C. Unless extended, the time for filing a petition for certiorari will expire on February 14, 2018. This application is being filed more than 10 days before the current filing deadline for that petition. *See* S. Ct. R. 13.5. This Court has jurisdiction by virtue of 28 U.S.C. § 1254(1).

2. This appeal challenges the sentence imposed upon Mr. Minnis after he pled guilty to a drug trafficking charge. The District Court found that Mr. Minnis was a career offender within the contemplation of U.S.S.G. § 4B1.2 by virtue of two prior convictions, one of which was for attempted first degree assault in

violation of Mo. Rev. Stat. § 564.011 and 565.050. The Court enhanced Mr. Minnis' sentence on the basis of both convictions.

3. Mr. Minnis contends that under Missouri law conviction of attempted first degree assault can occur in the absence of proof that the defendant formed an intent to commit an assault before taking what otherwise would be a substantial step toward the commission of that crime. Career offender enhancement on the basis of such a conviction is precluded by the categorical analysis established by this Court in *Taylor v. United States*, 495 U.S. 575 (1990), *Descamps v. United States*, 133 S. Ct. 2276 (2013), *Johnson v. United States*, 135 S. Ct. 2551 (2015), and *Mathis v. United States*, 136 S. Ct. 2243 (2016).

4. In *State of Missouri v. Lammers*, 479 S.W.3d 624 (Mo. 2016), the Missouri Supreme Court affirmed the conviction of a mentally ill young man who had watched a video about the school shooting in Columbine, Colorado, and “envisioned” himself engaging in similar acts. He subsequently purchased two assault rifles and ammunition and once practiced shooting cans with the weapons. The sole evidence regarding *mens rea* was provided by a police officer who interviewed the defendant. The Missouri Supreme Court summarized the interview:

During the interview, [Mr. Lammers] admitted that, prior to purchasing the weapons, he had envisioned committing a mass shooting, specifically at the Bolivar Walmart, but that he changed his mind after taking target practice.

Officer: So tell me about your thoughts you had.

Defendant: Well I was watching ... there's this movie called April Showers. It's about Columbine.

Officer: Ok.

Defendant: Well, my sister was in it. And I was like oh it's just ... I want to see what it was about. It was a high school shooting and I was like ... I don't want, I was ... these thoughts were going through my head, like, what would happen if I ever did that. So I went out and bought [the assault rifles] and then I realized I don't want to spend the rest of my life in prison. I don't want to do that.

Officer: But here, but here's the thing. You're not in school.

Defendant: No I'm out of school.

Officer: So you wouldn't shoot up ... where did you, where did you think about shooting up?

Defendant: Walmart.

Officer: Walmart?

Defendant: Yes sir. It was when I thought that. But then I realized when I went shooting ... I was like this, this isn't me. I don't know why I did this.

Later in the interview, Defendant described being in the Walmart on an occasion prior to when he bought the assault rifles. He was looking through the magazines and thinking about concealed weapons:

Defendant: ... I was like oh that looks pretty cool.

Officer: And then it just came to you I'm going to shoot up Walmart?

Defendant: Yeah.

When asked about his plan specifically from start to finish, Defendant stated that he would just walk into Walmart, start shooting people at random, and wait until police arrived. The detective then questioned why, if his target was Walmart, he did not act the same day he bought the guns. The detective asked Defendant if his actual target was a movie theater due to the similarities between these circumstances and the recent movie theater shooting in Aurora, Colorado, and the fact that the popular film “The Twilight Sage: Breaking Dawn—Part 2” was scheduled to premiere the same week Defendant bought the assault rifles. Defendant admitted he had considered this, but reaffirmed that his real target would have been the Walmart because there was sure to be many people there and, if he ran out of ammunition, he could easily reload.

Lammers, 479 S.W.3d at 630-31. In the transcript of Mr. Lammers’ trial, the interrogating officer acknowledged his uncertainty about when the defendant had those “bad thoughts” about shooting people at a movie theater or a store, as opposed to his initial “envisioning” of himself emulating the Columbine crimes:

Q. But he didn’t tell you when he had the thoughts, did he?

A. That’s correct.

Q. Okay. He may have had the thoughts after he got the gun.

A. He very well could have.

Q. All right. As a matter of fact, what he did tell you was ... that when he had those thoughts, that is why he gave those guns to somebody else, isn’t it?

A. He said that he – he was afraid of what he would do with them, so absolutely.

5. Particularly in view of the transcript before the Missouri Supreme Court in *Lammers*, the elements of attempted first degree assault under Mo. Rev. Stat. §§ 565.050 and 564.011, which define the crime of attempted first degree assault in conventional terms, are broader than the elements of the generic crime. The state court's application of those statutes by the Missouri Supreme Court cannot be reconciled with a requirement of proof beyond a reasonable doubt that an individual charged with attempted first degree assault first have formed an intent to commit assault and then have taken action that might complete an attempt to commit the crime.

6. Review by writ of certiorari is warranted to secure conformity with this Court's precedent. Granting Mr. Minnis' petition also would give the Court occasion to provide any clarification or further development that the doctrine of the cited opinions might need.

7. Mr. Minnis has retained the undersigned attorney to serve as counsel of record and file a petition for certiorari. Counsel lately has been responsible for the following matters with deadlines during the time before Mr. Minnis' petition would be due absent extension.

a. *Kuehn v. Hammond*, No. 13SL-CC04353, St. Louis County, Missouri, Circuit Court. Counsel was responsible for preparing the plaintiff's briefs addressing numerous evidentiary issues and responding to the defendants' motions

seeking dismissal. The briefing was completed on January 18, 2018, and the motions were heard and ruled upon the following day. Trial of the case was scheduled to begin February 5, 2018, but was postponed due to unanticipated limitations of the jury pool.

b. *Crane Co. v. Poage*, No. 17-900, United States Supreme Court. Counsel will have partial responsibility for drafting the respondent's brief in opposition to the petition for a writ of certiorari. The brief is due on February 19, 2018.

c. *In re MSR Resort Golf Course LLC*, No. 17-3975, United States Court of Appeals, Second Circuit. The Court of Appeals assigned this appeal to a mediator and scheduled mediation on February 7, 2018. Counsel anticipates completing and filing the appellant's mediation statement on or about February 2, 2018. Counsel also is engaged in the preparation of the appellant's brief on the merits of the case.

Mr. Minnis requests this extension of time to permit counsel to prepare a petition that thoroughly addresses the issues raised in this case and fully sets forth the rationale for review by this Court.

WHEREFORE, Applicant Antonio Minnis respectfully requests that an order be entered extending his time to file a petition for certiorari to and including March 15, 2018.

Respectfully submitted,

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