

No. A-

IN THE
Supreme Court of the United States

SEIFULLAH ABDUL-SALAAM,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN
WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA

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DATED: MARCH 6, 2018

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

Pursuant to Rule 13.5 of the Rules of this Court, Seifullah Abdul Salaam respectfully requests a sixty (60) day extension of time within which to file a petition for a writ of certiorari to the Supreme Court of Pennsylvania. In support thereof, Petitioner submits as follows:

1. This is a capital case. Mr. Abdul-Salaam intends to file a Writ of Certiorari to the Supreme Court of Pennsylvania seeking review of that Court's denial of his claim that his death sentence is unconstitutional as it relied in part on a statutory aggravating circumstance, 42 Pa. C. S. §9711(d)(9) (significant history of felony convictions involving the use or threat of violence to the person), that is void for vagueness.

2. A Cumberland County Court of Common Pleas jury convicted Mr. Abdul-Salaam of murder in the first degree on March 15, 1995, and sentenced him to death the next day. *Commonwealth v. Abdul-Salaam*, CP-21-CR-0001499-1994 (Cumberland C.P., Crim. Div.) (Hess, J., presiding). The Supreme Court of Pennsylvania affirmed Petitioner's convictions and

sentence of death on direct appeal. *Commonwealth v. Abdul-Salaam*, 678 A.2d 342 (Pa. 1996), *cert. denied sub nom.*, *Abdul-Salaam v. Pennsylvania*, 520 U.S. 1157 (1997).

3. Timely post-conviction litigation commenced thereafter and the petition was denied by the post-conviction court. The Supreme Court of Pennsylvania affirmed the denial of relief. *Commonwealth v. Abdul-Salaam*, 808 A.2d 558, 561 (Pa. 2001).

4. Federal habeas corpus proceedings were initiated on November 25, 2002. On April 24, 2014, the District Court denied relief on all claims. A timely appeal to the United States Court of the Appeals for the Third Circuit is currently pending.

5. On June 26, 2015, this Court held the residual clause in the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(B), containing statutory language similar to the (d)(9) aggravating circumstance, unconstitutionally void for vagueness. *Johnson v. United States*, 135 S. Ct. 2551 (2015). On April 18, 2016, this Court held *Johnson* to be retroactive in *Welch v. United States*, 136 S. Ct. 1257 (2016). On June 16, 2016, within 60 days of *Welch*, Mr. Abdul-Salaam filed for post-conviction relief pursuant to the Post Conviction Relief Act (PCRA) alleging the unconstitutionality of aggravating circumstance 42 Pa. C.S. §9711(d)(9).¹

6. On March 28, 2017, the post-conviction court denied the petition. On April 25, 2017, Mr. Abdul-Salaam appealed to the Supreme Court of Pennsylvania from the March 28, 2017 order denying his petition for relief under the PCRA.

¹ In Pennsylvania, timeliness of challenges predicated on new, and retroactive, constitutional provisions are triggered by the date the rule was held to be retroactive, not the date the right accrued. 42 Pa. C.S. § 9545 (b)(1)(iii) (“the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section *and has been held by that court to apply retroactively.*”).

7. On December 19, 2017, the Supreme Court of Pennsylvania affirmed Mr. Abdul Salaam's convictions and death sentence. *Commonwealth v. Abdul-Salaam*, 174 A.3d 1049 (Pa. 2017) (attached).

8. Petitioner wishes to file a Petition for Writ of Certiorari seeking review of the Supreme Court of Pennsylvania's December 19, 2017 decision. Unless extended, the time within which to file a petition for a writ of certiorari will expire on March 19, 2018.

9. Currently before this Court is *Sessions v. Dimaya*, No. 15-1498 (argued October 2, 2017). The issue there is whether the rule in *Johnson* extends to the similarly worded provision, 18 U.S.C. 16(b), as incorporated into the Immigration and Nationality Act's provisions governing an alien's removal from the United States. The resolution in *Dimaya* will likely inform the scope and merits of challenges to state court provisions that likewise share similarities to the provision found void for vagueness in *Johnson*.

10. This request is made more than ten (10) days prior to the March 19, 2018 filing deadline herein and is timely.

WHEREFORE, Petitioner requests that the Court allow a sixty (60) day extension for the preparation and filing of this Petition for Writ of Certiorari to the Supreme Court of Pennsylvania addressing the post-conviction appeal decision of that Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I am a member in good standing of the bar of this Court and that on this 6th day of March, 2018, I caused one copy of the foregoing Application For An Extension Of Time Within Which To File A Petition For A Writ Of Certiorari To The Supreme Court of Pennsylvania to be served by United States mail, postage prepaid on the counsel identified below, pursuant to Rule 29.4(a) of the Rules of this Court. All parties required to be served have been served.

Counsel for Respondent:

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David Lee Zuckerman
David Lee Zuckerman

EXHIBIT

174 A.3d 1049 (Mem)
Supreme Court of Pennsylvania.

COMMONWEALTH of Pennsylvania, Appellee
v.
Seifullah ABDUL-SALAAM, Appellant

No. 737 CAP
|
December 19, 2017

Appeal from the Order entered on 3/28/17 in the Court of
Common Pleas, Cumberland County, Criminal Division,
dismissing PCRA relief at No.
CP-21-CR-0001499-1994

Attorneys and Law Firms

Michael Wiseman, Esq., Law Office of Michael
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Community Defender Office for the Eastern District of
PA, for Seifullah Abdul-Salaam, Appellant.

Jaime M. Keating, Esq., Charles John Volkert Jr., Esq.,
Cumberland County District Attorney's Office, for
Commonwealth of Pennsylvania, Appellee.

Opinion

ORDER

PER CURIAM

AND NOW, this 19th day of December, 2017, the Order
of the Court of Common ***1050** Pleas is AFFIRMED. *See*
Commonwealth v. Spatz, — Pa. —, 171 A.3d 675
(2017).

All Citations

174 A.3d 1049 (Mem)

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