

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TRENTON R. BIRCHETTE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**APPLICATION FOR EXTENSION OF TIME IN WHICH TO
FILE PETITION FOR WRIT OF CERTIORARI**

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the Fourth Circuit.

Petitioner, by his attorney, respectfully makes application pursuant to Supreme Court Rule 13.5 and Rule 22 to extend the time in which to file a petition for writ of certiorari from the judgment entered by the United States Court of Appeals for the Fourth Circuit. In support thereof, counsel states the following:

1. Petitioner Trenton R. Birchette was convicted by a jury in federal court of four counts: possession with intent to distribute cocaine and cocaine base under 21 U.S.C. § 841; use of a communication facility under 21 U.S.C. § 843(b); possession of a firearm in furtherance of drug trafficking under 18 U.S.C. § 924(c); and possession of a firearm subsequent to a conviction for a felony under 18 U.S.C. § 922(g). The district court

sentenced Mr. Birchette to serve 130 months in prison. During the jury deliberations, a black juror asked to speak privately with the district judge, which request was refused. Immediately after the trial, a different black juror approached the defense team and made some statements, reporting to the defense team that some statements involving race were made during jury deliberations by a white juror within the jury room. In accordance with the Local Rules of the Eastern District of Virginia, counsel asked no follow-up questions of the juror. Counsel immediately returned to the courthouse and informed the government about the juror contact. Counsel for Mr. Birchette later filed an ex parte request for leave to interview the juror, in order to investigate whether there was a potential basis for a motion for a new trial under this Court's decision in *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 869 (2017). The district court denied the defense leave to investigate, and later denied a motion for reconsideration.

2. On appeal, the Fourth Circuit affirmed, concluding that the district court did not abuse its discretion in denying the defense leave to investigate the potential claim under this Court's decision in *Pena-Rodriguez*, 137 S. Ct. 855.

3. The Fourth Circuit issued its decision on November 7, 2018. This Court has jurisdiction over Mr. Birchette's case pursuant to 28 U.S.C. § 1254(1). His petition for a writ of certiorari is due on February 5, 2019.

4. The appellate attorney assigned to this case, Caroline S. Platt, recently has had or soon will have the following filings (in the U.S. Court of Appeals for the Fourth Circuit

unless otherwise noted): a petition for certiorari with the Supreme Court in *United States v. Edward Kehoe*, No. 17-4536, on November 19, 2018; the reply brief in *United States v. Darryl Seay*, No. 18-4383, on January 4, 2019; the opening brief and joint appendix in *United States v. Timothy Ward*, No. 18-4720, on January 16, 2019; and the opening brief and joint appendix in *United States v. Jaison Feliciana*, No. 18-4703, on January 16, 2019. In addition, Ms. Platt presented oral argument in *United States v. Billy Curry*, No. 18-4233, on December 12, 2018, and will present argument in *United States v. Christopher Rodriguez-Soriano*, No. 18-4291, on January 30, 2019, as well as assist her colleagues with preparation for the several other cases her office will present during that Fourth Circuit court week.

5. In light of appellate counsel's briefing deadlines and other obligations, counsel for Mr. Birchette request an extension of sixty days, from February 5, 2019, to April 6, 2019, in which to file the petition for writ of certiorari in Mr. Birchette's case.

Wherefore, Petitioner prays that this application be granted.

Respectfully submitted,

GEREMY C. KAMENS
Federal Public Defender
for the Eastern District of Virginia

Caroline S. Platt

Caroline S. Platt
Appellate Attorney
Counsel of Record
Keith Loren Kimball
Assistant Federal Public Defender
Office of the Federal Public Defender
1650 King Street, Suite 500
Alexandria, VA 22314
(703) 600-0800
caroline_platt@fd.org

December 19, 2018