

No. _____

**In The
Supreme Court of the United States**

COMMONWEALTH OF PENNSYLVANIA,
Applicant

v.

MICHAEL J. HICKS,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF PENNSYLVANIA

**UNOPPOSED APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI**

To the Honorable Samuel A. Alito, Jr.
Associate Justice of the United States Supreme Court
and Circuit Justice for the Third Circuit

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**UNOPPOSED REQUEST FOR EXTENSION OF TIME TO FILE
A PETITION FOR WRIT OF CERTIORARI**

Pursuant to Rule 13.5 of the Rules of this Court, Applicant, the Commonwealth of Pennsylvania, by and through Lehigh County District Attorney James B. Martin, hereby requests a 29-day extension of time within which to file a petition for a writ of certiorari up to and including Friday, September 27, 2019. **Undersigned counsel has conferred with counsel for Respondent, Kathryn R. Smith, Esquire, who indicates she is not opposed to the extension of time.**

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is Commonwealth of Pennsylvania v. Michael J. Hicks, No. 56 MAP 2017, 208 A.3d 916 (May 31, 2019). The majority and concurring opinions are attached as Exhibit 1.

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1257(a). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for writ of certiorari is due to be filed on or before August 29, 2019. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition for writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

In the instant case, the Supreme Court of Pennsylvania overruled Commonwealth v. Robinson, 600 A.2d 957 (Pa.Super. 1991), which held that possession of a concealed firearm in public was sufficient to create reasonable suspicion that the individual may be dangerous, such that an officer can approach

that person and briefly detain him. In Hicks, the Majority concluded that, contrary to the longstanding law of Pennsylvania in Robinson, there was “no justification for the notion that a police officer may infer criminal activity merely from an individual’s possession of a concealed firearm in public.”

Police learned that Hicks was in possession of a firearm which he had shown to another person and placed in his waistband before entering a convenience store. Hicks eventually left the store and went back to his car, where he was stopped by police. Believing Hicks had moved his hands inside the car, police retrieved the gun, eventually determining Hicks had a license to carry it. He also was found to be in possession of marijuana, and was charged with driving under the influence, possession of marijuana, and disorderly conduct.

Analyzing the stop under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the Pennsylvania Supreme Court concluded that the fact that a person is known to be in possession of a concealed weapon does not give rise to the conclusion that criminal activity is afoot. Therefore, according to Hicks, the question of whether a suspect is armed and dangerous is irrelevant; and mere dangerousness is insufficient to justify a stop. Concluding that the sole basis of the stop was the observation of a concealed firearm, Hicks held the stop was unlawful, and vacated Hicks’ convictions.

In its analysis, the Court rejected an “element-or-defense” test under which courts in other jurisdictions have permitted seizures for conduct where licensure serves as an affirmative defense. The Court concluded that this sort of test

impermissibly allows the legislature to curtail Fourth Amendment protections. However, a concurring Justice opined that rejecting the element-or-defense test has significant consequences for law enforcement's ability to investigate criminal activity involving licensures, and is out of step with other jurisdictions.

In light of the serious consequences of Hicks for law enforcement officers, Applicant has sought input from the National District Attorneys Association, Pennsylvania District Attorneys Association (PDAA), and the Pennsylvania Chiefs of Police Association in preparing its petition for writ of certiorari. Applicant anticipates the filing of an amicus curiae brief by the PDAA and/or one of the other aforementioned organizations, noting that the PDAA filed an amicus brief in the Supreme Court of Pennsylvania. A 29-day extension of time to file the petition for writ of certiorari will allow Applicant sufficient time to address the constitutional and legislative implications of the Hicks decision and for the filing of any amicus curiae briefs. Accordingly, Applicant respectfully avers there is good cause for the requested extension until September 27, 2019.

Respectfully submitted,

/s/ James B. Martin

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Date: August 16, 2019