
IN THE SUPREME COURT OF THE UNITED STATES

MARQUIS SHAW, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

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

TO THE HONORABLE ELENA M. KAGAN, ASSOCIATE JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE
FOR THE NINTH CIRCUIT:

Pursuant to Supreme Court Rules 13.5, 22.1–22.3, and 30.3, petitioner Marquis Shaw prays for a 60-day extension of time to file his petition for certiorari in this Court to and including August 1, 2022.

1. Timeliness. The judgment of the United States Court of Appeals for the Ninth Circuit, affirming the applicant’s conviction and sentence, was filed March 4, 2022. Appx. A. On April 18, 2022, the applicant filed a petition for rehearing, which was denied on May 9, 2022, as untimely. Appx. B.¹ Pursuant to Rule 13.3 any petition for certiorari would therefore be due for filing within 90 days of March 4, that is, on or before June 2, 2022. This application is being filed on or before the tenth day prior to the due date, as required by this Court’s Rule 30.2.

2. Opinions Below and Jurisdiction. A copy of the Memorandum Opinion of the Court of Appeals (coram of Schroeder, Tallman & Lee, JJ.), is not yet

¹ Appellate counsel committed an unfortunate one-month calendaring error.

published in the Federal Appendix. It is available at 2022 WL 636639, and a copy is attached as Appendix A. There is no published decision of the district court on any question to be presented. The jurisdiction of this Court is to be invoked under 28 U.S.C. § 1254(1).

3. Reasons for Granting the Extension.

a. The applicant was named as one of seven co-defendants in a 33-count second superseding indictment filed on November 9, 2017, in the U.S. District Court for the Central District of California. (The initial indictment, charging 72 defendants in 12 counts, was filed June 11, 2014.) The superseding indictment charged him with holding a leadership position in a street gang known as the Broadway Gangster Crips. It included charges of conspiring to participate in the affairs of a racketeer-influenced and corrupt organization (“RICO”), 18 U.S.C. § 1962(d); violent crimes in aid of racketeering (“VICAR”) (with a predicate of murder), 18 U.S.C. § 1959(a)(1); carrying firearms in furtherance of a crime of violence and their use to commit murder, 18 U.S.C. § 924(j); and controlled substances conspiracy, 21 U.S.C. § 846, as well as particular occasions of drug distribution in violation of 21 U.S.C. § 841(b), 860.

Before trial, the government filed an Information (notice) under 21 U.S.C. § 851 of its intent to invoke increased minimum and maximum terms on the controlled substances counts, due to two prior drug convictions, including a 24-year-old felony marijuana case that had since been reduced under California law to a minor offense.

(i) The applicant stood trial in February 2018 with two co-defendants on seven counts. Trial lasted 18 days, including nearly four days of deliberations.

The jury largely disbelieved the testimony of the government’s cooperating witnesses and found Mr. Shaw not guilty of all four major counts, including RICO and VICAR. At the same time the jury convicted him on three particular counts charging instances of selling small amounts of crack cocaine, in violation of 21 U.S.C. §§ 841(b)(1)(B) and 860.

(ii) In October 2018, Judge Otero imposed concurrent sentences of 420 months, that is, 35 years’ imprisonment, to be followed by 16 years’ supervised release. The propriety of this aggravated sentence was predicated – over timely objection – on the same conduct on which the counts depended as to which the jury had acquitted Mr. Shaw, deeming that alleged activity both “relevant” under the Guidelines, USSG § 1B1.3, and part of the applicant’s “history and characteristics” under 18 U.S.C. §§ 3553(a) and 3661. Despite characterizing the jury as “intelligent,” the court expressly disapproved and expressed personal disagreement with the verdicts of not guilty.

(iii) The applicant appealed to the Ninth Circuit. He challenged only the sentence, not the convictions. After argument, the panel issued a non-precedential opinion on March 4, 2022, rejecting all of Mr. Shaw’s contentions. Appx. A. His challenges to sentencing based on “acquitted conduct” were overruled based on settled Circuit precedent, as well as on this Court’s decision in *United States v. Watts*, 519 U.S. 148 (1997) (per curiam).

b. Counsel would not be able to complete the petition prior to the ordinary June 2 deadline for several reasons: a careless error by appellate counsel in calendaring the rehearing deadline, which counsel did not realize until receiving the Court of Appeals’ order on May 9 denying rehearing as untimely; the time

then needed to find new, appropriate counsel to file for relief in this Court; and undersigned counsel's pre-existing professional deadlines and family-related obligations. In light of the severity of the applicant's sentence, neither he nor the government would be prejudiced by an extension of up to 60 days.

c. In counsel's professional opinion, the case presents one or more issues worthy of presentation to this Court in a petition for certiorari, to wit:

(1) Does the Double Jeopardy or Due Process Clause of the Fifth Amendment, or the Jury Clause of the Sixth Amendment, bar a court from imposing a more severe criminal sentence for the counts of conviction on the basis of conduct that a jury necessarily rejected, given its verdicts of acquittal at the same trial? If necessary to reach an affirmative answer, should this Court's decision in *United States v. Watts*, 519 U.S. 148 (1997) (per curiam), be overruled?

(2) In avoidance of the constitutional question, does the doctrine of collateral estoppel, as long applied in federal criminal cases, bar imposition of an aggravated sentence on a factual predicate necessarily rejected by the jury at trial in the same case?

d. For the reasons stated, the Applicant cannot file a petition meeting counsel's own and this Court's high standards prior to the existing due date.

WHEREFORE, the Applicant-Petitioner prays that an Order be entered extending the time within which he may petition this Court for certiorari by sixty days, to and including Monday, August 1, 2022.

Dated: May 18, 2022

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