

DOCKET NO. _____

BEFORE THE UNITED STATES SUPREME COURT

WILLIAM MAXWELL
Petitioner/Appellant/Defendant,
VS.
UNITED STATES OF AMERICA
Respondent/Appellee/Plaintiff.

On Petition for Certiorari to the United States
Court of Appeals for the Third Circuit

On Appeal from the United States District Court for the District of
New Jersey, Camden Vicinage, Honorable Robert Kugler, presiding.

MOTION FOR EXTENSION TO FILE PETITION FOR CERTIORARI

Directed to the Honorable Associate Justice Alito

Respectfully submitted,

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JURISDICTION

The Supreme Court of the United States has jurisdiction to hear this matter under 28 U.S.C. §1254.

The Third Circuit Court of Appeals had jurisdiction to hear this appeal from the United States District Court for the District of New Jersey pursuant to 28 U.S.C. §1291.

The United States District Court for the District of New Jersey had subject matter jurisdiction to hear alleged violations of Title 18, United States Code.

TO THE HONORABLE ASSOCIATE JUSTICE ALITO:

COMES NOW, William Maxwell (hereinafter "Maxwell") and files this Motion for Extension of Time to File his Petition for Certiorari to the Third Circuit, and for leave thereon, and for just cause would show unto the Honorable Justice as follows:

RELIEF REQUESTED

1) Maxwell seeks an extension, until February 12, 2024 (60 days) to file his Petition for Certiorari with this Court. Maxwell, herewith, to the extent that leave is required, seeks leave to present this Motion for Extension.

FACTUAL JUSTIFICATION AND ARGUMENT

2) On September 15, 2023, the Third Circuit Court of Appeals denied Maxwell's Motion for Panel Rehearing/Hearing En Banc. See attachment 1.

3) On July 16, 2023, after a series of judgment recalls and reissuances, the Third Circuit issued its Final Judgment in the case. See attachment 2.

4) The original opinion of the Third Circuit was issued on July 15, 2022. See United States v. Scarfo, --4th--(3d. Cir. 2022), WL 2753761; see attachment 3.

5) Maxwell sought a counseled rehearing which was denied on or about September 25, 2022. Maxwell directed his then counsel Huff to file a petition for certiorari to the Supreme Court, and if not, to provide him with the record on appeal (ROA). See attachment 4.

6) Counsel filed a Motion to Withdraw, which was granted, provided Maxwell a copy, but otherwise did not respond or contact Maxwell and failed and refused to deliver him a copy of the ROA.

7) Maxwell has since filed three Motions to Recall and Reissue the judgment with the Third Circuit which were GRANTED. The trial lasted more than 8 months (from jury selection to verdict) with extensive pre-trial and post conviction litigation (Indictment on November 1, 2011, verdict on July 3, 2014, direct appeal pending). The ROA is more than 75,000 pages and includes thousands of exhibits. Due to the size of the ROA, after being ordered to produce the ROA and briefing to Maxwell, counsel sought and was granted an extension to produce the ROA in electronic format. When the ROA was produced to the BOP, FCI Beaumont Low did not have a computer with software to view the ROA. An additional recall and reissuance was required to allow the BOP to correct this deficiency. When the BOP provided a computer and software, the original software did not have enough RAM to open the ROA so an additional recall and reissuance was required to allow the BOP to go through its procedures to obtain additional RAM and install the RAM and make the computer available to Maxwell.

8) After Maxwell's counseled direct appeal was filed this Court issued its decision in New York Rifle & Pistol Assn. v. Bruen, 142 S.Ct. 2111 (2022).

9) During the interim between Maxwell's counseled direct appeal being filed and Maxwell's Judgment being issued by the Third Circuit (July 16, 2023), this Court issued Ciminelli v. United States, 598 U.S. _____ (2023).

10) During the interim between Maxwell's counseled direct appeal being filed and Maxwell's Judgment being issued by the Third Circuit (July 16, 2023), the Third Circuit issued its

decision in Range v. Attorney General, 54 F.4th 262 (3d Cir. 2022), reh'd en banc granted, opinion vacated, 2023 U.S. App. LEXIS 1061, 2023 WL 118469 (3d Cir. Jan. 6, 2023), en banc opinion filed June 6, 2023, Cause No. 21-2835, which held that 18 U.S.C. §922(g)(1), possession of a firearm by a non-violent felon, as applied to Range, was unconstitutional, post Bruen.

11) Maxwell, an attorney (license suspended pending direct appeal) is convicted of white collar charges based on violations of 18 U.S.C. §1349, §1343 and related charges purporting to support a 18 U.S.C. §1962(d) racketeering conspiracy. The jury instructions given to the jury allowed the jury to convict based on items far outside the scope of "property" as clarified in Ciminelli. The jury instructions allowed for conviction for the use of wires that were not related to fraud or property as defined in Ciminelli.

12) Maxwell, additionally, has a conviction for 18 U.S.C. §922(d) and §922(g)(1) for purportedly being in a conspiracy to provide a firearm to a non-violent felon (no allegation that Maxwell took any affirmative act other than there being an inference that purported to support the entering into a conspiracy). These would be unconstitutional under Range and there are no analogues to support the conviction (relying on Bruen methodology).

13) Finally, it was discovered post trial, that the Government tendered to the jury 286 exhibits that were not offered by the government into evidence; nor admitted by the trial court in evidence. These 286 exhibits consist of wire taps and transcripts of the wire taps which were played for the jury

during opening statements and during trial and were considered by the jury during its deliberation. The Government actually had a colloquy with the trial court about the necessity to ensure that the exhibits were admitted or a mis-trial would result; nevertheless, the Government did not offer and the trial court did not admit 286 separate exhibits (wire taps and transcripts thereof).

Additionally, the unoffered and non-admitted exhibits were considered by the trial court in denying Maxwell's Rule 29 Motion(s) both at the close of the evidence and at the end of the case itself. Further, the unoffered and non-admitted exhibits, and reasonable inferences to be drawn therefrom, were considered by the trial court in denying Maxwell's Rule 33 Motions.

The Third Circuit considered the unoffered and non-admitted 286 exhibits and reasonable inferences drawn therefrom in rendering its opinion affirming the judgment of the trial court.

14) Maxwell contends that this is the type of structural error discussed by this court in Arizona v. Fulminate, 499 U.S. 279, 310, 111 S.Ct. 1246, 113 L.Ed. 2d 302 (1991). There this Court held that structural errors affects the framework within which the trial proceeds, as distinguished from a lapse or flaw that is simply an error in the trial process itself. ("In addition an omission of a reasonable-doubt instruction, though a 'trial error' distorts the very structure of the trial because it creates the risk that the jury will convict the defendant even if the state has not met its required burden of proof.") Fulminante, 499 U.S. at 291.

ACCESS TO AND REVIEW OF THE ROA

15) The single 'discovery computer" at FCI Beaumont Low is shared with 1600 plus inmates to view their legal materials. It is housed in the education department and may be checked out by Maxwell for a few hours per day when education is open. However, it is not accessible during the periods when education is closed or the prison or units are locked down for any reason. Lockdowns occur with great frequency at FCI Beaumont Low. They include safety and security concerns, contraband searches, staff appreciation festivities, staffing shortages, and punitive reasons. For example, it is customary at FCI Beaumont Low to punish everyone for a single inmate's conduct. Maxwell, who has a perfect conduct record (no disciplinary reports during the past 10 years of incarceration) has spent many years locked down. These lockdowns have resulted from COVID, hurricanes, tropical storms, loss of power (every summer except one in the past 10 years), OTHER inmate contraband, OTHER inmate violence, OTHER inmates' failure to follow prison rules.

16) The more than 75,000 page record and the issues to be raised before the court require specific citation to relevant parts of the record. This would include, for example, not only a list of the 286 exhibits that were given to the jury, considered by the trial court and appellate court, but the location in the record (for verification of the evidence being neither offered nor admitted).

17) This extensive documentation is required to demonstrate the jury instruction errors as well. The jury instructions consumed a single day of trial and are

approximately 150 pages of the ROA. This documentation (citations thereto) is required to demonstrate that the definition of "property" in the jury instructions is either non-existent or wrong (for Ciminelli purposes).

18) Maxwell is and has been continually confined for the past 10 years, post trial, and is unable to consult with the United States to determine whether they are opposed to the relief requested herein.

19) Maxwell seeks this extension not for any improper purpose but for the reasons stated herein, under oath, and in the interest of justice.

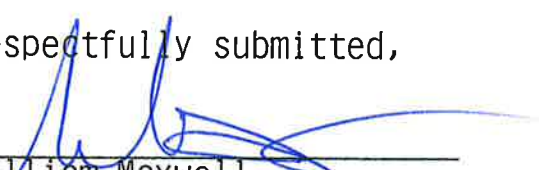
MOTION FOR LEAVE

To the extent that leave is required to seek an extension prior to the filing of the petition for certiorari, Maxwell seeks leave to submit his Motion for Extension for the reasons set forth supra.

PRAYER

FOR THESE REASONS, Maxwell prays for an extension until February 12, 2024 to file his petition for certiorari, due to ROA length, limited access to the ROA considering its size, and the specificity requirements noted herein. Maxwell additionally prays for leave to submit his Motion for Extension.

Respectfully submitted,



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