

No. 24-_____

IN THE
Supreme Court of the United States

BRENNARIS MARQUIS JOHNSON,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of the State
of Washington

**Application for Extension of Time To File Petition for a Writ of
Certiorari**

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To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

In accordance with this Court’s Rules 13.5, 22, 30.2, and 30.3, Applicant Brennaris Marquis Johnson respectfully requests that the time to file his petition for a writ of certiorari be extended for 60 days, up to and including Monday, October 7, 2024. The Washington Court of Appeals issued its opinion on January 2, 2024, and the Washington Supreme Court denied discretionary review on May 8, 2024. The opinion and order are appended to this application. Absent an extension of time, the petition would be due on August 6, 2024. The jurisdiction of this Court is based on 28 U.S.C. § 1257(a). This request is unopposed.

Background

This case presents an important question regarding the right to a jury trial in states, like Washington, with mandatory sentencing guidelines: Whether a sentence above the statutory presumptive range violates the jury trial right where the judge may not impose such a sentence, even after a jury finds an aggravating fact, unless the judge also finds that the facts the jury found amount to “substantial and compelling reasons” for an enhanced sentence. In addition to Washington,

three other states condition a judge's authority to impose an enhanced sentence on this judge-made finding. Two more states require the judge to make a similar finding to gain the authority to impose an enhanced sentence.

A jury found Mr. Johnson guilty of the Washington offense of second-degree assault. The jury found one statutory aggravating fact beyond a reasonable doubt: that Mr. Johnson committed the crime "shortly after being released from incarceration." Wash. Rev. Code § 9.94A.535(3)(t). The judge also found, as permitted by Washington statute, that a sentence within the presumptive range would mean Mr. Johnson's additional conviction of violating a no-contact order would go "unpunished." Wash. Rev. Code § 9.94A.535(2)(c).

However, these findings alone did not permit a sentence above the standard range. The judge had to go on to find that the aggravating facts found by the judge and the jury amounted to "substantial and compelling reasons" to depart above the presumptive range. Wash. Rev. Code §§ 9.94A.535, 9.94A.537(6). Without this additional finding, the trial court had authority to sentence only within the range.

In imposing on Mr. Johnson a sentence two years above the top of the presumptive range based on judge-made findings, the trial court violated Mr. Johnson's Sixth Amendment right to a jury trial.

Reasons for Granting an Extension of Time

Counsel of record joined Mr. Johnson's case for the purpose of filing a petition for certiorari in May 2024, taking over representation from Gregory Link, the director of the Washington Appellate Project. Counsel had not worked on Mr. Johnson's case previously and needs additional time to familiarize himself with the record. In addition, preparing Mr. Johnson's petition requires time to survey the sentencing schemes of other states with mandatory sentencing guidelines.

As an appellate public defender, counsel of record has a demanding caseload representing indigent persons on appeal from criminal convictions and in other state-law matters conferring a right to appointed counsel. Between the state supreme court's denial of review in May 2024 and the present, counsel of record has filed two opening briefs in the state court of appeals and six petitions for review in the state supreme court. Due in the near future are the following:

- An opening brief in the Washington Court of Appeals, Division One, in *State v. Castaneda Rodriguez*, No. 86212-0-I, due August 7, 2024;
- An opening brief in the Washington Court of Appeals, Division Three, in *State v. Curtis*, No. 40195-2-III, due July 17, 2024, with a motion for extension pending;
- An opening brief in the Washington Court of Appeals, Division Two, in *State v. Wilks*, No. 58671-1-II, due August 12, 2024;
- An opening brief in the Washington Court of Appeals, Division One, in *State v. Landenberger*, No. 86355-0-I, due August 12, 2024;
- A reply brief in the Washington Court of Appeals, Division Three, in *State v. Torres*, No. 39254-6-III, due August 12, 2024;
- A reply brief in the Washington Court of Appeals, Division One, in *State v. Thompson*, No. 85515-8-I, due August 12, 2024; and
- A reply brief in support of discretionary review in the Washington Supreme Court in *In re Dependency of N.B.G.*, No. 103185-8, due August 5, 2024.

Conclusion

Applicant requests that the time to file a petition for writ of certiorari in the above-captioned matter be extended by 60 days, up to and including October 7, 2024.

Respectfully submitted,



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