

In the United States District Court
For the Middle District of North Carolina



Brian David Hill,)	
Petitioner/Defendant)	
)	<u>Criminal Action No. 1:13-CR-435-1</u>
)	
v.)	Civil Action No. 1:17-CV-1036
)	
United States of America,)	Mandamus: 19-2077, 4th Circuit
Respondent/Plaintiff)	
)	
)	

PETITIONER'S NOTICE OF APPEAL

NOW COMES the Petitioner, by and through Brian David Hill ("Brian D. Hill"), "Petitioner", or "Hill"), that is acting pro se in this action before this Honorable Court in the Middle District of North Carolina, and hereby respectfully moves to file this notice of appeal.

Notice is hereby given that Defendant/Petitioner Brian David Hill in the above named case hereby appeal to the United States Court of Appeals for the Fourth Circuit from an order entered in this action on October 4, 2019 (Document #198).

*See Fed. R. App. P. 3(c) for permissible ways of identifying appellants.

This NOTICE OF APPEAL concerns the abuse of discretion, ignoring the evidence, ignoring Brian's Probation officer Jason McMurray, ignoring the recommendation of the Western District of Virginia federal court that Brian David Hill be released on bond with curfew without requiring an ankle monitor, allowing frauds upon the court, and errors of the record by the Honorable U.S. District Court Chief Judge Thomas D. Schroeder.

Brian David Hill is illegally and unconstitutionally being ordered to turn himself into Federal Prison by December 6, 2019, and was done by the errors and usurpations of power by Judge Schroeder.

The Hon. Judge Schroeder is refusing to recuse himself from the case knowing that it is creating a conflict of interest and is allowing such prejudice and abuse to continue is not good for this case. Not good for the 2255 Civil case and not good for anything to do with this criminal case either. The Constitution and the law requires that a Judge be impartial and without prejudice and without bias, and for the Canons of Professional Conduct. It is also proper judicial conduct to follow the facts exactly and not making conclusory facts that cannot be proven on the record. It is also proper conduct to vacate any frauds upon the Court, even if such frauds were perpetuated by the Government.

THIS IS A CONSTITUTIONAL CRISIS.

ERRORS of the record:

Error of law #1:

Judge Schroeder; Page 1 of 8: *“The Defendant was convicted in state court in Virginia in 2018, and his federal revocation proceeding followed.”*

In the motion the Hon. Judge Thomas D. Schroeder denied under Document #192, evidence exhibit was filed from the record of the Martinsville, Virginia Circuit Court that his conviction in General District Court on December 21, 2018, was vacated due to appeal to the Circuit Court which that court had not convicted him yet due to the ongoing Trial De Novo. See Exhibit 4 — Document #193, Attachment #4 (Doc. #193-4). It is on record in Defendant’s/Petitioner’s Motion for Stay of Judgment pending Appeal that the “Circuit Court case was filed on 01/09/2019 and was commenced by General District Court Appeal”. According to

attorney Scott Albrecht who had formerly worked for the Martinsville Public Defender office, once an appeal has been filed to the lowest municipal court also known as a police court, aka the General District Court which is not an Article III compliant constitutional state court and doesn't follow the usual constitutional obligations and is not a state court of record, then it is appealed to the Circuit Court for Trial De Novo which is to be tried in front of a Jury or Bench Trial by Judge in a state court of record. So Brian's conviction in the "police court" was no longer valid and was vacated after Brian's timely filed notice of appeal in the General District Court. It is on record during the hearing in the Western District of Virginia case no. 7:18-mj-00149, during the hearing on Dec 26, 2018 that Brian had timely filed his Notice of Appeal automatically vacating the conviction from General District Court, please review the Transcript from that case. Once the appeal has been filed in the municipal court, it is a fact and procedure of law that the conviction be treated as if it had never taken place and a new finding of guilty must be entered by the Circuit Court prior to a conviction being valid on the record or the Defendant/Petitioner would have to withdraw his appeal voluntarily to reinstate his conviction in General District Court.

So the Hon. Judge Schroeder is wrong on that factual claim, had erred, and cannot be substantiated. It shouldn't even have been entered in his opinion of his order.

Error of law #2:

Judge Schroeder; Page 7 of 8: "*Defendant reportedly hit his grandfather. (Doc. 123 at 22-23, 48.)*"

Actually it distorts what had entirely happened. USPO Kristy L. Burton had said that "*At that moment, everybody was very agitated and flurried, but I wasn't in there long enough for -- whatever had happened had occurred before I got to the home.*" Page 23 of 84.

It even said that the family did not call the police because the entire family was agitated and stressed (or flurried) which is the way families are from time to time. Families go through arguments. Nobody called the police so nobody felt that Brian David Hill was dangerous or aggressive enough to call law enforcement.

Renorda Pryor asked USPO Burton “*Q Okay. And while you were there in that environment, did they call the police? Was anyone hurt?*”

Her response was “*A As far as I know, they never called the police, no.*”

So it was a small family feud where everybody was agitated which happens in families across the country. To use that against Brian was simply wrong and was an error of fact and an abuse of discretion.

Even witness Kenneth Forinash had this to say about the incident: “*...and his reflex action was that he turned around and hit me. It didn't hurt. And a few minutes later, we all apologized and everything was okay.*” Page 53 of 84.

It doesn't sound as bad as the way it had sounded in the Hon. Judge Schroeder's order. That was back in 2015 and should not have been used against Brian David Hill as yet another reason to deny his motion for Stay of Judgment pending Appeal. It is normal for families and even married couples to have arguments and feuds in today's climate with the extreme stress and anxiety of modern American life with jobs and the stress of life. People handle these things in different ways. To use something this small and stupid, of a small family feud, as one of the basis of the decision to deny the Motion for Stay of Judgment pending Appeal is inappropriate and is an abuse of discretion.

Error of law #3:

Judge Schroeder; Page 7 of 8: “*The Defendant maintained that the child pornography was sent to his cell phone unsolicited and anonymously, which seems unlikely in so far as the cell phone is a prepaid phone belonging to his*

grandmother (Doc. 123 at 6, 35) and no one would likely have knowledge of the phone number.”

That is not true as the Defendant/Petitioner had broken no law, and that Defendant/Petitioner had never asked for the child pornography, there is no evidence of it, there is no mentioning of it in this entire case. The only thing that happened was that Brian David Hill had received threatening text messages before the child pornography had allegedly been reportedly sent to his grandmother’s cell phone. Brian immediately thereafter, in good faith, reported the cell phone to his Probation Officer Kristy L. Burton who acknowledged that Brian had voluntarily reported the matter to her, a federal “law enforcement officer” or “agent”, and gave her the cell phone. That is an affirmative defense under federal law to any child pornography charge under the federal law. That was why Brian had not been charged for giving the phone to Kristy L. Burton because he is actually innocent of such allegation by turning over the so-called unsolicited such material to a law enforcement officer or agent in good faith. Brian maintains that he complied with the law, and did not do anything wrong to warrant that being used against him.

According to Attorney Susan Basko on the record of Document #46 in this case:

“The other purpose was to follow the provision in federal child porn law that gives an affirmative defense under this law.”

18 U.S. Code § 2252A - Certain activities relating to material constituting or containing child pornography

*(d) **Affirmative Defense**. – It shall be an affirmative defense to a charge of violating*

subsection (a)(§) that the defendant~

(1) possessed less than three images of child pornography; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof~

(A) took reasonable steps to destroy each such image; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such image.

8. Shortly after Luke's situation, a group of indie journalists and activists contacted me and said they had porn sent to them in trick emails where the sender opened an email account in the name of someone the activist trusted. The delivery technique had advanced to placing the images inside a pdf, so the images could not be previewed.

These men have access to a computer forensics expert who previewed the pdf in a "sandbox," and saw they were child porn. These men included Dan Johnson of People Against the NDAA, Stewart Rhodes of Oathkeepers, and several others. These men were aware that Brian David Hill had also had child porn downloaded onto his computer.

According to the Document #123 Transcript, the Hon. Judge Schroeder forgot to bring up this part of the transcript in his order.

Page 38 of 84:

"Q When you stated that he turned over the phone to you, did he voluntarily do that?"

"A Yes, ma'am."

"Q You didn't ask him any questions about it? He just voluntarily contacted you or how -- I'm sorry. Help me understand. How did you get the phone?"

"A He did contact me to indicate -- we'd had a previous incident where information -- I was told by the family and him that the Mayodan Police Department had returned evidence to them that contained child pornography. When I asked to see that, they indicated it had been destroyed. During that time, I indicated that if this ever happens again or anything like that ever happens to let me know. So he contacted me after receiving that email -- or text message, sorry, whatever it was, and he turned it over to me within a couple of days."

"Q So he voluntarily did it?"

"A Yes."

That is an affirmative defense under “18 U.S. Code § 2252A - Certain activities relating to material constituting or containing child pornography”.

Brian David Hill was compliant with federal child pornography law in this instance and that should not have been an issue to be used against Defendant/Petitioner in denying his Motion to Stay of Judgment pending Appeal.

Error of law #4:

Judge Schroeder; Page 7 of 8: *“Not only was the court unaware of the error, more importantly the filing had no influence on the court’s independent determination it made based on the evidence presented at the revocation hearing.”*

That is interesting when the very Document #180 listed on pages 19 to 20 of Document #195, stated that Defendant/Petitioner was to have:

1. Been ordered to a high end of imprisonment (referring to the 10 months), and that it had been entered under the name of Brian David Hill and the correct case number for such a supposed template. The only reason why the Hon. Judge Schroeder ordered 9 months of imprisonment instead of 10 months was because of the statutory maximum that was requested by Assistant U.S. Attorney Anand Prakash Ramaswamy, the Government counsel in this case. So the 10 months was what Judge Schroeder apparently wanted but could only give 9 months, so that was similar.
2. Been ordered to the custody of the Federal Bureau of Prisons.
3. Finding that Brian David Hill was guilty of a commission of a crime on September 21, 2018, despite when the Martinsville Circuit Court has not yet come to such decision as Trial De Novo erases the conviction in General District Court and new trial had been ordered.
4. That Brian had been revoked of Supervised Release.

5. And that Brian had been represented by Attorney Renorda Pryor.

Judge Schroeder; Page 7 of 8: *"The Defendant's contention that the court pre-determined the case is false."*

Document #180 (Pages 19 to 20 of Document #195) looked way too perfect to simply be some template. It will be up to the U.S. Court of Appeals and a judicial investigation into Judge Schroeder to determine whether Brian's contention was false or true. It is ironic that Judge Schroeder is having to defend himself against an allegation, when that has been all Brian David Hill has been able to do is consistently having to defend himself against false allegations right and left since 2012. Even if any element of an allegation was true against Brian, Judge Schroeder is seeing what it is like to being accused of something even though he has never reportedly been a criminal defendant and never got to experience what every criminal defendant has had to ever go through in the criminal justice system. Has he even wore their shoes? Has he ever been to prison and seen what it's like?

Also the fact that U.S. Probation Officer Kristy L. Burton was given more credibility and respect, but the good conduct of Brian David Hill with U.S. Probation Officer Jason McMurray was ignored and not taken into consideration by the same Judge Does In-Fact show evidence that it was premeditated/prejudice.

The fact that the Hon. Judge Schroeder gave the maximum imprisonment by (#1) didn't take his compliance under the bond conditions into account (*May 14, 2015 and is still compliant with all of the bond conditions till even this day of October 5, 2019, and beyond*); (#2) didn't take into account his compliance with the conditions of Supervised Release from the August 13, 2015 infraction under Document #124 (filed September 4, 2015) all the way until September 21, 2018 (calculated at 3 years, 1 month, and 8 days) when Brian exhibited a weird and abnormal behavior that he had never done before in the 28 years of Brian being

alive; (#3) didn't take into account that Brian and his family had respected Brian's Probation Officer Jason McMurray. Even before the infraction, Brian had been compliant and respectful with USPO McMurray during the home detention, an additional June 30, 2015 when released until August 13, 2015 before the day of infraction, 12 additional days calculated, in total would be 3 years, 1 month, and 20 days. The infraction should not count against Brian David Hill for the Final Revocation hearing because it conflicts with the affidavit of Brian's actual innocence inside of his 2255 Motion under Document #125 and #128 brief/memorandum and was filed in November, 2017, putting Brian at risk of multiple federal perjury charges just to simply get Brian to comply with sex offender treatment when that requires that Brian be forced against his will to commit criminal acts of multiple felony acts of perjury against his claims of actual innocence. None of Brian's good behavior, respect and compliance with Brian's Probation Officer Jason McMurray was taken into account at all in his decision on September 12, 2019, and none of anything at all was taken into account in Brian's favor. Sounds to me like Judge Schroeder is not exonerated of his premeditated order under Document #180 (Pages 19 to 20 of Document #195) and that simply him claiming Defendant's/Petitioner's contentions was "false" is not sufficient to prove that the Hon. Judge Schroeder is innocent of Brian's allegations of being partial, prejudicial, and biased towards Brian David Hill and is partially in favor of the Government and the liar/perjurer Kristy L. Burton. The Hon. Judge Schroeder was okay with picking at Brian's grandmother having a pre-paid cell phone with child pornography received on it but did not take Attorney Susan Basko's (Document #46) declaration into account that said anyone who receives unsolicited child pornography can report it to a law enforcement agency and turn in such device and is considered actual innocence under an affirmative defense to the child pornography law. Brian's conduct was lawful and in good faith. Judge Schroeder

jumped on any allegation against Brian that looks bad but the record says different. That is an abuse of discretion and is an error of law, false facts submitted on court record, a fraud upon the court. When Brian is complying with federal law and reporting any issues or knowledge of any criminal activity going on against Brian and his family, reporting the matter to law enforcement, that should not be used against him in denying his Motion for Stay of Judgment pending Appeal.

Last note here was that Brian had received threatening text messages in 2015, threatening emails in 2013, all about setting him up with child pornography. All of them were reported to a law enforcement agency or contact. That was before Brian had reported the child pornography being received from an anonymous person (unsolicited) on his grandmother's pre-paid cell phone.

The allegations against Judge Schroeder have still not been resolved. His answer is not sufficient to prove that he is not guilty of that misconduct of a premeditated order under Document #180.

Threatening message #1: Exhibit A — Document #71, Attachment #1

Threatening message #2: Exhibit B — Document #71, Attachment #2

Whistleblower message #1: Exhibit D — Document #71, Attachment #4

Proof from Defendant's/Petitioner's side that Tracfone was voluntarily given to USPO Kristy L. Burton and goes along with her statement on that regard under oath: Exhibit E — Document #71, Attachment #5

Threatening text messages reported to law enforcement agency N.C. State Bureau of Investigation: Exhibit F — Document #71, Attachment #6

Threatening message #3: Document #84, Attachment #7

Threatening message #4: Document #84, Attachment #8

After all of this gets argued before the U.S. Court of Appeals on the records in this case, it is clear that the Hon. Judge Thomas D. Schroeder has abused his discretion,

ignored evidence, ignored witnesses like USPO Jason McMurray, made errors of law and made errors of record, and took no evidence into consideration in Brian's favor on September 12, 2019. Prejudice, partiality, dereliction of duty?

It is clear that the U.S. Court of Appeals will rule in favor of Brian's appeals including the Writ of Mandamus.

It is also interesting that the Hon. Judge Thomas D. Schroeder and any of his legal staff had taken the time and research into producing 8 pages of order under (Document #198) dated October 4, 2019, that the error under Document #180 was already reportedly by the Order as a template that looked as though it wouldn't take long to produce a written judgment for the Notice of Appeal under Document #187 and Document #190 to finally be docketed. Despite the Court of Appeals reminding Judge Schroeder through the Clerk's office on September 20, 2019, to file the written judgment (USCA4 Appeal: 19-2077, Doc: 3, Filed: 10/02/2019, Pg: 54 of 68). Despite being served with a copy of the petitioned Writ of Mandamus (USCA4 Appeal: 19-2077, Doc: 2, Filed: 10/02/2019, all pages: 1 through 21). Instead of making sure to do his duty and file the written judgment, he is taking the time to deny two motions and write a lot of errors of law, conclusory facts by assumptions, and abuses of discretion. He rather file an order denying two motions rather than make sure that Defendant's/Petitioner's right to direct appeal under the Constitution and as of matter of law, matter of right, being protected by the court.

It is clear that the Hon. Judge Thomas D. Schroeder of Winston-Salem, North Carolina, has decided to rebel against the U.S. Court of Appeals which is disrespect and mockery of the higher courts, that may be willing to flaunt his contempt and disrespect to the higher court, out of fear that his judgment or judgments may be remanded and vacated as a matter of facts and/or as a matter of law. He is mocking the Appellate Court by failing or refusing to file the written

judgment. It normally takes a week, especially after allegedly admitting in his order as to Document #180 (Pages 19 to 20 of Document #195) being simply a template from another case as he argued in his defense to Brian's allegations in Document #195. He and his staff has allegedly taken the time to already have a template as he had claimed, took the time to file 8 pages of an order denying motions, but doesn't seem to be filing the written judgment necessary for the direct appeal of the Final Revocation hearing on September 12, 2019. In eight (8) days, it will be an entire month that Judge Schroeder may or may not file his written judgment. It is as if he is flaunting his disrespect towards the U.S. Court of Appeals in Richmond, Virginia, because they may not view his decision favorable in another state outside of North Carolina State Senator Philip Edward Berger Senior's and his son Phil Berger Jr.'s jurisdiction (Phil Berger was allegedly called a dictator by a law professor in North Carolina).

I think it is about time for the Court of Appeals to order the Hon. Judge Thomas D. Schroeder to enter his written judgment by a fixed time period or he should face contempt of a higher court. No judge should disobey his superiors that are honorable judges of a higher court. The whole judicial system of Government is about following the rules and following your duties.

The Honorable Judge Thomas D. Schroeder needs to remember to follow the law.
Respectfully filed with the Court, this the 5th day of October, 2019.

Respectfully submitted,


Signed

Signed

Brian D. Hill (Pro Se)
310 Forest Street, Apartment 1
Martinsville, Virginia 24112
Phone #: (276) 790-3505



Former U.S.W.G.O. Alternative News reporter

I stand with QANON/Donald-Trump – Drain the Swamp

Brian asks Donald Trump for a full pardon of innocence, asks Qanon for help

Make America Great Again

Defendant/Petitioner also requests with the Court that a copy of this pleading be served upon the Government as stated in 28 U.S.C. § 1915(d), that “The officers of the court shall issue and serve all process, and preform all duties in such cases.

Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases”. Petitioner requests that copies be served with the U.S. Attorney office of Greensboro, NC via CM/ECF Notice of Electronic Filing (“NEF”) email, by facsimile if the Government consents, or upon U.S. Mail.

Thank You!

CERTIFICATE OF SERVICE

Petitioner hereby certifies that on October 5, 2019, service was made by mailing the original of the foregoing:

"PETITIONER’S NOTICE OF APPEAL"

by deposit in the United States Post Office, in an envelope (certified mail), Postage prepaid, on October 5, 2019 addressed to the Clerk of the Court in the U.S. District Court, for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401.

Then pursuant to 28 U.S.C. §1915(d), Petitioner requests that the Clerk of the Court move to electronically file the foregoing using the CMIECF system which will send notification of such filing to the following parties to be served in this action:

Anand Prakash Ramaswamy U.S. Attorney Office	Angela Hewlett Miller U.S. Attorney Office
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Civil Case # 1:17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 Anand.Ramaswamy@usdoj.gov	Civil Case # 1: 17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 angela.miller@usdoj.gov
JOHN M. ALSUP U.S. Attorney Office 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 john.alsup@usdoj.gov	

This is pursuant to Petitioner's "In forma Pauperis" ("IFP") status, 28 U.S.C. §1915(d) that "The officers of the court shall issue and serve all process, and perform all duties in such cases ... "the Clerk shall serve process via CM/ECF to serve process with all parties.

<p>Date of signing:</p> <p><u>October 5, 2019</u></p>	<p>Respectfully submitted,</p> <p><u>Brian D. Hill</u> <i>Signed</i></p> <p>Signed Brian D. Hill (Pro Se) 310 Forest Street, Apartment 1 Martinsville, Virginia 24112 Phone #: (276) 790-3505</p> <p>U.S.W.G.O.</p> <p>I stand with QANON/Donald-Trump – Drain the Swamp I ask Qanon and Donald John Trump for Assistance (S.O.S.) Make America Great Again</p>
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I ask Department of Defense ("DOD") military Constitutional oath keepers, alliance, Qanon for help in protecting me from corruption and criminal behavior of Government. There needs to be an investigation. There needs to be an investigation into this "dictator" NC Senator Philip Edward Berger as one law professor has called him in his own opinion.

Certified Mail tracking no: 7019-1120-0001-4751-4757