Record No. 1295-20-3

In The Court of Appeals of Virginia

BRIAN DAVID HILL,
Petitioner/Appellant,

vs.

COMMONWEALTH OF VIRGINIA,
Appellee/Respondent.

Petition for Appeal From the Circuit Court
of the City of Martinsville

PETITION FOR REHEARING OR REHEARING EN BANC

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PETITION FOR REHEARING

Pursuant to Rule 5A:15 of the Court of Appeals of Virginia, Petitioner Brian David Hill ("Petitioner") respectfully petitions this Court for an order (1) granting rehearing, (2) vacating or modifying the Panel's September 2, 2021 order denying the Petition for Appeal, and (3) re-disposing of this case by granting the Petition for Appeal, allow the appeal to be set for Perfection of Appeal under Rule 5A:16.

Mr. Hill submits that the Writ Panel of Judges ("the panel") had erred in refusing/denying the "Petition for Appeal" after Petitioner's Pro Se Supplemental Petition for Appeal entered on April 15, 2021, as well as Counsel's Petition for Appeal on April 13, 2021, and upon the record in the originating case in the Circuit Court of Martinsville under case no. CR 19000009-00. Final conviction/judgment entered on November 18, 2019.

Mr. Hill's defective/ineffective counsel John Ira Jones, IV, had inappropriately invoked the case laws of Anders v. California, 386 U.S. 738 (1967); Kuzminski v. Commonwealth, 8 Va. App 106, 378 S.E.2d 632 (1989). See "MOTION TO WITHDRAW AS COUNSEL OF RECORD" filed on April 13, 2021 in this Court of Appeals.

As Petitioner's counsel did at least argue one good potential ground for requesting relief in this appeal case, there were other grounds which he did not bring up and had ignored or overlooked. The attorney did not engage in conversation with his client to determine all available grounds for a non-frivolous appeal. He inappropriately and falsely portrayed this appeal as frivolous. There are constitutional issues which can be brought up.

Petitioner was entitled to relief as a matter of law and as a matter of right, especially when he had proven ineffective assistance of counsel on the record itself, enough in the record warranting relief. The highest Supreme Court of the United States ("SCOTUS") and any SCOTUS or Federal rulings concerning state court decisions cannot be ignored by any Judge in this Court of Appeals of Virginia, this Court has no right to ignore the U.S. Supreme Court. This Court also has no right to ignore Federal Laws under the Supremacy Clause of the United States Constitution, where Federal Law is Supreme Law of the Land, and any rights not retained by the Federal Law and the United States Constitution or not prohibited by the Constitution or Federal Laws is reserved to the states respectively or to the people under the Tenth Amendment of the United States Constitution. I must remind the Commonwealth of Virginia and this Court that Virginia had lost the civil war in the 1860's and had lost to Commander in Chief

Abraham Lincoln. Virginia is no longer a confederacy since they lost the Civil War of the 1860's and cannot defy Federal Laws. Federal Laws apply to Virginia.

The decision of the Writ Panel of this Court contradicts Federal Law as well as controlling and authoritative case law precedent set by the United States Supreme Court.

Petitioner seeks rehearing on the important Constitutional and Legal issues raised in his Petition for Appeal, the Commonwealth's opposition response, the legal counsel's Petition for Appeal, as well as within the record itself. The Record on Appeal contradicts the Panel's opinion and it is erroneous in its facts or arguments. The record of the Writ of Habeas Corpus had already demonstrated many important issues such as motions were being selectively ignored, Constitutional rights violated, Due Process deprived, and Federal Laws violated by the Courts.

Unless Petitioner is granted relief by this Court, then (#1) the Court of Appeals of Virginia, (#2) the Commonwealth of Virginia, (#3) the Circuit Court of Martinsville will be acting in direct violation of Title 42 U.S. Code § 407(a).

Unless Petitioner is granted relief by this Court, then Petitioner suffers under permanent irreputable damage and constitution violations which was caused by ineffective assistance of counsel and the Circuit Court selectively

ignoring pro se motions while not ignoring the pro se motion to withdraw appeal. Not just ineffective assistance of counsel in the Circuit Court and General District Court phases, but also in the Court of Appeals of Virginia. Counsel John Ira Jones, IV was defective in failing to bring up the ineffective assistance of counsel claims which is a very strong ground for reversing a final conviction in asking for a new trial and even can overturn a false guilty plea if there was one. Withdrawing of the appeal in the Circuit Court was directly caused by ineffective assistance of counsel and selective enforcement (violates Equal Protection under the Laws) is illegitimate when records in this Court or a different Appellate Court demonstrate that Petitioner did have more effective grounds and thus Petitioner's appeal was not frivolous. Having at least one good strong ground which has a legal bearing of reversing the final judgment contradicts the legal counsel's assertation of Anders v. California, 386 U.S. 738 (1967); Kuzminski v. Commonwealth, 8 Va. App 106, 378 S.E.2d 632 (1989).

Petitioner shall state the appropriate grounds for relief as to why the Panel of this Court made a bad decision, an erroneous decision contrary to law and contrary to effective assistance of counsel and Due Process clause as well as to the United States Constitution.

GROUNDS FOR RELIEF

As grounds for this petition for rehearing, petitioner states the following:

1. Petitioner filed the (1) Pro Se Supplemental Petition for Appeal on March 25, 2021, but was reentered on April 15, 2021, and Petitioner's counsel filed his Petition for Appeal on April 13, 2021. The Commonwealth Attorney filed an opposition brief on May 6, 2021, but Petitioner never reviewed over that opposition brief as legal counsel John Ira Jones, IV never emailed or mailed a copy of the opposition brief to the client or client's mother Roberta Hill. That itself is ineffective, defective, and unethical counsel. Counsel appointed in this appeal and for this appeal had failed to discuss the Opposition Brief by the Commonwealth of Virginia and City of Martinsville, and never gave a copy of that opposition brief to Petitioner. The ineffective assistance of counsel isn't just in the Circuit Court, the General District Court, but such ineffective assistance of counsel was also in this direct criminal case appeal.
2. John Ira Jones, IV never should have been appointed as representative counsel for Petitioner's appeals. In 2019, according to GovSalaries, John Ira Jones, IV in 2019 was employed with the Commonwealth of Virginia, in the Office of the Attorney General of Virginia, with an annual salary of $54,699. That is a conflict of interest. Such conflicts of interest are unethical and violates the very sanctity of Due Process, and a criminal defendant's access to the adversarial system. See all of the opinion of Strickland v. Washington, 466 U.S. 668 (1984). Petitioner

was not being represented by John Ira Jones, IV, because he will not admit that the Commonwealth of Virginia is wrong because he had worked for the Commonwealth of Virginia in 2019 and 2018 when Petitioner was charged and going through the Criminal Trial processes, not long before supposedly representing Brian David Hill. See https://govsalaries.com/jones-iv-john-ira-100016866 or http://web.archive.org/web/20210906022417/https://govsalaries.com/jones-iv-john-ira-100016866 Disclaimer: Link researched and produced by Roberta Hill. Text of link given to Petitioner.

3. John Ira Jones had a history of failing to file Petitions as directed and had committed sanctionable conduct by not even filing the first Petitions for Appeals in cases no. 0128-20-3 and 0129-20-3. Petitioner allowed counsel to represent him again in this appeal case and asked the Court to give him a second chance. A big mistake. Now Petitioner is being punished again with financial sanction or penalty for what this worthless legal counsel had done against Petitioner. This attorney was never going to represent Petitioner, only help the enemy win by filing potentially defective pleadings and branding his appeals as meritless or frivolous or both, and John Ira Jones did achieve the objective favorable to the enemy which he did do the damage successfully

against Petitioner's 14th Amendment Due Process protections with the Panel's decision.

4. The basis for requesting relief by granting the Petition for Appeal is partially based upon ineffective assistance of counsel. Even the Supreme Court of Virginia must respect the decisions of SCOTUS, the highest Supreme Court of the United States ("SCOTUS") as the main legal authority for court case law involving all Courts of the United States of America over all matters concerning the U.S. Constitution by the Fourteenth Amendment of the U.S. Constitution pertaining to Federal Supremacy and requirement of Due Process for all State Courts, requirement of Equal Protection under the Laws. Even the Supreme Court of Virginia had referenced the SCOTUS cases including Strickland v. Washington, 466 U.S. 668 (1984). The decision by the Writ Panel on September 2, 2021 to deny the Petition for Appeal without first addressing the ineffective counsel John Ira Jones in this direct appeal case contradicts the Supreme Court. This deprived Petitioner of due process of law and have caused aggravated injury of a Constitutional nature, defamation of character, and had caused irreputable harm to Petitioner including the attempts to rob Petitioner of his SSI disability.
5. The Panel's decision that Petitioner will pay $300 to such defective counsel who didn't even discuss the appeal and never discussed the Petition for Appeal

over with his own client, referring to John Ira Jones, IV had illegally created an attempt to legitimize attorney malpractice and potential ethics violations by John Ira Jones, IV. Counsel who does not professionally engage all duties and responsibilities including informing his/her client upon each decision by the Court is negligence and has wrecked Petitioner's appeal and had caused irreputable damage/harm of both a Constitutional nature and a financial nature.

6. The Panel argued in their reasoning under Pg. 5 and 6 of their decision that "The trial court shall allow John I. Jones, IV, Esquire, the fee set forth below and also counsel 's necessary direct out-of-pocket expenses. The Commonwealth shall recover of the appellant the costs in this Court and in the trial court. Costs due the Commonwealth by appellant in Court of Appeals of Virginia: Attorney's fee $300.00 plus costs and expenses." The Panel's decision that Petitioner will pay $300 to such defective counsel who didn't even discuss the Petition for Appeal and hardly ever talked about the appeal case over with his own client, referring to John Ira Jones, IV, had violated the Federal Law protecting Petitioner from being compelled to pay back legal costs when Petitioner's only documented source of income was his Supplemental Security Income, SSI disability, as reported in the Affidavit to this Court for this case in petitioning the Court not to require prepayment of filing fee prior to initiating the appeal.

The Financial Affidavit filed with the Clerk's Office proves that Petitioner is only under SSI disability income. By this Court ordering or compelling any amount of legal payment is unlawful under 42 U.S. Code § 407 - Assignment of benefits. See People v Lampart, __ Mich App __ (#315333, 7/31/2014) the Court of Appeals held that, to the extent the trial court's consideration of SSDI benefits results in an order of restitution that could only be satisfied from those benefits, the use of the court's contempt powers then would violate 42 USC 407(a). Philpott, 409 US at 415-417; State Treasurer, 468 Mich at 155;Whitwood, 265 Mich App at 654. See also United States v Smith, 47 F3d 681, 684 (CA 4, 1995) (holding, under a federal statute employing similar language to 42 USC 407(a), that a court could not order restitution against benefits after they were received because "[t]he government should not be allowed to do indirectly what it cannot do directly[,]" meaning that it could not require the defendant "to turn over his benefits as they are paid to him."). 42 USC 407(a) represents a clear choice by Congress to exempt all social security benefits, whether from SSDI or SSI, from any legal process, save for a few enumerated exceptions not at issue in this case. Bennett v Arkansas, 485 US 395, 397; 108 S Ct 1204; 99 L Ed 2d 455 (1988). Trial courts must be careful to avoid any order that in fact would compel one to satisfy a restitution obligation from the proceeds of one's SSDI benefits. There is no restitution ordered in the

criminal case that is appealed herein. It is only technical legal fees. Good luck getting blood from a turnip. The Social Security Administration will be directly notified of the Panel's unlawful attempt to give the Court leeway to take Petitioner's only source of income and is his SSI disability income. Those Panel judges are directly conflicting with the Canons of Judicial Conduct where Judges cannot violate Federal or State laws in their professional conduct. They cannot make decisions contrary to law, contrary to SCOTUS.

7. The panel overlooked a potential flaw in their own argument in the record which doesn't go along with the statute and thus draws the final judgment into serious legal question. The panel argued that "*The withdrawal of a properly noted appeal from the general district court to the circuit court in a criminal case is governed by Code§ 16.1-133. That statute provides, in pertinent part, as follows:",* and (citation omitted to focus on specific part of statute) "*If the appeal is withdrawn more than ten days after conviction, the circuit court shall forthwith enter an order affirming the judgment of the lower court and the clerk shall tax the costs as provided by statute*." The record had shown that it was not more than ten days after conviction. That itself makes the judgment premature and maybe even illegally filed. If the Panel had reviewed the entire record as they had claimed, they would have known that. The "MOTION - FAX TO WITHDRAW APPEAL" under Page 419 was filed on November 12, 2019. The

final judgment was filed on November 18, 2019, see Page 431, "ORDER IN MISDEMEANOR OR TRAFFIC INFRACTION PROCEEDING". The final judgment was put in too early according to the very statute cited by the Panel. According to review of the November, 2019 calendar which every Microsoft Windows computer has, it says that the tenth day (after the written motion to withdraw appeal) would fall upon a Sunday, November 22, 2019. Since the Court would be closed that day, they would have to wait until Monday, November 23, 2019 in order to meet the ten days necessary to enter a final conviction after the withdrawing of the appeal. As it would be up to the Court's discretion or time as to when to enter the final conviction after withdrawing of appeal, according to the statute, citation: "…If the appeal is withdrawn more than ten days after conviction…", well then there is another issue that was overlooked by the Panel and by the court appointed counsel. See "MOTION TO VACATE FRAUDULENT BEGOTTEN JUDGMENT" pg. 433-459. That motion was filed attempting to argue that Petitioner is innocent, that the Commonwealth had defrauded the Court and very well could have been construed by the Trial Court as a withdrawing of the written notice to withdraw the appeal. Again, the final judgment was filed on November 18, 2019. Ten days would be the 28th of November, 2019. Petitioner also filed a timely notice of appeal on November 26 or 27, 2019. One of those days were on a Federal Holiday, Thanksgiving. Any

of those pro se filings could have been construed as an attempt to ask the Court to reverse the earlier motion to withdraw appeal before the ten days after conviction however that statute is interpreted under Virginia Code § 16.1-133. The panel made a very interesting remark on Virginia Code § 16.1-133 regarding withdrawing appeals but the statute itself puts that final conviction into serious legal issues depending on how Virginia Courts interpret that part of the statute which may invalidate that final conviction. Even though Petitioner did not bring that issue up in his "Petition for Appeal", his legal counsel John Ira, Jones, IV clearly could have preserved that issue on appeal and did not. Clear ineffective assistance of counsel in this Direct Appeal, his counsel was defective and unethical in the handling of this Appeal Case.

8. The Writ Panel also argued that "Indeed, appellant himself notes in his pro se supplemental petition for appeal that he did not plead guilty or concede his guilt. Thus, we find appellant's argument that the Rules of Court governing guilty pleas applied under the circumstances of this case is without merit." That means the attorney/legal-counsel John Ira Jones had filed a defective Petition for Appeal. The only ground he raised was defective from the record itself, yet he raised that only ground as if that wasn't frivolous. That attorney purposefully filed a defective Petition for Appeal and not preserving other issues that may actually warrant relief from this Court. Relief such as

Constitutional relief. Any decisions made by this Court or the Circuit Court which violates Federal Law is invalid and violates the Canons of Judicial Conduct. John Jones deserves no money for making false statements to this Court, he should not be compensated for defamation of character and/or making false statements and Petitioner never advocated any of that. Counsel is clearly working against Petitioner and he worked for the Commonwealth of Virginia as a lawyer against those who were litigants against the Commonwealth of Virginia. He isn't just acting in conflict of interest; he had knowingly made defective pleadings that he probably knew would not prevail. It is not Petitioner who should be financially punished when he clearly doesn't have the money to pay off such a state debt (you can't get blood from a turnup, Brian was sued by Righthaven LLC in 2011 and they lost), but it should be former Assistant Attorney General John Ira Jones, IV.

9. The Constitutional issue here that the Writ Panel of this Court failed to consider was the U.S. Const. Eighth Amendment's prohibition on cruel and unusual punishments inflicted. The Circuit Court being allowed to forcefully make an SSI Dependent who is disabled pay thousands of dollars in legal fees for his wrongful criminal conviction when Petitioner only lives off of his Federal Social Security Disability Benefits pursuant to Title 42 U.S. Code § 407. That is cruel and unusual punishment inflicted by the Circuit Court and the Court of Appeals

of Virginia due to the wrongful State Conviction. Brian pays $500 for rent on record in the Circuit Court and that was on record. Brian pays for other things he needs, and has nothing left in the month. You're going to attempt to deprive Petitioner of his ability to live. You're acting as a Corporation instead of a State. Look Honorable Judges, try to understand Honorable Judges, that the Federal Courts are not attempting to make Petitioner pay legal costs because they know it has very difficult legal challenges under Federal Law and may not even prevail, they will not rob somebody with a disability on Federal SSI disability money. Is the Panel going to advocate **"unlawful"** robbery (*unlawful taking of somebody's money is robbery*) of Brian David Hill of his Federally protected SSI money when the Federal Courts don't even do this to Brian????? Not even the U.S. Court of Appeals for the Fourth Circuit demand that Petitioner pay the Government's legal costs as well as court appointed lawyer's legal costs when the U.S. Court of Appeals can make a losing appellant or appellee who isn't In-Forma-Pauperis pay legal costs upon losing an appeal. They did not do that to Petitioner but your Court thinks it has the right to violate Federal Law and act with more cruelty than the Federal Courts?????? You have to follow Federal Law and this Court is obligated under the Federal Supremacy Clause to follow the Federal Law as the Federal Courts have done with Brian David Hill. Arguably, if Petitioner makes any money in the future, then the Social Security

Administration pretty much reduces the SSI monthly amount to try to be equivalent with the amount earned from making money. So pretty much it is useless to work a job even if Petitioner could work to pay off the State. The Commonwealth as a State Government of the United States of America has no right to deprive somebody of life, liberty, and property without Due Process of Law. No State shall order cruel and unusual punishments inflicted.

10. This Court is punishing Petitioner financially for fighting for his Constitutional and legal rights in this Court and that itself is Unconstitutional to punish somebody financially or in any way for simply filing pleadings and asking the Courts for any Constitutional relief. By punishments or threats of punishments will deter poor people and disabled people from their Constitutional rights as criminal defendants. The Commonwealth has NO RIGHT to try to interfere or deter somebody from pursing their Constitutional rights in a Court of Law. That also violates Federal Law. The Panel's decision as well as this Court's decision may violate 18 U.S. Code § 242 - Deprivation of rights under color of law.

11. The U.S. Department of Justice may condemn what the Panel had done to Petitioner in that decision as it is unlawful under 18 U.S. Code § 242, Deprivation of rights under color of law. See https://www.justice.gov/crt/deprivation-rights-under-color-law -

Disclaimer: Roberta Hill researched this link and obtained link text). The law reads: “Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both”. However, the U.S. Department of Justice had argued legally in addition to the statute that “For the purpose of Section 242, acts under "color of law" include acts not only done by federal, state, or local officials within their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, prisons guards and other law enforcement officials, as well as judges, care providers in public health facilities, and others who are acting as public officials. It is not necessary that the crime be motivated by animus toward the race, color, religion, sex, handicap, familial status or national origin of the victim.” It mentions handicap and Petitioner is on SSI disability so he

does have a handicap. The panel is going into criminal Federal Law violating territory here**. Even Judges can be charged criminally with Deprivation of rights under color of law.**

12. The panel made an error of fact or error of the record when they argued that "*Thus, the trial court did not "ignore" appellant's pro se motions; they simply were not ripe for consideration when appellant elected to withdraw his misdemeanor appeal*." Page 4 of the Panel's order. That is not truthful and false. It is a defamatory or false statement. The record shown that Pro Se Motions were filed months and months prior to the withdrawing of appeal while motions filed by Counsel was always acted upon quickly. That is "Intentional" "ignoring", yes intentional ignoring of Petitioner's pro se motions. See pg. 293-301 of "MOTION - REQ SUB COUNSEL-FILED BY D". Motion filed on July 19, 2019. The Motion to Withdraw Appeal under Page 419 was filed on November 12, 2019. A date difference of 3 months, 3 weeks, 3 days between that pro se motion filing date and from the date which Petitioner filed his motion to withdraw appeal. However, when the legal counsel saw that pro se motion asking for new counsel, the legal counsel under pages 378-380 filed for a "MOTION - PUB. DEFENDER WITHDRAW", and was filed on July 29, 2019. It was granted by the Circuit Court Judge on August 1, 2019, according to page 383, "ORDER - APPOINTED ATTY MATT CLARK". When Petitioner filed a

motion to get rid of his court appointed counsel for being ineffective, the Court did ignore Petitioner's motion but when Lauren McGarry filed a similar motion, it was acted upon within days. Petitioner also filed a motion for discovery under pages 302-324. Filed on July 26, 2019, "MOTION - DISCOVERY". That motion was never acted upon from that filing date through November 12, 2019 when the Motion for Withdrawing Appeal was filed. The date between that motion and withdrawing appeal would be a difference of 3 months, 2 weeks, 3 days. Plenty of time to grant the motion but was never acted upon, the motion was ignored, the Panel was wrong. Then the pages 325-377 "MOTION - MOT TO SUPPRESS EVIDENCE" was filed on July 26, 2019. The date between that motion and withdrawing appeal would be a difference of 3 months, 2 weeks, 3 days. Then on pages 418-430 the "MOTION - FAX MOT TO DISMISS" was filed on November 4, 2019. Eight days away from the motion to withdraw appeal. No judge ever ordered an evidentiary hearing or response from the Commonwealth Attorney as to their position on the motion to dismiss. However, the Court did act upon the pro se motion to withdraw appeal, the only motion the Court acted upon and did not ignore. It was selectively enforced. This is unconstitutional. Many months did those motions and other motions never had been acted upon. For the panel to lie by claiming that "they simply were not ripe for consideration when appellant elected to withdraw his

misdemeanor appeal" is not true. Maybe they would have been ripe whenever Petitioner filed a motion to proceed pro se, but then that would have been ignored too unless counsel pushed for Petitioner to proceed pro se which puts Petitioner at counsel's mercy. He can practically be held hostage by his own legal counsel. This is simply not Constitutional and utterly illegal. Due process was deprived and Petitioner was deprived of Due Process of Law and given no access to the adversarial system, and these violations of the Constitution led to Petitioner withdrawing Appeal. It is clear as day that Petitioner does have avenues to present a non-frivolous appeal. Any reasonable lawyer would see that something is wrong with Petitioner's criminal case, as clear as spring water.

13. The compelling issues brought up in paragraphs 1-12 constitutes "intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented" sufficient to warrant rehearing of the order denying/refusing Petitioner's Petition for Appeal. It argues the potential civil or criminal liability issues of what the Panel of this Court had done by making that decision. The Constitutional and legal issues and contradictions arising out of what the Panel of this Court had done by making that decision. The Petitioner isn't saying 100% that this is why a Petition for Appeal should be granted, but the Panel's decision may need to be modified to comply with the Federal Laws

and the SCOTUS authoritative decisions herewith. Going against the law is a sheer violation of the Canons of Judicial Conduct. A Court of Law is supposed to be exactly that, a Court of the Law.

14. There are other legal issues which can be brought up further justifying relief but would surpass the word count limit. Legal issues such as West Virginia Attorney Edward Ryan Kennedy arguing in the Federal Appeals Court for the Fourth Circuit in Richmond, Virginia, case no. 19-4758, and court appointed lawyers did not make those arguments that Petitioner did not violate Virginia Code §18.2-387. Why did none of the court appointed lawyers in the Circuit Court bring up the very same arguments that Attorney Kennedy of West Virginia brought up on Federal Appeal???

15. The granting of the petition in this case means that this Court can preserve the Due Process and Equal Protection under the Laws. In alternative, the Court can ask for new counsel or allow the Petitioner to try again to make legal arguments as to why the Petition for Appeal should be granted. Maybe appoint new counsel who doesn't work for the Commonwealth of Virginia, an independent competent skilled counsel who could make legal arguments demonstrating why Anders v. California, 386 U.S. 738 (1967) may not apply in this appeal. It is clear that Petitioner is still entitled to relief. He can file a Writ of Actual Innocence in this Court of Appeals of Virginia as the Judge did not bar

him from that. All he had done was withdrawn his appeal but Petitioner did not waive being allowed to prove his ACTUAL INNOCENCE to this Court, to any Court of the Commonwealth for that matter. Petitioner can ask for a new jury trial based on newly discovered evidence. If Petitioner is ever cleared and found innocent of his only prior conviction, then he should also have the right to request a new trial in the Circuit Court as that was being used against him so he could not testify at the jury trial and would be used against him at sentencing. If his prior conviction is overturned on Actual Innocence, then Petitioner should be entitled to an opportunity to have a new trial because then his indecent exposure would be his only charge and no prior convictions. It takes months maybe years to overturn a wrongful conviction, so if the Panel is okay with his prior being used against him, then he should get some kind of relief in the Circuit Court if he is acquitted of his prior conviction. Please understand that. Petitioner is entitled to Due Process of Law which is in the Fourteenth Amendment of the U.S. Constitution. It is another deprivation of his Constitutional rights to use a prior conviction against him if at some point that he is found innocent and acquitted of that prior conviction. This Court can't selectively use Petitioner's prior criminal conviction against him and then when Petitioner is found innocent of that prior conviction in the future, then the Circuit Court won't let him use that in his favor. We have equal protections

under the Laws and that is a guarantee that a State cannot selectively use something against Petitioner but not allow Petitioner to use that same thing in his favor when circumstances change such as an acquittal, an Actual Innocence verdict by the Federal Court.

CONCLUSION

For the foregoing reasons, petitioner Brian David Hill prays that this Court (1) grant rehearing of the order denying and refusing his Petition for Appeal in this case, (2) vacate or modify the Panel's/Court's September 2, 2021 order denying/refusing Petition for Appeal, (3) grant the Petition for Appeal, and allow perfecting the Appeal, (4) consider whether the Petition for Appeal should have been denied or granted in part or if at all, and (5) any other relief that is necessary for justice and complying with Federal Law and any other Supreme Laws of the land.

Respectfully filed with the Court, this the 7th day of September, 2021.

Dated:

September 7, 2021

Respectfully submitted,

Brian D. Hill
Signed

Brian D. Hill

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CERTIFICATE OF TRANSMISSION AND SERVICE

Pursuant to Rule 5A:15(b), On September 6, 2021, Due to the conditions of Brian David Hill's Supervised Release not allowing me to access the internet, I filed this Petition with the Court by having my Mother and Assistant Roberta Hill through rbhill67@comcast.net, filed the original pleading through Virginia Appellate Courts Electronic System (VACES) as well as emailing a PDF file copy of this Petition to cavbriefs@vacourts.gov. Also, on September 6, 2021 a copy of the Petition through my Assistant Roberta Hill had been transmitted/served on the following, via email (by Roberta Hill) and by fax (by Brian D. Hill), at the email address indicated:

Glen Andrew Hall, Esq.

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Dated:

September 7, 2021

Respectfully submitted,

Brian D. Hill
Signed

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CERTIFICATE OF COMPLIANCE
WITH WORD OR PAGE COUNT LIMIT

I certify that this Petition, excluding the cover page, table of contents, table of authorities and certificates, contains 5,276 words according to the word count feature of Microsoft Word 2016. This is pursuant to Rule 5A:15(b), that a "petition for rehearing may not exceed 5,300 words in length", are of 14-size font, New Century Schoolbook.

Dated:

September 7, 2021

Respectfully submitted,

Brian D. Hill
Signed

Brian D. Hill _____

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