

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
APPENDIX OF FORMS

Form 10. Petition for a Writ of Actual Innocence Based on Nonbiological Evidence.

PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON
NONBIOLOGICAL EVIDENCE

THE COURT OF APPEALS OF VIRGINIA

Brian David Hill Record No. _____
(FULL NAME OF PETITIONER AND PRISONER NO., IF APPLICABLE) (TO BE SUPPLIED BY THE CLERK OF THE COURT OF APPEALS)

v.

Commonwealth of Virginia, and City of Martinsville
(RESPONDENT)

310 Forest Street, Apartment 2, Martinsville, Virginia 24112

(PETITIONER'S ADDRESS)

Pursuant to the provisions of Chapter 19.3 of Title 19.2 of the Code of Virginia, I, Brian David Hill

NAME OF PETITIONER

hereby petition this Court for a WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE. In support of this petition, I state under oath that the following information is true:

1. On November 18, 2019, I was convicted or adjudicated delinquent in the

City of Martinsville Circuit Court of the following offense(s):

JURISDICTION (CITY/COUNTY)

Description of Felony Offense	Virginia Code	Circuit Court Case No.	Plea
Indecent exposure (Misdemeanor)	§ 18.2-387.	CR19000009-00	Not Guilty
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Note: Only withdrawn appeal but retained the right to file a Petition for a Writ of Actual Innocence, but did not plead guilty, See Joint Appendix 1 Page ~~000-000~~. 419-432.

2. I am innocent of the offenses(s) that are the subject of this petition.

This Petition I requested I retain the right to prove Actual Innocence.

3. My claim of innocence is based upon the following evidence:
See attached Brief and Exhibits; and based on unlawful destruction of
evidence by the Commonwealth of VA.

[X] ATTACHED ADDITIONAL SHEET(S)

4. Check all that apply:

[X] (a) This evidence was previously unknown or unavailable to either me or my attorney at the time the conviction(s) or adjudication(s) of delinquency became final in the circuit court; and/or

[X] (b) This evidence was not subject to scientific testing because _____
it was destroyed by Sovah Hospital in Martinsville, VA, Martinsville Police Department.

5. This evidence became known or available to me on N/A, don't know when they destroyed
DATE evidence.

6. The circumstances under which the evidence was discovered were
See attached Brief and Exhibits; and based on unlawful destruction of
evidence by the Commonwealth of VA.

[X] ATTACHED ADDITIONAL SHEET(S)

7. Check all that apply: A new Virginia Law admits new evidence not previously admissible.

[X] (a) This evidence could not have been discovered or obtained by the exercise of diligence before the expiration of 21 days following entry of the final order(s) of conviction or adjudication of delinquency by the court; and/or Autism was not admissible at the time.
Direct Appeal still in VA Supreme Court.

[] (b) The testing procedure was not available at the time of the conviction(s) or adjudication(s) of delinquency became final in the circuit court.

8. The evidence upon which I base my claim is material and, when considered with all of the other evidence in the record, will prove that no rational trier of fact would have found me to be guilty or delinquent beyond a reasonable doubt of the charge(s) described above because

In July of 2020, the General Assembly lowered the bar for person's petition for
Writ's of Actual Innocence based on non-scientific evidence. See attached Brief
and Exhibits [X] ATTACHED ADDITIONAL SHEET(S)

9. In support of this petition, I have attached the following documents:
See attached Brief and Exhibits.

[X] ATTACHED ADDITIONAL SHEET(S)

10. I understand that this petition must contain all relevant allegations of facts that are known to me at this time.

11. I understand that it must include all previous records, applications, petitions, and appeals and their dispositions related to this/these conviction(s) or adjudication(s) of delinquency, as well as a copy of any documents or evidence in support of the facts that I assert above.

12. I understand that if this petition is not complete, this Court may dismiss the petition or return the petition to me pending the completion of such form.

13. I understand that I am responsible for all statements contained in this petition.

14. I understand that any knowingly or willfully made false statement is grounds for prosecution and conviction of perjury as provided for in Virginia Code § [18.2-434](#).

15. Counsel. Check the appropriate box.

I am being represented by an attorney on the filing of this petition.
My attorney's name and address are

I am not being represented by an attorney on the filing of this petition.

16. Exemption from filing fee. Check box below if claiming in forma pauperis status and seeking to file this petition without payment of fees.

I claim *in forma pauperis* status and I request that this Court accept this petition without the payment of filing fees. I affirm under oath that I am eligible for *in forma pauperis* status. My assets amount to \$ between \$50-\$100 (which sum includes my ~~institutional inmate~~ account which has a balance of **\$61.24** \$between 50-100, and my liabilities amount to \$ 1,224 See AFFIDAVIT OF INDIGENCE

See the attached or supported AFFIDAVIT OF INDIGENCE. Petitioner not an inmate, but is under Federal custody of supervised release which was extended due to state conviction.

17. Request for counsel. Check box below if claiming eligibility for court-appointed counsel and requesting appointment of counsel.

I am requesting that the Court appoint counsel to represent me in this action. I affirm under oath that I am unable to pay for an attorney to represent me in this action, as set forth in item No. 17 above.

Based on the above, I petition this Court pursuant to the provisions of Chapter 19.3 of Title 19.2 of the Code of Virginia for a Writ of Actual Innocence Based on Nonbiological Evidence.

January 28, 2022
DATE

Brian D Hill
signed

SIGNATURE OF PETITIONER

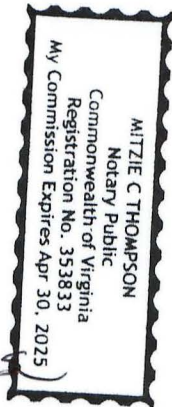
Commonwealth/State of Virginia

City [] County of Martinsville

Subscribed and sworn to/affirmed before me on this date by the above-named person. Brian D Hill

Jan 28 2022
DATE

Mitzi C Thompson
NOTARY PUBLIC



My commission expires: April 30 2025

DATE SIGNATURE OF ATTORNEY (IF APPLICABLE)

VIRGINIA STATE BAR NUMBER

Pro se (self-represented) petitioners: You are required to send copies of the PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE and all attachments to the Commonwealth's Attorney of the jurisdiction where the conviction(s) or adjudication(s) of delinquency occurred and to the Attorney General of Virginia by certified mail. You must complete the form entitled Court of Appeals Form CAV-104, CERTIFICATE OF MAILING - PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE.

Petitioners represented by counsel: You are required to serve copies of the PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE and all attachments on the Commonwealth's Attorney of the jurisdiction where the conviction(s) or adjudication(s) of delinquency occurred and on the Attorney General of Virginia. You must include the forms entitled Court of Appeals Form CAV-103CA, ACCEPTANCE OF SERVICE OR RETURN OF SERVICE BY THE COMMONWEALTH'S ATTORNEY - PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE and Court of Appeals Form CAV-103AG, ACCEPTANCE OF SERVICE OR RETURN OF SERVICE BY THE ATTORNEY GENERAL - PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE.

Last amended by Order dated September 24, 2020; effective immediately.

Last amended by Order dated November 23, 2020; effective March 1, 2021.

*To be supplied by the Clerk

Record #

BRIAN DAVID HILL v. COMMONWEALTH OF VIRGINIA

AFFIDAVIT OF INDIGENCE

For Petition for the Writ of
Actual Innocence

NAME: Brian David Hill

ADDRESS: 310 Forest Street, Apt. 2, Martinsville, VA 24112

OCCUPATION: Disabled

HOUSEHOLD SIZE (TOTAL NUMBER OF PERSONS
RESIDING IN THE HOME THAT YOU HAVE FINANCIAL
RESPONSIBILITY FOR, INCLUDING YOURSELF): 1 Person in Apartment 2

NET MONTHLY INCOME: \$841, SSI Disability 42 U.S.C. §407 protected from U.S. Treasury

NET MONTHLY INCOME OF SPOUSE: N/A

NET MONTHLY INCOME OF EMPLOYED DEPENDENTS: N/A

AMOUNT ON DEPOSIT IN BANKS: Between \$50 to \$100 at the time of this Affidavit. **\$61.24**

VALUE OF EQUITY IN REAL ESTATE: Own no Real Estate, pay \$500 monthly rent

INCOME PRODUCED BY REAL ESTATE: N/A

OTHER INCOME: Only SSI is my approved income by the Federal Government

VALUE OF PERSONAL PROPERTY: Used furniture and hygiene products, not much for used items.

MAKE, MODEL, AND YEAR OF CARS OWNED: Own no cars

VALUE OF INTEREST IN OTHER PROPERTY: Own no land, own no cars, own no property

APPROXIMATE INDEBTEDNESS:	<u>AMOUNT</u>	<u>LENDER</u>
Circuit Court of Martinsville	\$1,224, likely more but I don't know what total legal debt is.	Legal Costs

NOTE:

I usually use up my entire monthly SSI money on things I need like paying any monthly bills such as Rent, hygiene products, legal or mailing expenses, things to deal with my anxiety and stress as I have Generalized Anxiety Disorder as documented in Fed Court, and any other needs/necessities.

I declare under penalty of perjury that the foregoing is true and correct.

I hereby certify that the foregoing information is accurate to the best of my knowledge.

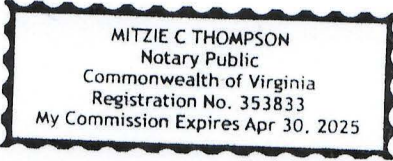
Executed on January 28, 2021.

Brian D. Hill
Signed
Signature of Petitioner

Subscribed and sworn to before me this 28 day of January, 2022.

Mitzie C Thompson
Notary Public

My commission expires April 30 2025



Certificate of Service

I hereby certify that a true and exact copy of the foregoing affidavit was mailed along with the Petition for the Writ of Actual Innocence and its attachments at the time of mailing the copies of the Petition for the Writ of Actual Innocence and its attachments. See the FORM CAV-104 (07/04) signed by Brian David Hill. It was again, as stated in FORM CAV-104 (07/04), mailed to the following:

Martinsville Commonwealth's Attorney Office
55 W Church St
PO Box 1311
Martinsville, VA 24114
ahall@ci.martinsville.va.us

Attorney General of Virginia, Mark R. Herring, Esq.
202 North Ninth Street
Richmond, Virginia 23219
mherring@oag.state.va.us

on the same date as the mailing date on CAV-104 form.
on the _____ day of _____, 2022 ~~January~~ On the same date as mailing date on
(date) (month) CAV-104 form.

I hereby certify that the foregoing affidavit was filed by Assistant/Representative Roberta Hill through rbhill67@comcast.net through Virginia Court eFiling System (VACES) with the Clerk of the Court of Appeals of Virginia due to the compliance with the Supervised Release conditions of Appellant:

Brian D. Hill
Signed
Signature of Petitioner Brian D. Hill

310 Forest Street, Apt. 2
Martinsville, Virginia 24112
(276) 790-3505
Filing Assistant:
Roberta Hill
rbhill67@comcast.net