

In The
Supreme Court
Of Virginia

Brian David Hill,

Appellant,

v.

**Commonwealth of Virginia,
City of Martinsville**

Appellee.

**ON APPEAL FROM THE COURT OF
APPEALS OF VIRGINIA**

PETITION FOR REHEARING OF APPELLANT



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Pro Se Appellant
Dated September 13, 2022

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SUMMARY

Brian David Hill, (“Appellant”) files this Petition for Rehearing of this Court (Rule 5:20).

The Supreme Court of Virginia (“SCV”) needs to reconsider, set aside, or vacate its Writ Panel’s decision on refusing the Appellant’s petition for appeal decided on September 2, 2022, a few days after oral argument made by Appellant on August 31, 2022. Needs to re-review over the Petition for Appeal, vacate or set aside the Writ Panel’s decision on September 2, 2022, and needs to order granting of the Petition for Appeal, and set it for Perfection of Appeal pursuant to Rule 5:23.

The SCV must vacate a decision if it creates a conflict of laws which contradicts case law precedents with the Supreme Court of the United States (“SCOTUS”), as one of the main purposes of the SCOTUS is to prevent conflicts within the circuits and to prevent conflicts of law between the states when it concerns Federal Constitutional law. All states including Commonwealth states are subject to the jurisdiction of the United States Constitution, but all states are republics with each of its own Constitution. The decision of the panel finding no assignment of error is in conflict with laws, and is contradiction with the holdings made in *McQuiggin v. Perkins*, 569 U.S. 383, (2013), *Schlup v. Delo*, 513 U.S. 298. *House v. Bell*, 547 U.S. 518, and *Coleman v. Thompson*, 501 U.S. 722, 750.

McQuiggin v. Perkins, 569 U.S. 383, (2013) (“The Court has applied this “fundamental miscarriage of justice exception” to overcome various procedural

defaults, including, as most relevant here, failure to observe state procedural rules, such as filing deadlines. See *Coleman v. Thompson*, 501 U.S. 722, 750, 111 S. Ct. 2546, 115 L. Ed. 2d 640.”).

The Writ Panel of three justices were Chief Justice Goodwyn, Justice Mann and Senior Justice Lemons. Over the oral argument on August 31, 2022.

This case concerns Brian D. Hill, formerly of USWGO Alternative News, a man who was caught up in an indecent exposure charge in the City of Martinsville on September 21 2018, and wrongful conviction in the Circuit Court on November 18, 2019. He has on record the diagnosis of Autism Spectrum Disorder, Obsessive Compulsive Disorder, and Type One Brittle Diabetes. He is innocent. He was not medically cleared. The local hospital Sovah Health Martinsville ordered laboratory tests and billed Medicaid, but they were never completed. While lying to Officer Robert Jones of Martinsville Police Department that Brian was not medically cleared. It was a lie. Even though he was given the assumption that he was medically cleared. Innocent people are not supposed to be convicted of a crime.

Here are the reasons why the Writ panel’s decision denying petition for appeal should be vacated or set aside, petition should be granted, should be perfected for appeal procedures, and why the case should be a legally binding case law opinion.

CONFLICT OF LAWS ARGUMENT

Anyways, the Appellant had argued *McQuiggin v. Perkins*, 569 U.S. 383, (2013) both in oral argument and in the petition for appeal, but the decision by the

Court of Appeals of Virginia (“CAV”) in this underlying appeal was in conflict of laws with the United States Supreme Court under *McQuiggin v. Perkins*, 569 U.S. 383, (2013) and other authorities. This SCV can still fix this miscarriage of justice.

The Supreme Court of Virginia should vacate the panel’s decision because errors do in fact exist and the panel had overlooked the fact that the CAV does have jurisdiction over misdemeanor convictions in certain situations/circumstances.

In the case of *McQuiggin v. Perkins*, the statute it relied upon for actual innocence claims did not mention the terms “fundamental miscarriage of justice exception” but rather the SCOTUS made an interpretation of the law to allow actual innocence claims with the common sense that no Court should convict or punish an innocent person. Making legal interpretations not entirely reliant on statutory words.

Appellant presents three legal jurisdiction avenues that this SCV has in its authority to rule that the Court of Appeals of Virginia did have jurisdiction to consider Appellant’s petition for the Writ of Actual Innocence on its merits rather than denying the petition on the basis that it lacked jurisdiction because it only covered felony cases. Appellant is serving a felony sentence of supervised release.

The Constitution of the United States and Virginia Constitution are both the supreme laws of the land. Statutes cannot override the Constitution. See Chapter 19.2. Issuance of Writ of Actual Innocence, Chapter 19.3. Issuance of Writ of Actual Innocence Based on Nonbiological Evidence.

Appellant argued in oral argument that he was serving a felony sentence of

supervised release by the United States Probation Office and that misdemeanor conviction directly impacted his supervised release sentence with a revocation and violation charge, but actual innocence claims would undo such violation and revocation. The panel overlooked the fact that Appellant does have jurisdiction under Virginia Code §19.2-327.10 and the CAV misinterpreted what the law had actually said and what Appellant attempted to explain in oral argument.

§19.2-327.10 says in part, “Notwithstanding any other provision of law or rule of court, upon a petition of a person who was convicted of a felony...the Court of Appeals shall have the authority to issue writs of actual innocence under this chapter.” Appellant had proved that he was convicted of a felony at the time, was serving supervised release at the time the petition was filed, and that the misdemeanor directly violates a condition of his felony sentence of supervised release. In *McQuiggin v. Perkins*, SCOTUS also made an interpretation of the miscarriage of justice exception despite those words not laying in the statute in that case. It made an interpretation favorable to the actual innocence exception and that a Court should give sensitivity to the issue of not convicting an innocent person of a crime. The SCV should do the same, and has that legal capability.

Anyways, the CAV’s decision dismissing Appellant’s writ is a conflict of law with the interpretation set by SCOTUS in *McQuiggin v. Perkins*.

The authority lies in the U.S. Constitution and Virginia’s Constitution.

SCV should find that the assignments of error do in fact exist because of

Article-I. Section 8. Criminal prosecutions. (“He shall not be deprived of life or liberty, except by the law of the land...”), Article-I. Section 11. Due process of law (“That no person shall be deprived of his life, liberty, or property without due process of law...”), and Amendment XIV Sect. 1 (“nor shall any state deprive any person of life, liberty, or property, without due process of law...”). If an innocent federal probationer serving a felony sentence is not allowed to Petition for a Writ of Actual Innocence despite §19.2-327.10 mentioning felony cases without limiting to only state felonies as to jurisdiction to challenge a state conviction, then that is a miscarriage of justice and is an error of law. There were actual errors presented in the petition for appeal, the SCV should re-review over that pleading. That was overlooked. Under the Constitutional amendments of both Constitutions, the SCV does have errors of law which need to be corrected by rehearing. The CAV does have jurisdiction with the three Constitutional amendments cited above.

Also, the due process of law clauses require that a Court reconsider a criminal conviction or allow a criminal conviction to be challenged if the Petitioner proved that the elements of a crime prosecuted are untrue. All Courts in both State/Commonwealth and Federal all have constitutionally given inherit or implied powers to correct errors on its record without a statute necessary. Hazel-Atlas Co. v. Hartford Co., 322 U.S. 238, 248 (1944) (“Equitable relief against fraudulent judgments is not of statutory creation. It is a judicially devised remedy fashioned to relieve hardships which, from time to time, arise from a hard and fast adherence to

another court-made rule, the general rule that judgments should not be disturbed after the term of their entry has expired.”) Hazel-Atlas Co. v. Hartford Co., 322 U.S. 238, 245 (1944) (“Every element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments.”). If the SCV or CAV do not reverse its errors of law and conflicts of law, then it conflicts with the interpretations of SCOTUS of cases involving the inherit or implied powers of a Court. The U.S. Courts and State Courts operate exactly the same. They are all republic forms of government following the same basic rules and laws under the Constitutions which are the supreme law of the land.

Virginia Courts including the CAV and SCV also have inherit and equitable powers which allow a Court to vacate a judgment which was procured by fraud.

In the cases of Petitions for the Writ of Actual Innocence, a petition disproving the elements of guilt over a charged crime and wrongful conviction, creates evidence of fraud on the court, fraud perpetuated by the prosecutor which would be either the Commonwealth Attorney or Attorney General, whoever prosecuted the case. Prosecutors normally are barred by State Bar Rule from prosecuting and convicting an innocent person of a crime who they know to be innocent of a crime. See Rule 3.8 - Additional Responsibilities Of A Prosecutor, Va. R. Sup. Ct. 3.8 (“(a) not file or maintain a charge that the prosecutor knows is not supported by probable cause...”). So if a criminal Defendant is proven innocent at a later time by the facts and of the law, then a prosecutor should not have been entitled to a criminal

conviction for a crime the defendant is in fact innocent of.

The Virginia and U.S. Constitutions both make it clear, all elements of a charged crime must be proven fully to the extent of the law beyond a reasonable doubt. If a criminal defendant had not plead guilty, and Appellant did not plead guilty in this case, he is still entitled to the satisfaction of proving every element of a crime before a criminal conviction can be maintained/sustained. Anything less is a fraud on the court. If an Appellant is able to have a criminal defense or disprove one or more elements of the charged crime, then a criminal conviction is a FRAUD ON THE COURT. It is the duty of the SCV and CAV to correct these issues as a matter of law. The Writ Petition should have jurisdiction over issues of fraud.

See Article I, Section 9. (“That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted...”) and convicting an innocent person of a crime is a cruel and unusual punishment. It is cruel to convict an innocent person no matter what the charge, if that charge deprives a person of life, liberty, or property. A guilty person is forced to pay legal fees of a criminal conviction pursuant to § 19.2-354. If a criminal defendant disproves the elements of guilt in his Writ Petition, then ordering such legal fees against an innocent person is cruel and unusual punishment inflicted. If a federal probationer serving a felony sentence is revoked of his supervised release or probation as a result of a misdemeanor criminal conviction and is given no right or opportunity to challenge that with new evidence, then that is also a cruel and unusual punishment

inflicted against an innocent person of a crime.

Maybe *McQuiggin v. Perkins*, 569 U.S. 383, (2013) does not exactly apply to the Virginia Supreme Court regarding a state remedy such as the Petition for the Writ of Actual Innocence, but the state supreme courts are usually co-equal to the SCOTUS with exception to decisions which conflict with authorities concerning the U.S. Constitution itself. Usually the state supreme courts make sure to not start up a conflict of laws over well-settled disputes. SCOTUS did lay the groundwork where a defaulted petition for Habeas Corpus can be permitted to having jurisdiction when confronted with evidence of factual innocence. In the case of the Writ Petition filed with the CAV proving fraud on the court against a wrongful conviction of a misdemeanor of a federal probationer serving a felony sentence promising not to violate any local, state, or federal law as part of the conditions.

It is wrong for this SCV to be rejecting the petition for appeal when it is clear that there was errors properly argued in Appellant's petition for appeal when it is fraud to convict an innocent person of a crime when elements of the crime are disproven by admissible evidence, by new evidence, and by clear and convincing evidence. It is wrong for the SCV to be rejecting the petition for appeal when it violates due process of law to require an innocent man to pay legal fees for a crime he has proven his innocence of. The CAV violated due process of law and committed cruel and unusual punishment to keep an innocent man convicted of a crime. That is morally wrong, it is wrong as matter of Constitutional law.

The Constitution and its limitations of authority of law and government wasn't to deprive people from pursuing their constitutional rights in a Court of Law but was to prevent the government, the Commonwealth from taking away somebody's life, liberty, money, and/or property without due process of law. Due process of Law isn't just simply limited to the constitutional right to a hearing to be heard, or the right of a judge to simply make a decision in a criminal/civil case. Due Process of law is more than that. It is to not ignore the law when such law is constitutional and not to ignore a situation which such situation applied to a law is unconstitutional even when the law is constitutional itself. Due Process of law requires that when a criminal defendant had proven his/her innocence that a conviction must be undone as matter of fact and as a matter of law. It is within the Court's inherit or implied constitutional powers. Remember, the Constitution and laws were never meant to deprive people from pursuing their rights in a Court of Law but was to prevent the government from taking away somebody's life, liberty, and/or property without due process of law. It creates dangerous precedent of conflicts of laws with SCOTUS. This Supreme Court can still do the right thing, they can reverse the Writ Panel's decision and the Chief Justice S. Bernard Goodwyn should admit that he was wrong with his and the Writ Panel's decision in refusing the Petition for Appeal. He can still right the error and use his own liberal beliefs of wrongful convictions and criminal justice reform to conform with the authorities of the U.S. Supreme Court. Otherwise it is a conflict of laws. Liberals were known to be against rogue police, tough on crime and tough on

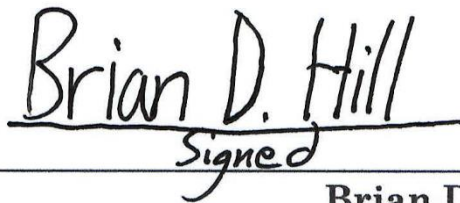
innocent people accused of crimes they are innocent of. What happened to the liberal Chief Justice of the VA Supreme Court???? SCOTUS made it clear for decades that actual innocence can overcome a procedural bar. The Writ Panel decision claiming no error did make error and allowed fraud on the Circuit Court.

CONCLUSION

The judgment/order of Writ Panel’s refusal of Appellant's petition for appeal on September 2, 2022, and the case should be remanded for further proceedings on the issue, and that Appellant’s petition for appeal be granted for maturing appeal for further proceedings. Appellant requests relief accordingly and asks for any other relief which the SCV may deem proper and just.

Respectfully Filed/Submitted on September 13, 2022,

BRIAN DAVID HILL
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Signed

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CERTIFICATE OF COMPLIANCE

1. This brief complies with 5:20(c) page limit or word limit, regarding the type-volume limits (“...must not exceed the greater of 10 pages or a word count of 1,750 words...”), excluding the parts of the document exempted by Rule 5:6(a)(3) (cover page, table of contents, table of authorities, signature blocks, or certificate):

This brief is [10] pages.

2. This brief complies with the typeface and type style requirements because:

[X] this brief has been prepared in a proportionally spaced typeface using [Microsoft Word 2013] in [14pt Times New Roman]; or



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Dated: September 13, 2022



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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 13th day of September, 2022, I caused this amended “PETITION FOR REHEARING OF APPELLANT” to be delivered by email service by Assistant/Filing-Representative Roberta Hill using rbhill67@comcast.net or rbhill67@justiceforuswgo.nl to the Commonwealth of Virginia and City of Martinsville through the Commonwealth Attorney’s Office of Martinsville City; as well as to the named counsel for the Office of the Attorney General; and the original was filed with the Clerk of the Supreme Court of Virginia by Virginia Court eFiling System (VACES) through Assistant/Filing-Representative Roberta Hill which shall satisfy proof of service as required by Rule 5:1B(c) stating that “*Service on Other Parties by Email. – An electronic version of any document filed in this Court pursuant to Rule 5:1B(b) must be served via email on all other parties on the date the document is filed with the Court or immediately thereafter, unless excused by this Court for good cause shown. An e-filed document must contain a certificate stating the date(s) of filing and of email service of the document.*” And the proof that such pleading was delivered will be filed together with this “Petition for Appeal” shall satisfy the proof of service was required by Rule 5:17(b):

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The reason why Brian David Hill must use such a representative/Assistant to serve such pleading with the Clerk on his behalf is because Brian is currently still under the conditions of Supervised Release for the U.S. District Court barring internet usage without permission. Brian's Probation Officer is aware of Roberta Hill using her email for conducting court business concerning Brian Hill or court business with the Probation Office in regards to Brian David Hill. Therefore, Roberta Hill is filing the pleading on Brian's behalf for official court business. Brian has authorized Roberta Hill to file the pleading.

If the Court wishes to contact the filer over any issues or concerns, please feel free to contact the filer Brian David Hill directly by telephone or by mailing. They can also contact Roberta Hill at rbhill67@comcast.net and request that she forward the message and any documents or attachments to Brian David Hill to view offline for his review.



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