

RECORD NO. 220186

**PRIVATE TRANSCRIPT, TRANSCRIBED BY APPELLANT/PETITIONER
BRIAN DAVID HILL**

**IN THE SUPREME COURT OF VIRGINIA
IN THE CITY OF RICHMOND**

BRIAN DAVID HILL)	
)	RECORD NO. 220186
vs.)	
)	August 31, 2022
COMMONWEALTH OF VIRGINIA ET AL)	2:32 P.M. approximately

Supreme Court of Virginia Justices referred to as SCV in transcript.

Brian David Hill the Appellant/Petitioner known as Petitioner in transcript.

This transcript is privately conducted by the Appellant/Petitioner. Roberta Hill submitted the audio file of the oral argument to Artificial Intelligence (AI) guided transcription). So AI aided in Brian David Hill producing this transcript.

TELEPHONE CONFERENCE APPEARANCES:

For the Petitioner: BRIAN DAVID HILL, PRO SE

Appellant/Petitioner

310 Forest Street, Apt. 2

Martinsville, Virginia 24112

Court Reporter: PRO SE, done by Brian David Hill, with assistance of family/AI.

Appellant/Petitioner

310 Forest Street, Apt. 2

Martinsville, Virginia 24112

Proceedings streamed live by staff of Supreme Court of Virginia and was stream recorded by Roberta Hill using Jaksta Media Recorder for purposes of transcript making. Transcript produced by computer-aided transcription software, help of AI, help of family.

PROCEEDINGS

(The Petitioner was present by telephone conference.)

SCV Justice: Please call the next case.

SCV: Brian David Hill versus Commonwealth of Virginia et al.

Petitioner: Ah, Thank you justices. Um, here are the reasons why petition for appeal should be granted and why the case should become a legally binding case law opinion.

Petitioner: This case concerns Brian D. Hill, 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 2019.

Petitioner: He has on record the diagnosis of autism spectrum disorder, obsessive compulsive disorder, and type one brittle diabetes.

Petitioner: 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 it was.

Petitioner: There was also the issue that Brian was exposed to carbon monoxide gas toxicity and the issue of the police body camera footage being destroyed by Martinsville Police Department after the Circuit Court had two court orders ah for Brady materials. And the J...General District Court had one court order.

Petitioner: Three court orders asking for the Brady materials, which included the police body camera footage recorded by Officer Jones on September 21, 20-8. Of the suspect, Brian David Hill, that footage was destroyed in flagrant violation of three court orders and messages requesting it and they did not get back to those.

Petitioner: Glen Andrew Hall, attorney for the Commonwealth committed criminal violations of contempt of Court by allowing evidence to be illegally destroyed by Martinsville police under Chief G. E. Cassidy. In the letters in the record.

Petitioner: And Glen Hall has committed these contempt crimes three different times and has gotten away with those crimes. In the corrupt city of Martinsville. Commonwealth Attorney office committed blatant corruption by destroying evidence favorable to the actual innocence of Brian, in this criminal case, in one, in the petition for writ of actual innocence.

Petitioner: It was a medical emergency, his autism spectrum disorder and it's medical emergency, with no laboratory proof disproving whether or not that Brian had drugs or any toxicity in his body, while being falsely declared medically cleared by the doctor.

Petitioner: All of that was considered a criminal offense. No, it was not a criminal offense. It was not a criminal offense because he was not medically cleared due to laboratory tests being deleted from the chart without explanation. All of that was presented to the Court of Appeals of Virginia in the petition for the writ. Lab tests ordered, then later deleted from the chart. While blood vials destroyed.

Petitioner: Evidence destroyed to convict this innocent man, covered up by Martinsville Police, and covered up by Sovah Health Martinsville I mean...I mean Hospital in Martinsville, didn't even check his blood sugar. Brian Hill is innocent. He should not be blocked from that.

Petitioner: The Court of Appeals should not bar him from proving his innocence in overturning his conviction. Here's the precedent, which this Supreme Court can have its case law. The U.S. Supreme Court had ruled upon the actual innocence exception to any petition, procedurally barred by any procedural grounds.

Petitioner: The writ of actual innocence being barred due to conviction being a misdemeanor is a procedural bar. And actual innocence is not supposed to be procedurally barred by a state court, as courts should be sensitive to the issue of Petitioner being allowed to prove actual innocence to overturn a wrongful conviction.

Petitioner: There is a new Virginia law, Virginia code section 19.2-271.6: evidence of Defendant's mental condition admissible in the Virginia Courts, and it's supposed to be to the sensitivity of the issues like autistic criminal defendant Brian Hill being wrongfully convicted here. See *McQuiggin v. Perkins*, 569 U.S. 383, (2013). Actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in *Schlup v. Delo*, 513 U.S. 298. *House v. Bell*, 547 U.S. 518.

Petitioner: 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. See *Coleman v. Thompson*, 501 U.S. 722, 750.

Petitioner: State procedural rule, such as barring misdemeanants from overturning the wrongful convictions on actual innocence, simply because the General Assembly forgot to include misdemeanor convictions in the language.

Petitioner: What about persons convicted of a federal felony at an earlier time, which the General Assembly did include felonies in the language? So what about a felon serving probation or supervised release, where such conditions say that even a misdemeanor charge and conviction can violate those conditions? Where is their remedy when they are actually innocent of a state conviction?

Petitioner: Misdemeanor convictions can affect felons serving a federal or state supervised release. It should be permissible for petitions for writs of actual innocence, since those convictions directly deeply impact felony convictions of those serving supervised release.

Petitioner: The US District Court have ruled that state convictions can be used as a predicate for convicting a supervised release probationer of a violation. But what if that person is innocent of their state conviction?

Petitioner: Does that person not have any legal remedy in the Commonwealth of Virginia to challenge a wrongful state conviction? What if it is a misdemeanor? Does that person have no right to prove actual innocence and overturn that state conviction on actual innocence simply because it is a misdemeanor?

Petitioner: What if the misdemeanor conviction directly impacts a felony sentence of probation? Where is their remedy? I have no remedy in either the state courts and federal courts (ah question mark)? Is that not a fundamental miscarriage of justice? Which the US Supreme Court had ruled that lower courts should give the fundamental miscarriage of justice exception to procedurally barred petitions claiming actual innocence?

Petitioner: If you're truly innocent, you shouldn't have a misdemeanor conviction. That is how the Court of Appeals should rule instead. The governor shouldn't be the only mechanism, because if you have evidence you're factually innocent, the court should consider petitions where there is a fundamental miscarriage of justice of convicting an innocent person. Where such innocence directly impacts felony supervised release sentences.

Petitioner: Do you have any questions?

SCV Justice: No.

Petitioner: All right, thank you for hearing this argument.

SCV Justice: Thank you very much. Take care.

Petitioner: You too.

Approximately oral argument may have taken around 08:31.

CERTIFICATE OF PETITIONER

I, Brian David Hill, Pro Se Petitioner/Appellant, certify that the foregoing transcript is a true and correct transcript of the audio recording of the proceedings in the above-entitled matter.

Dated this 31st day of August 2022.

Corrected on September 12, 2022, due to audio cut out at one part of the oral argument.
Recovery of recorded oral argument audio allowed correction of transcript.


Signed
Brian D. Hill

Brian D. Hill, Appellant/Petitioner
310 Forest Street, Apt. 2
Martinsville, Virginia 24112