

In The  
**Court of Appeals**  
Of Virginia

**Brian David Hill,**

*Appellant,*

v.

**Commonwealth of  
Virginia, City of  
Martinsville**

*Appellee.*

**ON APPEAL FROM THE CIRCUIT COURT  
FOR THE CITY OF MARTINSVILLE**

**AMENDED APPELLANT'S MOTION FOR DELAYED APPEAL**



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## SUMMARY

Pursuant to Virginia Code § 19.2-321.1, Brian David Hill, (“Appellant”) respectfully moves this Court for three delayed appeals in the above-captioned cases (cases no. 0313-23-3, 0314-23-3 and 0317-23-3).

In support of this motion, Mr. Hill offers the following:

1. First appeal. By order entered February 17, 2023, the Circuit Court of the City of Martinsville denied Mr. Hill’s motion entitled: “MOTION TO RECONSIDER THE ORDER DENYING “MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE PURSUANT TO VIRGINIA CODE § 8.01-428(D), VIRGINIA CODE § 8.01-428(A) AND VIRGINIA CODE § 8.01-428(B) ON THE BASIS OF FRAUD UPON THE COURT, CLERICAL FACTUAL ERRORS” (Motion For Reconsideration), filed on February 17, 2023. (R. 4255). Mr. Hill, acting pro se, timely filed a notice of appeal to this Court challenging this judgment/order. (R. 4278-4291). Record No. 0313-23-3. Circuit Court case no. is CR19000009-00. Style is: COMMONWEALTH OF VIRGINIA and CITY OF MARTINSVILLE v. BRIAN DAVID HILL, Commonwealth of Virginia and City of Martinsville are appellees of the appealed case.

2. Second appeal. By order entered February 14, 2023, the Circuit Court of the City of Martinsville denied Mr. Hill’s motion entitled: “MOTION FOR SET

ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE PURSUANT TO VIRGINIA CODE § 8.01-428(D), VIRGINIA CODE § 8.01-428(A) AND VIRGINIA CODE § 8.01-428(B) ON THE BASIS OF FRAUD UPON THE COURT, CLERICAL FACTUAL ERRORS”, filed on January 26, 2023. (R. 4120). Mr. Hill, acting pro se, timely filed a notice of appeal to this Court challenging this judgment/order. (R. 4292-4306). Record No. 0314-23-3. Circuit Court case no. is CR19000009-00. Style is: COMMONWEALTH OF VIRGINIA and CITY OF MARTINSVILLE v. BRIAN DAVID HILL, Commonwealth of Virginia and City of Martinsville are appellees of the appealed case.

3. Third appeal. By order entered February 21, 2023, the Circuit Court of the City of Martinsville denied Mr. Hill’s motion entitled: “MOTION TO RECONSIDER THE ORDER DENYING “MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE PURSUANT TO VIRGINIA CODE § 8.01-428(D), VIRGINIA CODE § 8.01-428(A) AND VIRGINIA CODE § 8.01-428(B) ON THE BASIS OF FRAUD UPON THE COURT, CLERICAL FACTUAL ERRORS” (Motion For Reconsideration), filed on February 17, 2023. (R. 4277). Mr. Hill, acting pro se, timely filed a notice of appeal to this Court challenging this judgment/order. (R. 4313-4325). Record No. 0317-23-3. Circuit Court case no. is CR19000009-00. Style is: COMMONWEALTH OF VIRGINIA and CITY OF MARTINSVILLE v.

BRIAN DAVID HILL, Commonwealth of Virginia and City of Martinsville are appellees of the appealed case.

4. Virginia Law governing Motions for Delayed Appeals, state as follows in-part:

Va. Code § 19.2-321.1 (“Such motion shall identify the circuit court and the style, date, and circuit court record number of the judgment sought to be appealed, and, if one was assigned in a prior attempt to appeal the judgment, shall give the Court of Appeals record number in that proceeding, and shall set forth the specific facts establishing the said error, neglect, or fault. If the error, neglect, or fault is alleged to be that of an attorney representing the appellant, the motion shall be accompanied by the affidavit of the attorney whose error, neglect, or fault is alleged, verifying the specific facts alleged in the motion, and certifying that the appellant is not personally responsible, in whole or in part, for the error, neglect, or fault causing loss of the original opportunity for appeal.”)

5. Appellant hereby establishes with Exhibits of evidence, the clear and convincing evidence, prima facie evidence, which proves said error, neglect, or fault to such an extent where Appellant is not personally responsible in whole or in part, for the error, neglect, or fault causing loss of the original opportunity for appeal.

6. Appeal record citation will also be used and not just citation of the Trial Court record. Trial Court record citation will be using the “R. #####” context. Citation of the Appeal court record will be using the “App. R. ##### of case no. 0313-23-3” context.

7. Further arguments in support of this motion will be made below the Exhibits listings, exhibits in support of this motion.

8. This motion is being filed in good faith and is not any attempt to create delay. The motion gives good reasons why Appellant should be given the relief sought.

First the EXHIBITS listing (also describing the specific exhibits pdf file) and then the legal arguments as to why the Appellant's request for delayed appeal is warranted due to good reasons as will be described below the EXHIBIT LIST.

**EXHIBITS (attached ALL-EXHIBITS-1-20-2024.pdf):**

**EXHIBIT 1.** File: EXHIBIT 1-Declaration for Motion for sanctions against Justin Hill.pdf. It is a true and correct copy of a Declaration/Affidavit of Brian David Hill explaining what the hard evidence is talking about. Explaining that the other exhibits are credible evidence, prima facie evidence. Index: EXHIBIT PAGES 1 THROUGH 14 OF 102.

**EXHIBIT 2.** File: EXHIBIT 2.pdf. It is a true and correct copy of a URL/LINK to an audio file Mar09-726407.wav uploaded to the internet by family of Appellant Brian D. Hill and link was given by Appellant since the Court of Appeals of Virginia does not directly accept audio files, however this audio file is necessary as evidence for disposition of this motion and the facts surrounding this motion. Index: EXHIBIT PAGES 15 THROUGH 16 OF 102.

**EXHIBIT 3.** File: EXHIBIT 3.pdf. It is a true and correct copy of a URL/LINK to an audio file Apr13-045432.wav uploaded to the internet by family

of Appellant Brian D. Hill and link was given by Appellant since the Court of Appeals of Virginia does not directly accept audio files, however this audio file is necessary as evidence for disposition of this motion and the facts surrounding this motion. Index: EXHIBIT PAGES 17 THROUGH 18 OF 102.

**EXHIBIT 4.** File: EXHIBIT 4.pdf. It is a true and correct copy of a URL/LINK to an audio file Oct20-077885.wav uploaded to the internet by family of Appellant Brian D. Hill and link was given by Appellant since the Court of Appeals of Virginia does not directly accept audio files, however this audio file is necessary as evidence for disposition of this motion and the facts surrounding this motion. Index: EXHIBIT PAGES 19 THROUGH 20 OF 102.

**EXHIBIT 5.** File: EXHIBIT 5-TRANSCRIPT OF Mar09-726407.wav(2).pdf. It is a true and correct copy of a transcript of audio file Mar09-726407.wav, making it easy for the judges of this court to examine the transcribed words of that audio recording when Appellant had a meeting with Attorney Fred Smith. Recording was legally allowed by one party consent, as the party who consented to the recording being made was Appellant. **TRANSCRIPT OF Mar09-726407.wav.** Index: EXHIBIT PAGES 21 THROUGH 47 OF 102.

**EXHIBIT 6.** File: EXHIBIT 6-TRANSCRIPT OF Apr13-045432.wav.pdf. It is a true and correct copy of a transcript of audio file Apr13-045432.wav, making it easy for the judges of this court to examine the transcribed words of that audio recording when Appellant had a meeting with Attorney Fred Smith. Recording was

legally allowed by one party consent, as the party who consented to the recording being made was Appellant. **TRANSCRIPT OF Apr13-045432.wav**. Index: EXHIBIT PAGES 48 THROUGH 53 OF 102.

**EXHIBIT 7**. File: EXHIBIT 7-TRANSCRIPT OF Oct20-077885.wav.pdf. It is a true and correct copy of a transcript of audio file Oct20-077885.wav, making it easy for the judges of this court to examine the transcribed words of that audio recording when Appellant had a meeting with Attorney Fred Smith. Recording was legally allowed by one party consent, as the party who consented to the recording being made was Appellant. **TRANSCRIPT OF Oct20-077885.wav**. Index: EXHIBIT PAGES 54 THROUGH 61 OF 102.

**EXHIBIT 8**. File: EXHIBIT 8-Declaration for Motion for Delayed Appeal.pdf. It is a true and correct copy of a Declaration/Affidavit of Brian David Hill explaining what the hard evidence is talking about. Explaining that the other exhibits are credible evidence, prima facie evidence. Also explains things as to why the motion for delayed appeal should be granted. Index: EXHIBIT PAGES 62 THROUGH 81 OF 102.

**EXHIBIT 9**. File: EXHIBIT 9.pdf. It is a true and correct copy of a URL/LINK to an audio file 20230306154652-O-12766382555.wav uploaded to the internet by family of Appellant Brian D. Hill and link was given by Appellant since the Court of Appeals of Virginia does not directly accept audio files, however this audio file is necessary as evidence for disposition of this motion and the facts

surrounding this motion. Index: EXHIBIT PAGES 82 THROUGH 83 OF 102.

**EXHIBIT 10.** File: EXHIBIT 10.pdf. It is a true and correct copy of a URL/LINK to an audio file 20230622090230-I-2766382555.wav uploaded to the internet by family of Appellant Brian D. Hill and link was given by Appellant since the Court of Appeals of Virginia does not directly accept audio files, however this audio file is necessary as evidence for disposition of this motion and the facts surrounding this motion. Index: EXHIBIT PAGES 84 THROUGH 85 OF 102.

**EXHIBIT 11.** File: EXHIBIT 11-TRANSCRIPT OF 20230306154652-O-12766382555.wav(2).pdf. It is a true and correct copy of a transcript of audio file 20230306154652-O-12766382555.wav, making it easy for the judges of this court to examine the transcribed words of that audio recording when Appellant had a phone conversation with Attorney Fred Smith. Recording was legally allowed by one party consent, as the party who consented to the recording being made was Appellant. **TRANSCRIPT OF 20230306154652-O-12766382555.wav.** Index: EXHIBIT PAGES 86 THROUGH 88 OF 102.

**EXHIBIT 12.** File: EXHIBIT 12-TRANSCRIPT OF 20230622090230-I-2766382555.wav(1).pdf. It is a true and correct copy of a transcript of audio file 20230622090230-I-2766382555.wav, making it easy for the judges of this court to examine the transcribed words of that audio recording when Appellant's mother Roberta Hill (also online filing assistant) had a phone conversation with Attorney Fred Smith. Recording was legally allowed by one party consent, as the party who



consented to the recording being made was Appellant's mother Roberta Hill (also online filing assistant). **TRANSCRIPT OF 20230622090230-I-2766382555.wav.**

Index: EXHIBIT PAGES 89 THROUGH 91 OF 102.

**EXHIBIT 13.** File: EXHIBIT 13-2nd Emergency Letter to Justin Hill, Attorney General.pdf. It is a true and correct copy of a Roberta Hill email to counsel of Appellees with one file attachment to that email which will be EXHIBIT 14. Email Subject: 2nd Emergency Letter to Justin Hill, Attorney General; Date: 6/28/2023, 4:18 AM. Index: EXHIBIT PAGES 92 THROUGH 93 OF 102.

**EXHIBIT 14.** File: EXHIBIT 14-Emergency\_Letter\_Justin\_Hill\_6\_28\_2023.pdf.pdf. It is a true and correct copy of a file attachment to email of EXHIBIT 13. Entitled: "2ND EMERGENCY LETTER TO JUSTIN HILL OF OFFICE OF THE ATTORNEY GENERAL - RE: Case nos. 1424-22, 1425-22, 0313-23-3, 0314-23-3, 0317-23-3, 0289-22-3, 0290-22-3". Index: EXHIBIT PAGES 94 THROUGH 102 OF 102.

### **LEGAL ARGUMENTS AND STATEMENT OF FACTS**

9. On Thursday, April 13, 2023, Appellant had agreed not to file anything in the "State Court" aka Commonwealth Courts for six months. No verbal exception was given permitting Appellant to file in the Court of Appeals of Virginia throughout the recordings of Brian Hill the appellant at the meetings with Attorney Fred Smith. That agreement was made verbally between Appellant and Attorney Fred Smith

(Martinsville, VA, Email: [fred@freddsmithjrpc.com](mailto:fred@freddsmithjrpc.com)) in some kind of agreement with the special prosecutor in Appellant's contempt of court case in the Trial Court, case no. CR19000009-01. However, Appellant did not waive any of his rights to his appeals, and agreeing not to file anything in the "state court"(s) for six months does not explicitly withdraw any of Appellant's appeal rights in all of Appellant's appeal cases before the Court of Appeals of Virginia. See the affidavit in **EXHIBIT 1** (EXHIBIT PAGES 1 THROUGH 14 OF 102), as well as the audio file on **EXHIBIT 4** (EXHIBIT PAGES 19 THROUGH 20 OF 102), second affidavit in **EXHIBIT 8** (EXHIBIT PAGES 54 THROUGH 61 OF 102). and **EXHIBIT 7** (EXHIBIT PAGES 54 THROUGH 61 OF 102). This court is free to seek confirmation of this fact by inquiring with Attorney Fred Smith or even with counsel for Appellees. In fact, this Court can have both the Commonwealth's Attorney and Assistant Attorney General listen to the audio recordings and then inquire as to the verbal agreement prohibiting Appellant from filing in the CAV when audio recordings prove that Attorney Fred Smith directs Appellant not to file in any "state Court" of Virginia except in the federal courts. This attorney allowed Brian to file in the federal courts for six months because of Virginia having no jurisdiction/jurisprudence over federal, but prohibited Appellant from filing in any court of Virginia.

10. Appellant had stated under oath in **EXHIBIT 8** (EXHIBIT PAGES 54 THROUGH 61 OF 102), that Appellant is not at fault for the error, neglect, or fault. Appellant has the evidence proving that Attorney Fred Smith had directed or ordered

the Appellant not to file anything in the “state court” with no verbal exception to the Court of Appeals of Virginia. The only exception was that he can file in the federal courts during the six-month no-filing period because the state had no jurisdiction to prohibit him from filing in the federal court system. That was the only exception which the exhibits prove beyond a reasonable doubt. Appellant said under oath in **EXHIBIT 8**, that by filing within the six-month period, he would face criminal consequences such as he would face not just a conviction of contempt of court but also federal imprisonment due to the circumstances laid out in his affidavit/declaration.

11. The error, neglect, or fault in Appellant losing the original opportunity for appeal was that he had agreed verbally to not file anything in the “state court” for six months. The Attorney Fred Smith had made it abundantly clear, that Appellant was not to file anything in the “state courts” for six months. In the **Exhibit 6 Transcript** and recording in **Exhibit 3**, the evidence supports that Attorney Fred Smith was going to have his contempt of court case continued for six months, and that the Commonwealth Attorney had agreed to it. That during the six-month period, he told Appellant don't file anything with state court. Then he said again: “Don't file anything in state court.” He did not give him an exception to file in the Court of Appeals of Virginia. He did not give any indication during his visit with Fred Smith on April 13, 2023, according the conversation recording which is present as evidence in the **Exhibit 6 Transcript** and recording in **Exhibit 3**. Appellant had agreed to this

and had complied with his demand or order or whatever. See EXHIBIT PAGES 69-70 OF 102, **EXHIBIT 8**.

12. At one point in March, the court appointed Attorney Fred Smith had told Brian D. Hill on March 9, 2023 that he would have to agree to six months of state probation where his primary term or condition would be that Appellant cannot file in the Virginia state courts without the assistance of a lawyer. So, if Appellant cannot afford a lawyer, then he would not be allowed to file anything in the Court of Appeals of Virginia, and that was the first attempt to prohibit Appellant from filing in this court. See **EXHIBIT 2** (EXHIBIT PAGES 15 THROUGH 16 OF 61) and **EXHIBIT 5** (EXHIBIT PAGES 21 THROUGH 47 OF 61). Fred Smith said and I quote:

CITATION FROM TRANSCRIPTION:

(EXHIBIT PAGES 22 OF 102) “now out in this case, they uh asked that a special prosecutor be”, (EXHIBIT PAGES 23 OF 102) “Uh Justin, and I have talked extensively about... this case.” (EXHIBIT PAGES 28 OF 102) “here's what uh we have under consideration... Griffin and I talked extensively about... uh your history, various diagnoses... Uh He proposes that... uh there will be a joint motion by... the Commonwealth... and the defendant one” (EXHIBIT PAGES 29 OF 102) “that there is an agreement on the record in the court files that you have a diagnosis... of autism... that autism explains uh... the behaviors at issue here,”; (EXHIBIT PAGES 29 OF 102) “you would be placed on probation for probably six months and probably the only...the biggest term of your” (EXHIBIT PAGES 30 OF 102) “probation be that...you don't make any more filings...uh without the assistance of a lawyer...that, that, that would be the primary condition.”

13. The court appointed attorney on April 13, 2023, no longer pursued the

state probation idea but instead told Brian D. Hill that his contempt of court case would be delayed/stayed for six months and during that time he cannot file in state court which also encompasses the Court of Appeals of Virginia (CAV) but did allow Appellant to file in federal court during the six-month period. This was the second attempt to prohibit Appellant from filing in this court and in any “state court”, and that attempt had succeeded. See **EXHIBIT 3** (EXHIBIT PAGES 17 THROUGH 18 OF 61) and **EXHIBIT 6** (EXHIBIT PAGES 48 THROUGH 53 OF 61). Fred Smith said and I quote:

CITATION FROM TRANSCRIPTION:

(EXHIBIT PAGES 50 OF 102) “tomorrow morning and the, and the commonwealth's attorney agrees to this,... this will be continued for six months.... during that six months, Brian,... don't file anything... [Brian Hill] Alright.... [Fred Smith] with, with state court.... They, they have no jurisdiction of what you might do in federal... court.... [Brian Hill] That's fine. [Fred Smith] Don't file anything in state court.”, (EXHIBIT PAGES 51 OF 102) “[Fred Smith] at the end of the six months when we come back to court, [Fred Smith] Uh, if we don't have any more paper in the file [Fred Smith] or more issues, um, [Fred Smith] I have a reason to believe he will dismiss the case.”

10. Granting this motion protects Appellant’s constitutionally protected procedural due process of law under the Fourteenth Amendment of the United States Constitution. The audio recordings along with the **EXHIBIT 8** affidavit prove that such a prohibition exists and thus the constitutional right of procedural due process of law of Appellant was violated and that the constitutional right of procedural due process of law was not afforded to Appellant. The Supreme Court of Virginia made

case law authority quite clear in all tribunals of Virginia requiring that all parties to a case in any court of the State/Commonwealth of Virginia be given **Procedural Due Process of Law** which includes the **statutory right to appeal** and **the right to be heard in the court when jurisdiction exists in a case** or in any legal action before a court in an active/open/pending case. The Supreme Court of Virginia said in its legal authority that: **Husske v. Commonwealth, 252 Va. 203, 204 (Va. 1996)** (“6. The **Due Process clause merely requires** that the **defendant may not be denied an adequate opportunity to present his claims within the adversary system.**”). Appellant’s constitutional right to procedural due process of law is violated if this court even considers Appellees erroneous claims in their bid to have Appellant’s three appeals rejected as possibly untimely filed because of being given a false assumption that Appellant was not prohibited from filing in this court for a period of six months when the verbal agreement is proven with the audio files of recording the conversation between Appellant and his lawyer Fred Smith on three separate dates in 2023.

11. All exhibits including Brian David Hill’s affidavit/declaration in support of this motion prove that Appellant was prohibited from filing in the state court and there had been no exceptions given except for the federal court system. The Court of Appeals of Virginia is a “state court” and not a federal court. Attorney Fred Smith gave Brian David Hill, the appellant, explicit instructions not to file anything in the “state court” for six months after the continuance was granted in his contempt of

court case. Admitted that the Commonwealth Attorney had agreed to this. The verbal agreement between Brian D. Hill, Appellant, and the court appointed lawyer Fred Smith had been recorded by Brian Hill and that evidence is in **Exhibits 2, 3, and 4**. Transcripts of the evidence in **Exhibits 5, 6, and 7**.

12. By order entered January 17, 2024, this Court dismissed all appeals in cases no. 0313-23-3, 0314-23-3 and 0317-23-3, for untimely filing.

13. Mr. Hill now moves this Court pursuant to Code § 19.2-321.1 for a delayed appeal in all three appeal cases (cases no. 0313-23-3, 0314-23-3 and 0317-23-3) from the trial court's orders entered February 14, 2023, February 17, 2023, and February 21, 2023. See the paragraphs 1, 2, and 3, noted above inside of this motion document.

14. This motion is timely because it has been less than six months since Mr. Hill's appeal in all three appeal cases was dismissed. See Code§ 19.2-321.1(A).

15. This case satisfies the requirements for eligibility for a delayed appeal because due to the " error, neglect, or fault in me losing the original opportunity for appeal was that I had agreed verbally to not file anything in the "state court" for six months..." (EXHIBIT PAGES 73 OF 102) Mr. Hill's three appeals were dismissed for failure to adhere to proper ... time limits in the appeal process." Code § 19.2-321.1(A). Moreover, Mr. Hill is in no way responsible, in whole or in part, for Attorney Fred Smith ordering or instructing Appellant not to file in any "state court" for six months until the continuance had passed and his contempt of court case was

dismissed. See Code § 19.2-321.1(D).

16. **AMENDED JANUARY 20, 2024:** Pursuant to Rule, Mr. Hill, pro se without counsel, served a copy (through online filing Assistant Roberta Hill) on counsel of Appellees (Assistant Attorney General Justin Hill) including Glen Andrew Hall (since required by statute) on the date of January 20, 2024, notifying the Commonwealth Attorney and Assistant Attorney General (counsel of Appellees) of filing this Motion.

17. **AMENDED JANUARY 20, 2024:** Appellant found more evidence which he is presenting to this Court and to Appellees and the Commonwealth's Attorney as such service is required by the statute. Paragraphs below are being added as the amended Motion for Delayed Appeal.

18. Appellant's attorney Fred Smith who was appointed to represent Appellant in Appellant's contempt of court charge, had called Roberta Hill intending to call Brian Hill, his client, the Appellant. See **EXHIBIT 10**, EXHIBIT PAGES 84 THROUGH 85 OF 102. His client was unavailable at the time, so Roberta Hill had spoken with Attorney Fred Smith. Transcription makes it easy for the judges of this Court to see what is really going on here See **EXHIBIT 12**, EXHIBIT PAGES 89 THROUGH 91 OF 102. The discussion between Roberta Hill and Fred Smith are in a quoted citation below:

CITATION FROM TRANSCRIPTION:

(EXHIBIT PAGES 90-91 OF 102)



[Fred Smith]: Um, I got a call from the Attorney General's office yesterday concerning a filing that Brian has due in approximately 30 days.

[Roberta Hill]: Uh huh.

[Fred Smith]: And, uh, the, the, the attorney general, the assistant attorney General that spoke to me expressed concern that Brian has about filing anything until we get this October hearing behind us.

[Roberta Hill]: Uh huh.

[Fred Smith]: Um, uh, the attorney general will agree to give Brian until after October

[Roberta Hill]: Ok

[Fred Smith]: uh, of his hearing date, uh, in order to make further filings in the matters he has in the court of appeals. So, Brian needs to call the, the, the gentleman that he spoke with and tell him he would like to agree to do that, that he would like that extra time to make filings until sometime on a date after his October hearing date.

[Roberta Hill]: Ok, I'll let him know about that.

[Fred Smith]: Ok, thank you, Miss Hill.

19. Appellant's attorney Fred Smith who was appointed to represent Appellant in Appellant's contempt of court charge, had told Appellant that Fred *"...got a call from the Attorney General's office yesterday concerning a filing that Brian has due in approximately 30 days....And, uh, the, the, the attorney general, the assistant attorney General that spoke to me expressed concern that Brian has about filing anything until we get this October hearing behind us."* Also Fred said that: *"Um, uh, the attorney general will agree to give Brian until after October uh, of his hearing date, uh, in order to make further filings in the matters he has in the court of appeals. So, Brian needs to call the, the, the gentleman that he spoke with and tell him he would like to agree to do that, that he would like that extra time to*

*make filings until sometime on a date after his October hearing date.”* So, Fred Smith, the counsel who was supposed to represent Appellant in the contempt of court case, had given Appellant the false impression that Appellees counsel Justin Hill or the Attorney General himself had agreed to give Brian, the Appellant until after October of his contempt of court hearing date to file in his appeals, that the Attorney General agreed to Appellant’s request to extend the time of his appeals filing deadline. Told Appellant that: *“Brian needs to call the, the, the gentleman that he spoke with and tell him he would like to agree to do that”*. Fred Smith appeared to have told Appellant this around approx. 30 days before the deadline in the three foregoing appeals, interesting. Appellant didn’t make a phone call to Justin Hill (*the gentleman that he spoke with...*), but instead he made the request in writing to Justin Hill (*the gentleman that he spoke with...*) which his mother Roberta Hill had emailed the counsel for Appellees, Justin Hill (*the gentleman that he spoke with...*). See the 2nd email for emergency letter to Justin Hill, **EXHIBIT 13**, EXHIBIT PAGES 92 THROUGH 93 OF 102. That email had an pdf file attachment to that email to Justin Hill, so this Court should see **EXHIBIT 14**, EXHIBIT PAGES 94 THROUGH 102 OF 102.

20. Justin Hill did respond to Appellant’s mother’s email. See Appellate Court record for CAV case no. 0313-23-3, pg. 246-248, 259-260. See Appellate Court record for CAV case no. 0314-23-3, pg. 252-253, 264-265. See Appellate Court record for CAV case no. 0317-23-3, pg. 247-248, 259-260. Justin Hill said: *“I would*

*ask that you please pass along to him the same response I gave last time: I am prohibited from taking any legal action on his behalf. Your son, or an attorney representing him, are the only persons allowed to file a motion or request on his behalf. I remain amenable to a motion requesting a continuance, were he to file one. But, I cannot request a continuance or take any other action on your son's behalf.”*

**This means that Attorney Fred Smith had lied to Appellant. This proves it, and**

**Justin Hill can file a copy of the exact same email he sent back to Appellant's**

**mother Roberta Hill.** Counsel for Appellees can confirm this email and response.

Fred Smith had told Appellant that Appellees aka “*the attorney general will agree to give Brian until after October uh, of his hearing date, uh, in order to make further filings in the matters he has in the court of appeals*”. Justin Hill saying in email that he will not accept Appellant’s request for a continuance or anything to file on Appellant’s behalf (**Brian’s hands were tied thanks to Attorney Fred Smith**)

because Justin Hill does not represent Appellant, proves that Attorney Fred Smith had lied to the Appellant, lied to his mother Roberta Hill the online filing assistant, and had Appellant falsely believing that Appellees was amendable to simply Appellant giving them a phone call or sending a letter and then his appeals would be extended until after October 23, 2023. Then Appellant’s attorney Fred Smith had lied again to Appellant by claiming on October 20, 2023: “[Fred Smith] and I talked to him and they get, I understood that you got an extension...to, to file.” (See EXHIBIT PAGES 8 OF 102, and **EXHIBIT 7**, EXHIBIT PAGES 56-57 OF 102).

So, Attorney Fred Smith admitted to being in contact with Justin Hill, counsel for Appellees in the three noted appeals (foregoing cases at the top of this pleading, and claimed that Justin Hill had somehow given Appellant an “extension...to, to file” since Appellant had sent a letter to Justin Hill in June of 2023 requesting the extension of time to timely file his appeal briefs or anything, all at the direction of Attorney Fred Smith. The record of all three appeal cases prove that Appellees filed no extension of time on behalf of Appellant despite Attorney Fred Smith’s convincing lie or lies, even after Appellant had requested to Appellees that they notify the Court that Appellant was prohibited from filing in the Court of Appeals of Virginia for six months. The only one who filed a Motion for Leave of Court to file an opening brief and Appellant Designation of Appellant, was Appellant on the date of October 27, 2023, four days after the contempt of court case was dismissed. The Court of Appeals of Virginia can check the record of all three appeal cases no. 0313-23-3, 0314-23-3 and 0317-23-3, for Appellant’s denied motion asking to file his Appellant brief, because Appellant was told by Attorney Fred Smith that an extension was given to Appellant to file outside of time, as if it were filed not outside of time. Appellant was lied to by Attorney Fred Smith on June 22, 2023. Appellant’s mother had emailed Justin Hill, and Justin Hill had declined to file an extension of time for Appellant, despite Fred Smith giving advice to Brian Hill, the Appellant, to simply contact Justin Hill and then he would automatically be granted an extension of time to file in October, 2023, after the hearing to dismiss his contempt of court

case, so that Appellant is safe from his “contempt of court” case, safe to follow his duties to this Court as Appellant. Attorney Fred Smith may have manipulated Appellant and/or Appellees into believing something which may not have been true all along. Attorney Fred Smith convinced Appellant that Appellees was willing to listen to Brian’s plea for extending the time for his appeal while Justin Hill gave an email response for Appellant which wasn’t exactly what Attorney Fred Smith had told Roberta Hill to tell her son, the Appellant. Appellant had been deceived by Attorney Fred Smith into believing that simply contacting Justin Hill, counsel for Appellees begging them for an extension of time to file in his appeals would make it automatically so. Attorney Fred Smith gave Appellant that impression despite the fact that it wasn’t true at all. Attorney Fred Smith IS AT FAULT for why Appellant filed outside of time, after the deadline, causing the three dismissals of his appeals.

21. Another phone conversation between Appellant and Attorney Fred Smith, had demonstrated how Attorney Fred Smith had manipulated Appellant out of fear into accepting whatever Attorney Fred Smith had to say, to persuade Appellant not to file anything including in the Court of Appeals of Virginia. This attorney had been really adamant about demanding that his client Brian David Hill not file anything in the state court for six months. Almost as if this attorney had planned to wreck the appeals of Appellant by instilling fear and control into Appellant and lying to Appellant, and his family on record according to the recorded conversations in Exhibits. Appellant had no choice but to accept the fear and lies from his counsel

out of fear of going to prison for contempt of court. See EXHIBIT 9, EXHIBIT PAGES 82 THROUGH 83 OF 102. See EXHIBIT 11, EXHIBIT PAGES 86 THROUGH 88 OF 102.

22. The fear which Attorney Fred Smith had instilled into Appellant is that he would face a jury trial and that Judge Greer had wanted to make it so. Fred Smith had said:

CITATION FROM TRANSCRIPTION:

(EXHIBIT PAGES 87-88 OF 102)

[Fred Smith]: Just hang tight. Don't, don't file anything. Uh,

[Fred Smith]: this is a very unusual

[Fred Smith]: procedure that, uh, is, has been undertaken by Judge Greer and looking at the paper and looking at the statute. Uh, he, he could have summarily given you up to 10 days in jail or fined you up to \$250. But he's,

[Fred Smith]: he's

[Fred Smith]: decided to set this case down for jury trial, Brian. Uh, so I've got to, um, um, collect a lot of info. I think it will, uh, relate heavily to your mental health. So, uh, we have to work on all that to get updated records and that sort of thing. Um, I did. Um, um, I've reached out to Dr. Loehrer and hopefully I can talk to her in the next day or so. But anyway, that's where we are. So, uh, uh, I don't think. I've got a jury trial to do on Friday. So as soon as we get your trial date, uh, that morning before the jury trial starts. Uh, that's, that's all we'll be doing for the time being. Uh, so that's where we are. Just keep your head down and lay low. Ok.

[Brian Hill]: Alright.

23. Yeah, Fred Smith telling Appellant to keep his head down, lay low, and not file anything in any state court including the Court of Appeals of Virginia, while his appeals get dismissed for failure to prosecute or failing to file timely. All

Attorney Fred Smith had to do to Appellant was put him in the mindset of fear of losing his contempt of court case by instilling the belief that Appellant would face a “jury trial” where the jury would be told of his “prior conviction” and then the jury would already feel prejudiced into convicting Appellant of contempt of court. (R. 0217, 0158-0210, MOTION - MOT TO SUPPRESS EVIDENCE). Apparently, Fred Smith somehow knew that Appellant would fear a jury trial over a contempt of court case, as the jury could easily be swayed by his “prior conviction” (R. 0217, 0158-0210, MOTION - MOT TO SUPPRESS EVIDENCE) to prejudice the jury, make them angry and emotionally want to kill Appellant or be angry at Appellant and hateful at Appellant, thinking Appellant is somehow evil over his “prior” and make Appellant feel that the contempt of court case was a guaranteed verdict of whatever the angry jury has to feel. Fred Smith may have somehow known of him withdrawing his appeal and had decided to instill similar fear hoping that Appellant would give up on his appeals by false impression that his appeals would be extended in time and that Appellant submit to whatever Attorney Fred Smith had wanted Appellant to do, like not file for six months. It is as if, Fred Smith was acting like he was the boss of Appellant and Appellant had to follow the orders of Fred Smith, acting as his boss and not as counsel who was supposed to represent Appellant. This is COERCION, ON THE RECORD, the phone call recording proves this. Imagine, a contempt of court criminal charge and conviction is less than 2 weeks of jailtime, according to Attorney Fred Smith, but then he instills the fear that Appellant is facing a jury trial

at the direction of Judge Greer, that this is an unusual situation aka “this is a very unusual procedure that, uh, is, has been undertaken by Judge Greer”. So out of the blue, Attorney Fred Smith just tells Appellant on Mar 6, 2023, that Judge Greer is out to set a new procedure that is not normally done with contempt of court cases. So just out of the blue, Judge Greer decides to give Appellant a jury trial according to the claim by Attorney Fred Smith, the attorney who was already caught lying about different facets of his no-filing/filing prohibitions whatnot. Appellant who had faced the issue of, if he testifies, then his prior conviction comes up in front a jury of his peers who will fear of what he was convicted of which will drive the jury into possibly a violent rage, a need to convict Appellant at all costs and they will forget about any of the substance of his contempt of court charge. Attorney Fred Smith had used a psychological abuse tactic of instilling fear and telling Appellant to “lay low” as if Appellant had committed a “crime” so bad that he must “lay low” and keep his head down. Oh and forgot: “[Fred Smith]: Just hang tight. Don't, don't file anything.” Fred Smith hasn't told Appellant enough times to not file anything in a court. Appellant just happens to have three appeals where he has to file something by Monday, July 24, 2023. And under Rule 5A:19(b)(4) any motion for an extension of time to file the opening brief was due not later than Thursday, August 3, 2023. According to Attorney Fred Smith and the evidence concludes, with the fear instilled in Appellant over his freedom of speech, God forbid, his FREEDOM OF SPEECH, he was told over and over again not to file anything in the state court or anywhere in



Virginia, except the federal courts. Doesn't matter about the "rules" according to the fear instilled by Attorney Fred Smith. The evidence is overwhelming, proving that Appellant was manipulated by Attorney Fred Smith psychologically or mentally to not file timely in his appeals, by Monday, July 24, 2023. And under Rule 5A:19(b)(4) any motion for an extension of time to file the opening brief was due not later than Thursday, August 3, 2023. This is at no fault of Appellant because Appellant thought he was being a good boy and listening to his lawyer. So being a good boy doesn't mean that his appeals should be dismissed forever, God forbid. Appellant had thought his attorney was going to at least let him file his appeals, but Appellant was lied to and was manipulated by psychological abuse tactics to achieve the objective of ruining Appellant's three appeals under cases no. 0313-23-3, 0314-23-3 and 0317-23-3. Nothing Appellees will be able to argue can convince this Court otherwise, thanks to the prima face evidence, that Appellant does have the justification for this Court granting his motion for a delayed appeal pursuant to Code § 19.2-3 21.1. Exhibits 1-14 demonstrate that this Court has the legal justification to grant Appellant's request for the relief sought under that statute. Appellant cannot be at fault when his own lawyer manipulated his client and instilled fear in his client, refused to protect his client's first amendment right to freedom of speech to criticize a circuit court judge, and the lawyer lied to Appellant long enough for Appellant's appeals to fail for untimely filing. **Sounds a lot like MALPRACTICE. Appellant also prays that the Court of Appeals of Virginia may disbar Attorney Fred**

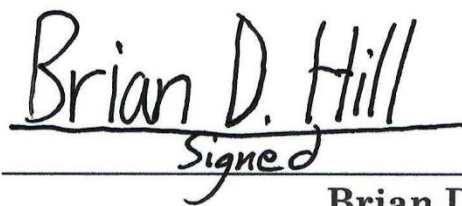
**Smith, punish Attorney Fred Smith, and allow Appellant to file a lawsuit against Fred Smith in his individual capacity for malpractice.** Attorney Fred Smith ruined Appellant's three appeals by causing the dismissals of those appeals. Fred Smith is at fault and he needs to be questioned by this Court about Fred Smith's misconduct as an attorney.

WHEREFORE, Mr. Hill prays this Court to grant his motion for a delayed appeal pursuant to Code § 19.2-321.1.

Appellant requests relief accordingly and asks for any other relief which the Court of Appeals of Virginia may deem proper/appropriate and just for the issues and facts raised in support thereof.

Respectfully Filed/Submitted on January 20, 2024,

**BRIAN DAVID HILL**  
**Pro Se**

  
*Signed*

**Brian D. Hill**

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**U.S.W.G.O.**

**CERTIFICATE OF COMPLIANCE**

1. This motion complies with type-volume limits:

[ X ] this motion contains [6,609] words.

[ ] this motion used 50 pages or less.

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

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

[ ] this motion has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

  
Signed

**Brian D. Hill**

Dated: January 20, 2024



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*Pro Se Appellant*

## **CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on this 20th day of January, 2024, I caused this “APPELLANT’S MOTION FOR DELAYED APPEAL” and attached EXHIBITS (ALL-EXHIBITS-1-18-2024.pdf) of evidence to be delivered by email service by Assistant/Filing-Representative Roberta Hill using [rbhill67@comcast.net](mailto:rbhill67@comcast.net) or [rbhill67@justiceforuswgo.nl](mailto: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 Court of Appeals 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 MOTION shall satisfy the proof of service was required by Rule 5A:2(a)(1) and Rule 5A:1(c)(4):

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