

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**

**DECLARATION OF BRIAN DAVID HILL IN SUPPORT OF AMENDED
APPELLANT'S MOTION FOR DELAYED APPEAL**

U.S.W.G.O.

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Founder of USWGO Alternative News
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Pro Se Appellant

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DECLARATION

Pursuant to the Virginia Code § 8.01-4.3. “Unsworn declarations under penalty of perjury; penalty.”, Appellant Brian David Hill hereby state to the Court of Appeals of Virginia and Appellee(s) the statement of facts as under penalty of perjury, pro se Appellant Brian David Hill, on oath deposes and states:

1. I am Brian David Hill, Appellant in the case nos. 1424-22, 1425-22, 0313-23-3, 0314-23-3, 0317-23-3, 0289-22-3, 0290-22-3. I represent myself in those appeal cases because I cannot afford a private attorney. I feel that I am competent to continually work on my appeals.

2. On or about February 24, 2023, a rule to show cause was issued against me, the Appellant, on a charge of criminal contempt of court for “VILE, CONTEMPTUOUS, OR INSULTING LANGUAGE ADDRESSED TO OR PUBLISHED OF A JUDGE FOR OR IN RESPECT TO ANY ACT OR PROCEEDING HAD IN SUCH COURT WITH RESPECT TO THE ATTACHED NOTICES OF APPEAL”. The criminal case number was CR19000009-01.

3. The direct cause of the criminal contempt charge was over statements made in my three notices of appeal, the same appeals at issue with the Motion for Delayed Appeal. See Trial Court record pages 4278-4291, 4292-4306, and pg. 4313-4325. The statements which triggered the contempt charge did not threaten the judge in any criminal way but only made lawful statements saying that certain people should

be held accountable for what I felt were that there were violations of law going on. I did not yell fire in a crowded theater. I did not defame the judge as I felt I had evidence and felt that the judge neglected to do his duties and neglected to do the right thing. All I did was criticize the judge and criticize some other people in my notices of appeal. Even the U.S. Supreme Court Justices give dissenting opinions and can criticize other judges or justices, that is freedom of speech. The bulwark of the very judicial process, the judiciary of government. I did not threaten any harm against the judge. I did not defame the judge. I was not charged with defaming the judge, and neither was I accused of defaming the judge. I felt that the judge got offended at my statements in my notices of appeal based on various evidence and factors going on in my trial court criminal case. I felt that I was protected under the First Amendment of United States Constitution and had filed pleadings early on in the contempt of court case asserting my constitutional legal defenses to the contempt of court charge, as I felt that my conduct in my notices of appeal were protected under the First Amendment of the United States Constitution, and the Virginia Constitution also has a clause for freedom of speech in its Bill of Rights. Even the Virginia Constitution says that freedom of speech can “never be restrained except by despotic governments”. I felt that the Trial Court had acted despotic with it's criminal contempt charge and abused its contempt powers by the legislature to restrain my freedom of speech according to the Virginia Constitution's own words under Article I, “Section 12. Freedom of speech and of the press; right peaceably to

assemble, and to petition.” I was not guilty of the contempt case. I don’t believe I was ever guilty because even the Virginia General Assembly has no lawmaking power above the Constitution to restrain the peaceful and orderly freedom of speech. The contempt of court case was unwarranted in my opinion and I never should have been charged with this. This was wrong. It was retaliation against me for my truthful claims and honest opinions and arguments based on what I had witnessed going on in my criminal case before the Trial Court.

4. On or about March 3, 2023, Attorney Fred Smith was appointed by the Hon. Giles Carter Greer of the Trial Court, to represent me over my contempt of court charge case. I have to make it clear factually that the same judge who I had brought allegations and opinions against in my notices of appeals, was the same judge over my contempt of court case and this judge did not recuse himself despite the fact that I was criticizing the exact same judge with my freedom of speech, honestly, who is the same judge over my contempt of court case. I felt that it was a conflict of interest and that it should have been a different judge over this case to protect my due process of law, my right to a fair trial, my right to an impartial trier of fact, and my right to effective assistance of counsel. I do not think it was appropriate for judge Greer to be the same judge in my contempt case as the one who I criticized and never threatened any harm against.

5. I had recorded conversations with my attorney Fred Smith at three visits to his law office located at 46 W. Main St., Martinsville, VA 24114. The conversation

dates which were recorded were March 9, 2023, April 13, 2023, and October 20, 2023.

6. **Exhibit 2**, link to the audio recording file, link given to me by family and was uploaded by Roberta Hill to the website directly to that link since I am under a supervised release condition where I am prohibited from using the internet. Exhibit 2 audio file, Mar09-726407.wav is a true and correct portion of the entire audio recording I had recorded at the office of Attorney Fred Smith on that date. I had given consent to recording my own attorney/client visit due to trust issues between me and Attorney Fred Smith. I had trust issues since judge Greer had appointed this attorney. I had a feeling that he was not looking out for my best interests protected under the United States Constitution and Virginia Constitution. I felt that Attorney Fred Smith was appointed to protect judge Greer's interests rather than protecting my constitutional right to freedom of speech and to possibly interfere with my constitutional right to appeal in the Court of Appeals of Virginia or cause prohibition of my constitutional right to appeal in the Court of Appeals of Virginia, despite my statutory appeal rights being protected by the Procedural due process of law under the Fourteenth Amendment of the United States Constitution. The original recording was recorded on the visit of Mar 9, 2023.

7. **Exhibit 3**, link to the audio recording file, link given to me by family and

was uploaded by Roberta Hill to the website directly to that link since I am under a supervised release condition where I am prohibited from using the internet. Exhibit 3 audio file, Apr13-045432.wav is a true and correct portion of the entire audio recording I had recorded at the office of Attorney Fred Smith on that date. I had given consent to recording my own attorney/client visit due to trust issues between me and Attorney Fred Smith. I had trust issues since judge Greer had appointed this attorney. I had a feeling that he was not looking out for my best interests protected under the United States Constitution and Virginia Constitution. I felt that Attorney Fred Smith was appointed to protect judge Greer's interests rather than protecting my constitutional right to freedom of speech and to possibly interfere with my constitutional right to appeal in the Court of Appeals of Virginia or cause prohibition of my constitutional right to appeal in the Court of Appeals of Virginia, despite my statutory appeal rights being protected by the Procedural due process of law under the Fourteenth Amendment of the United States Constitution. The original recording was recorded on the visit of April 13, 2023.

8. **Exhibit 4**, link to the audio recording file, link given to me by family and was uploaded by Roberta Hill to the website directly to that link since I am under a supervised release condition where I am prohibited from using the internet. Exhibit 4 audio file, Oct20-077885.wav is a true and correct portion of the entire audio

recording I had recorded at the office of Attorney Fred Smith on that date. I had given consent to recording my own attorney/client visit due to trust issues between me and Attorney Fred Smith. I had trust issues since judge Greer had appointed this attorney. I had a feeling that he was not looking out for my best interests protected under the United States Constitution and Virginia Constitution. I felt that Attorney Fred Smith was appointed to protect judge Greer's interests rather than protecting my constitutional right to freedom of speech and to possibly interfere with my constitutional right to appeal in the Court of Appeals of Virginia or cause prohibition of my constitutional right to appeal in the Court of Appeals of Virginia, despite my statutory appeal rights being protected by the Procedural due process of law under the Fourteenth Amendment of the United States Constitution. The original recording was recorded on the visit of April 13, 2023.

9. **Exhibit 5**, is a TRANSCRIPT OF Mar09-726407.wav. Date of transcription: January 14, 2024. Date of when audio was recorded: March 09, 2023.

10. **Exhibit 6**, is a TRANSCRIPT OF Apr13-045432.wav. Date of transcription: January 14, 2024. Date of when audio was recorded: April 13, 2023.

11. **Exhibit 7**, is a TRANSCRIPT OF Oct20-077885.wav. Date of transcription: January 14, 2024. Date of when audio was recorded: October 20, 2023.

12. 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. The Attorney Fred Smith had made it abundantly clear, that I 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 my 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 me don't file anything with state court. Then he said again: “Don't file anything in state court.” He did not give me an exception to file in the Court of Appeals of Virginia. He did not give any indication during my 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**. I had agreed to this and had complied with his demand or order or whatever.

13. I did not have any opportunity to file anything with the Court of Appeals of Virginia for six-months. Because I was prohibited from doing so as directed by Attorney Fred Smith. The six-month period had started when the continuance was granted by Judge Greer. So, it started in April, 2023, and ended in October, 2023. If I had not complied with Attorney Fred Smith’s demand or order or whatever I verbally agreed to, there would have been no joint push with the Commonwealth’s Attorney for dismissing my contempt charge and Attorney Fred Smith would have refused to protect my first amendment right to freedom of speech and I would have been convicted of contempt of court as charged if my attorney refuses to defend my

First Amendment right to freedom of speech and my Virginia Constitutional right to freedom of speech under Article I, Section 12 in the Bill of Rights. The constitution is usually the only supreme law which can nullify an unconstitutional statute passed by a legislature or unconstitutional usage of a statute. Unless Fred Smith my attorney had agreed to protect my first amendment right as my defense to my criminal contempt of court charge, I would be convicted, no doubt about it when my attorney refuses to present a defense for me. So, my choice was if I filed in the Court of Appeals of Virginia to timely file my opening appellant briefs, then I would have faced jailtime for criminal contempt. This court should be aware that I am under federal supervised release conditions by the United States Probation Office for the Western District of Virginia. If I am convicted of any crime, then I face revocation of supervised release and then I am liable for sentencing for that revocation such as federal imprisonment. If I am convicted of criminal contempt, then I can be in violation of conditions of my federal supervised release and would face revocation which means federal imprisonment (See record pg. 3655-3735). According to trial court record page 3728, Judge Thomas David Schroeder had said: "So I'm going to order that Mr. Hill be committed to the custody of the United States Bureau of Prisons for 9 months." That was over the indecent exposure misdemeanor charge. Since I had faced 9 months of federal imprisonment over only a misdemeanor, the contempt of court case may carry a similar federal imprisonment sentence. Not only would I face jailtime for contempt of court, I would face concurrently or

consecutively or close to after the jailtime period, I can face a federal imprisonment sentence. I may be unable to comply with the rules of timely filing with the Court of Appeals of Virginia while sitting in a federal prison in a different state in the United States of America, as it is clear that I likely would not be incarcerated in a federal prison in Virginia. Because of my severe medical issues, I would likely to be sent to the Federal Medical Center in Kentucky if not the FMC in Butner, North Carolina.

14. Unless my attorney were to agree to protect and defend my first amendment rights in defense against the contempt of court charge, I am guaranteed that I would face federal imprisonment and local jailtime which would have fettered with my due process right to appeal to the Court of Appeals of Virginia, and would directly interfere with my ability to comply with the Rules of the Supreme Court of Virginia and prevent me from timely filing of my appeal briefs or anything timely.

15. According to Attorney Fred Smith as proven in the audio recordings, the situation would be that I was either to not file anything in any of the Virginia state courts for six months, case was dismissed in October 23, 2023, or likely he would have had me gone to trial for the contempt of court case without defending my first amendment right to freedom of speech and I would have been convicted because my attorney would not defend me or not defend my constitutional rights. I had to agree not to file in state court to protect myself from the outcome which would have been a certain verdict. Either scenario meant that I would be interfered with or fettered with of my right to file in the Court of Appeals of Virginia. I clearly was prohibited

because of the alternative of filing with the CAV during a six-month period may have caused the Commonwealth Attorney aka special prosecutor to reconsider the decision to agree to push for dismissing the case, and I would have faced a certain outcome of jailtime and federal imprisonment.

16. 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. The Attorney Fred Smith had made it abundantly clear, that I was not to file anything in the “state court” for six months. The Court of Appeals of Virginia is a “state court”. The recorded conversation proves that Attorney Fred Smith orally gave no exceptions to my prohibition to file in “state court”. It can be any state court in Virginia. He was aware of my appeals. The opposite would be jailtime and federal imprisonment which would cause an interference and may prevent me from being able to file in the Court of Appeals of Virginia. The record of the trial court is over 4,000 pages. It would be difficult for the Court of Appeals of Virginia to mail over 4,000 pages of the record of the trial court to the federal prison where I would be an inmate, where I would be housed, just to protect my procedural due process of law. It may very well be impossible for me to prosecute my appeals while in a federal prison facility as a repercussion of my contempt of court case due to Attorney Fred Smith not willing to protect my freedom of speech in defense to my contempt of court charge. The CAV record request section having to mail over 4,000 pages of the trial court record to me while me being housed at a federal prison. The prison

facility may not allow me to possess over 4,000 pages of paper for my Virginia appeals inside of wherever I would be housed at a federal prison. If I am convicted of contempt of court, my appeals would be fettered with and my prosecution of my appeals would be extremely difficult to maybe impossible. Probably impossible. What can I say? It is pretty clear that it cannot be done. No federal prison will allow me to possess over 4,000 pages from the Court of Appeals of Virginia in a small prison cell. It would be a messy situation. Imagine this court having to mail a large box with over 4,000 pages of trial court record, just to protect my right to prosecute my appeals while I sit in a federal prison over my contempt of court charge when Attorney Fred Smith refused to protect my first amendment right to freedom of speech.

17. I feel and believe that the error, neglect, or fault is not my fault because of my freedom of speech. I believe that the error, neglect, or fault, is at fault of Attorney Fred Smith for not protecting my freedom of speech and for not protecting my constitutional right to my appeals in the Court of Appeals of Virginia. It is Attorney Fred Smith's fault why I couldn't file timely in the Court of Appeals of Virginia.

18. On January 17, 2023, the Court of Appeals of Virginia had said in its order I am aware of that: "Under Rule 5A:19(b)(1), the appellant's opening brief was due not later than 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." Both of those dates, I was prohibited from filing in the "state court" which

can mean any Virginia court including this court as I was given no exception by Attorney Fred Smith to file in this court and Attorney Fred Smith had not given me any exception to file in the Court of Appeals of Virginia. The audio recordings of my visits with my attorney prove that Attorney Fred Smith did not give me any exception to not file anything in the state courts for six months of the continuance of the contempt of court case. Those two dates in the order of the Court of Appeals of Virginia, any filing before the deadlines as set by the rules would have gotten me in trouble and I would have been convicted of contempt of court due to the circumstances where my court appointed attorney by Judge Greer, my attorney would not fight for my first amendment right to freedom of speech. A constitutional defense would negate any possible criminal conviction of a charged crime over a constitutionally protected action or constitutionally protected behavior. Because Attorney Fred Smith would not go that route, I had to agree not to file in the state courts for six months and until the six-month continuance had been over. That would be in October, 23, 2023, when the contempt of court case was dismissed with agreement of the Commonwealth's Attorney which would be the special prosecutor. It was impossible under my circumstances for me to comply with Rule 5A:19(b)(1), It was impossible for me to comply with Rule 5A:19(b)(4) under my circumstances. If I had filed timely before those deadlines, then I would have gone to federal prison and faced revocation of supervised release for facing a conviction of contempt of court. Then I would have sat in federal prison which would make it impossible or

nearly impossible to prosecute my appeals under the rules of the Supreme Court of Virginia, as the Court would have to mail over 4,000 pages of the record of the Trial Court to me in a federal prison cell. Also, I couldn't comply with any of the other rules since I may only have access to pen and paper if I am lucky to get access to a pen, maybe it would be pencil and paper writing to the Court of Appeals of Virginia. So, they would have to receive my handwritten pleadings which may be considered not compliant with the rules of the Supreme Court of Virginia but I would have no choice while sitting in a federal prison somewhere. If I get placed in the Special Housing Unit (SHU) of the federal prison for whatever reason or no reason, then I may not be able to write the Court of Appeals of Virginia at all or face more prison restrictions making it impossible for me to comply with any rule of the Supreme Court of Virginia, and I probably couldn't even comply with the rules of formality anyways while in a federal prison, period.

19. There was no way to avoid dismissal for failure to prosecute my appeals and timely file documents in my appeals because of the six-month no filing verbal agreement in the no filing in the "state court" prohibition. My hands were tied, I could not inform the Court of Appeals of Virginia about this predicament once I had agreed not to file in the state courts, so I couldn't file any request for an extension of time once the six-month period had begun in April, 2023. I did ask Justin Hill, counsel for Appellees to notify the Court of Appeals of Virginia about me not being able to file anything with this court, and he refused to do anything about it. What a

nice guy he was, being sarcastic here. It is clear that he didn't do his duty as Appellees to notify the court that I couldn't file in the state court for six months. Fred didn't say "circuit court", but the words: "state court". He was clear about the six-month prohibition.

20. By order entered January 17, 2024, this Court dismissed my appeals in all three appeal cases, nos. 0313-23-3, 0314-23-3 and 0317-23-3.

21. I as Appellant bear no personal responsibility for my error, neglect, or fault in me not timely filing my opening briefs in the three appeal cases. The responsibility lies entirely with Attorney Fred Smith who instructed me not to file anything in the "state court" to avoid me being convicted of contempt of court since he refused to present a first amendment defense by having a freedom of speech defense to my charge of criminal contempt for my "language" in my three notices of appeal at issue of which had begun my three appeals at issue. I shouldn't be held personally responsible for not filing timely because of the prohibition which I had no control of that matter. It was either I not file for six months or I face repercussions such as federal imprisonment and jailtime for criminal contempt because of not being allowed a first amendment challenge by my own court appointed lawyer Fred Smith. I feel that Fred Smith is at fault and should be who is responsible for me not filing timely. I feel personally that it is his fault and not my fault. It is his fault for me being prohibited from filing for six-months. My recordings of the conversation between me and Attorney Fred Smith proves this to be true.

22. AMENDED DECLARATION STATEMENTS, ORIGINAL DECLARATION STATEMENTS ABOVE ON EARLIER DATE. **JANUARY 20, 2024 STATEMENT:** I, Brian David Hill found additional evidence which I will submit to the Court of Appeals of Virginia and copies to both Glen Andrew Hall and Justin Hill, the Assistant Attorney General.

23. **Exhibit 9**, link to the audio recording file, link given to me by family and was uploaded by Roberta Hill to the website directly to that link since I am under a supervised release condition where I am prohibited from using the internet. Exhibit 9 audio file, 20230306154652-O-12766382555.wav is a true and correct copy of the entire audio recording I had recorded at 310 Forest Street, Martinsville, VA 24112 in Roberta Hill's apartment. The recording was of a phone call conversation between me and Attorney Fred Smith. I had given consent to recording my own attorney/client phone call due to trust issues between me and Attorney Fred Smith. I had trust issues since judge Greer had appointed this attorney. I had a feeling that he was not looking out for my best interests protected under the United States Constitution and Virginia Constitution. I felt that Attorney Fred Smith was appointed to protect judge Greer's interests rather than protecting my constitutional right to freedom of speech and to possibly interfere with my constitutional right to appeal in the Court of Appeals of Virginia or cause prohibition of my constitutional right to appeal in the

Court of Appeals of Virginia, despite my statutory appeal rights being protected by the Procedural due process of law under the Fourteenth Amendment of the United States Constitution. The copy of the original recording was recorded on the phone call conversation of March 6, 2023.

23. **Exhibit 10**, link to the audio recording file, link given to me by family and was uploaded by Roberta Hill to the website directly to that link since I am under a supervised release condition where I am prohibited from using the internet. Exhibit 10 audio file, 20230622090230-I-2766382555.wav is a true and correct copy of the entire audio recording which I was made aware that Roberta Hill had recorded at 310 Forest Street, Martinsville, VA 24112 in Roberta Hill's apartment. The recording was of a phone call conversation between Roberta Hill (*my mother and online filing assistant since I cannot use the internet*) and Attorney Fred Smith. The Court can ask her directly if necessary but I am aware personally that she, my mother had given consent to recording my mother's phone conversation with my Attorney Fred Smith. I had trust issues since judge Greer had appointed this attorney. I had a feeling that he was not looking out for my best interests protected under the United States Constitution and Virginia Constitution. I felt that Attorney Fred Smith was appointed to protect judge Greer's interests rather than protecting my constitutional right to freedom of speech and to possibly interfere with my constitutional right to

appeal in the Court of Appeals of Virginia or cause prohibition of my constitutional right to appeal in the Court of Appeals of Virginia, despite my statutory appeal rights being protected by the Procedural due process of law under the Fourteenth Amendment of the United States Constitution. The copy of the original recording was recorded on the phone call conversation of March 6, 2023.

24. **Exhibit 11**, is a TRANSCRIPT OF 20230306154652-O-12766382555.wav. Date of transcription: January 20, 2024. Date of when audio was recorded: March 06, 2023.

25. **Exhibit 12**, is a TRANSCRIPT OF 20230622090230-I-2766382555.wav. Date of transcription: January 20, 2024. Date of when audio was recorded: June 22, 2023.

26. **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.

27. 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.

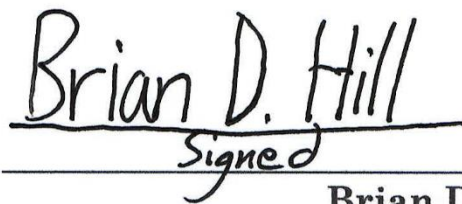
1424-22, 1425-22, 0313-23-3, 0314-23-3, 0317-23-3, 0289-22-3, 0290-22-3”.

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

Executed on January 20, 2024.

BRIAN DAVID HILL

Pro Se


Signed

Brian D. Hill

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