

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**

APPELLANT'S MOTION FOR DELAYED APPEAL

U.S.W.G.O.

Brian David Hill – Ally of Q and Lin Wood
Founder of USWGO Alternative News
310 Forest Street, Apt. 2
Martinsville, Virginia 24112
(276) 790-3505
c/o: Rbhill67@comcast.net; Roberta Hill



Pro Se Appellant

– JusticeForUSWGO.wordpress.com

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-1-18-2024.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 78.

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 78.

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 78.

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 78.

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 78.

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 78.

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 60 OF 78.

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 78.

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 54 THROUGH 62 OF 78.

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) 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 78), as well as the audio file on **EXHIBIT 4** (EXHIBIT PAGES 19 THROUGH 20 OF 78), second affidavit in **EXHIBIT 8** (EXHIBIT PAGES 54 THROUGH 62 OF 78). and **EXHIBIT 7** (EXHIBIT PAGES 54 THROUGH 61 OF 78). 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 62 OF 78)**, 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 78, **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 61) “now out in this case, they uh asked that a special prosecutor be”, (EXHIBIT PAGES 23 OF 61) “Uh Justin, and I have talked extensively about... this case.” (EXHIBIT PAGES 28 OF 61) “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 61) “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 61) “you would be placed on probation for probably six months and probably the only...the biggest term of your” (EXHIBIT PAGES 30 OF 61) “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 61) “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 61) “[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 78) 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. Pursuant to Rule, Mr. Hill, pro se without counsel, served a copy (through filing Assistant Roberta Hill) on counsel of Appellees including Glen Andrew Hall (since required by statute) on the date of January 18, 2024, notifying the Commonwealth of filing this Motion.

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 18, 2024,

BRIAN DAVID HILL

Pro Se


Signed

Brian D. Hill

Brian David Hill – Ally of Qanon
Founder of USWGO Alternative
News

310 Forest Street, Apt. 2
Martinsville, Virginia 24112
(276) 790-3505

Pro Se Appellant

<https://JusticeForUSWGO.wordpress.com>

<https://JusticeForUSWGO.nl>



CERTIFICATE OF COMPLIANCE

- 1. This motion complies with type-volume limits:

[X] this motion contains [3,327] 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 18, 2024



Brian David Hill – Ally of Qanon
Founder of USWGO Alternative News
310 Forest Street, Apt. 2 Martinsville,
Virginia 24112
(276) 790-3505
JusticeForUSWGO.wordpress.com
Pro Se Appellant

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 18th 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 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 MOTION shall satisfy the proof of service was required by Rule 5A:2(a)(1) and Rule 5A:1(c)(4):

1. Justin B. Hill, Esq.
202 North 9th Street
Richmond, VA 23219
Telephone: (804) 786-2071
Fax: (804) 786-1991
Email: jhill@oag.state.va.us; OAG Criminal Litigation:

Counsel for Appellees'

2. Glen Andrew Hall, Esq.
Commonwealth's Attorney
55 W Church Street
Martinsville, VA 24112
Phone: 276-403-5470
Fax: 276-403-5478
Email: ahall@ci.martinsville.va.us

Counsel for Appellees'

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.


Signed

Brian D. Hill



Brian David Hill – Ally of Qanon
Founder of USWGO Alternative News



310 Forest Street, Apt. 2
Martinsville, Virginia 24112
(276) 790-3505
JusticeForUSWGO.wordpress.com
Pro Se Appellant