

In The  
**Supreme Court**  
Of Virginia

**Brian David Hill,**

*Appellant,*

v.

**Commonwealth of  
Virginia, City of  
Martinsville**

*Appellees.*

**ON APPEAL FROM THE COURT  
OF APPEALS OF VIRGINIA (CAV)  
CASES NO. 0313-23-3, 0314-23-3 and 0317-23-3**

**APPELLANT'S PETITION FOR APPEAL**



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of court charge to be dismissed causing the untimely filing of the opening brief after surpassing the deadlines had proven that Appellant’s constitutional right to procedural due process of law had been illegally violated and illegally deprived. The CAV deprived Appellant of procedural due process of law by allowing the Trial Court to interfere with and meddle with Appellant’s appeals by charging Appellant with contempt of court then appointing an attorney who demanded that Appellant not file anything in the courts of Virginia including his appeals. His lawyer appeared to have demanded it and was acting as Appellant’s boss rather than as an advocate of law according to the five secret recorded conversations with Appellant’s court appointed lawyer. Appellant had warned the CAV in petition for rehearing that the new precedent of dismissing Appellant’s appeals over being prohibited from filing for six months because of the Trial Court charging Appellant with criminal contempt over his appeals will allow any Circuit Court or tribunal to become a DICTATORSHIP, a DICTATOR because then any judge who doesn’t like an appeal can charge the appellant at the trial court level with criminal contempt can abuse the contempt powers to act as dictators who criminalize any criticism and criminalize any appeals..... 18

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## PETITION FOR APPEAL

Pursuant to Rule 5:17 of the Rules of the Supreme Court of Virginia, Appellant Brian David Hill, (“Appellant”) files this Petition for Appeal for appealing the final judgment/case decision made by the Court of Appeals of Virginia (CAV) on January 17, 2024 and appealing the denying of the petition for rehearing on February 6, 2024. The timely filed petition for rehearing and/or rehearing en banc was denied on February 6, 2024. The 30-day deadline may be set for March 7, 2024.

**CITATION:** Three cases were included in all seven pending appeal cases which were consolidated formally by the CAV. Three of the seven cases were dismissed and are at issue in this petition. Therefore, Appellant will cite three cases records in the following format. This is because the pages differ between the three noted appeal cases records. The trial court record need not be cited since the appeals were prematurely dismissed in Appellant’s opinion due to the reasons being stated as to why in the petition.

(A.R. #1: ###-###) and no. 1 is referencing appeal case no. 0313-23-3. A.R. stands for Appeal Record. #1 stands for referencing appeal case no. 0313-23-3.

(A.R. #2: ###-###) and no. 2 is referencing appeal case no. 0314-23-3. A.R. stands for Appeal Record. #2 stands for referencing appeal case no. 0314-23-3.

(A.R. #3: ###-###) and no. 3 is referencing appeal case no. 0317-23-3. A.R. stands for Appeal Record. #3 stands for referencing appeal case no. 0317-23-3.

In support of this appeal, Appellant alleges the following:

**FINAL JUDGMENT/CASE DECISION APPEALED FROM**

1. Appellant appeals the final judgment of the CAV dismissing Appellant's three appeals cases no. 0313-23-3, 0314-23-3 and 0317-23-3. The reason the three appeals were dismissed was because of the appeal brief being considered as or deemed as untimely filed after the deadline of 40 days after the record of the Trial Court was filed with the CAV. Appellant did state good reasons why it was filed untimely. See the Assignments of Error 1-6. (A.R. #1: 572-575)(A.R. #2: 573-576)(A.R. #3: 568-571)

2. Appellant further appeals the final judgment/case decision of denying Appellant's petition for rehearing timely filed and was denied on February 6, 2024. (A.R. #1: 896-898)(A.R. #2: 897-899)(A.R. #3: 892-894)

3. Assignments of Error in the record of the Court of Appeals of Virginia is not necessary in this Petition for Appeal since the appeal brief was never considered due to the ruling of untimely filing. The Assignments of Error in this petition are solely based on the erroneous dismissal of Appellant's three appeals.

**PARTIES**

4. The party of Appellees are the (1) City of Martinsville, and (2) Commonwealth of Virginia.

5. The party of Appellant are (1) Brian David Hill, pro se Appellant.

**JURISDICTION AND VENUE**



6. This court has jurisdiction to hear this case and consider this petition for appeal, since this is an appeal from the final judgment/verdict of the CAV dismissing Appellant's appeals. The rule giving this court jurisdiction to consider Appellant's petition for appeal are under Rule 5:17(a)(2). Petition for Appeal.

### **NATURE OF THE CASE AND MATERIAL PROCEEDINGS**

7. On February 21, 2023, Appellant had filed timely NOTICES OF APPEAL with the Court of Appeals of Virginia and with the trial court regarding three orders of the trial court denying two motions. One was 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. Second and third court orders denying the motion were of the 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 and February 21, 2023. (A.R. #1: 1-14)(A.R. #2: 1-15)(A.R. #3: 1-13).

8. On February 27, 2023, Appellant had filed evidence and a motion requesting a stay of the proceedings with the CAV because he had been charged with criminal contempt of court by the clerk of the Trial Court based on allegations Appellant had made against the Hon. Giles Carter Greer (Judge Greer) a judge of the Trial Court who denied the motions. Appellant was charged for accusing the judge of the trial court of fraud on his court and any other allegations he had made at issue here. Appellant was not accused of defamation, slander, or libel, but was charged with Va. Code § 18.2-456(A)(3), “Vile, contemptuous, or insulting language addressed to or published of a judge...”. Appellant never threatened the judge and never advocated unlawful behavior here but simply engaged in protected first amendment free speech criticism of this judge to the superior court (the Court of Appeals of Virginia) above the Trial Court. The contempt of court charge was over Appellant’s timely filed NOTICES OF APPEAL. The Supreme Court of Virginia doesn’t have to take Appellant’s word for it, it said his NOTICES OF APPEAL were the reason for the criminal contempt charge against Appellant. (A.R. #1: 21-123, 135)(A.R. #2: 22-124, 127)(A.R. #3: 18-119, 131). NOTE: The motion requesting a stay of the proceedings may be construed as a motion for extension of time for the appeals since the contempt case by the Trial Court may have been used as a vehicle to disrupt, interfere with, and/or obstruct the Appellant’s constitutional procedural due process right to participate in his own appeals.

9. On March 9, 2023, Appellant again filed a motion requesting an extension

of time to file in his appeals due to court appointed attorney Fred Dempsey Smith pushing that his client, the Appellant, not be allowed to file in the “state court” for six months. Appellant said and I quote: *“The reason why is that I may within days be put under a stipulation on six months of probation once I sign an agreement, where I will not be allowed to file pro se, including I will be barred from filing anything in the Commonwealth/state court including appeals.”* Appellant even stated that his court appointed lawyer was pushing for this “state probation” or condition that Appellant cannot file in the “state court” including his appeals as the attorney gave no exception to that condition. The state probation never happened after it was initially considered but the verbal agreement (verbal contract) of Appellant not to file for six months in any of the “state court” did happen which is why Appellant had filed untimely (A.R. #1: 153-158)(A.R. #2: 154-159)(A.R. #3: 150-156).

10. On March 29, 2023, the CAV denied Appellant’s request for extension of time and stay of the proceedings which can also be interpreted as an extension of time. They were both denied. (A.R. #1: 164-165)(A.R. #2: 165-166)(A.R. #3: 160-161)

11. On May 30, 2023, Appellees filed a motion to consolidate with the CAV which was granted on June 30, 2023. Appellant never filed a response because he was on a six month no-filing prohibition set by court appointed attorney Fred Dempsey Smith appointed to represent Appellant in his contempt of court criminal

case. (A.R. #1: 166-169, 175-176)(A.R. #2: 167-170, 176-177)(A.R. #3: 162-165, 171-172)

12. The CAV received the record of the trial court on June 16, 2023. Unfortunately, Appellant was unable to file the appeal brief in 40 days due to Appellant being prohibited from filing in all state courts including the CAV set by court appointed attorney Fred Dempsey Smith appointed to represent Appellant in his contempt of court criminal case. The Assignments of Error and Statement of the Facts will cite the proof that this prohibition took place. It was not the Trial Court directly who set the prohibition but by the court appointed attorney appointed by the Trial Court who set the prohibition on Appellant. See Assignments of Error 1-6 and Statement of the Facts. (A.R. #1: 172-174)(A.R. #2: 173-175)(A.R. #3: 168-170)

13. On October 27, 2023, Appellant filed a motion for leave of court to file the appeal brief and that he be allowed to only file one brief for his three appeals since no brief was entered in those three appeals. Appellant had also filed an affidavit about his six-month no-filing prohibition explaining why he couldn't file within the 40-day deadline due to the no-filing prohibition set by his court appointed lawyer Fred Dempsey Smith who was appointed by the Trial Court in his criminal contempt of court case pursuant to Va. Code § 18.2-456(A)(3). The leave of court was to give Appellant 40 days after the filing of that motion for leave of court since he was under a six-month no-filing prohibition set by his court appointed lawyer. (A.R. #1: 178-284)(A.R. #2: 179-285)(A.R. #3: 174-280)

14. On December 1, 2023, Appellant filed his Appellant opening brief and Designation of the Record with its assignment of errors and statement of the facts. Appellant assumed that because he had given a good reason under penalty of perjury and would provide further proof if requested, that he was still allowed to file his Appeal Brief and Designation as long as he gave a good faith reason as to why he had filed untimely such as not being allowed to file at all in the state-level. He did file two motions for extension of time warning that he would be prohibited from filing for up to six months (See paragraphs 13 and 8-9; in pages 4-5 and 6 of this petition), and the fact that the CAV considered Appellant's brief untimely proves in itself that he was prohibited from filing exactly as he tried to warn the CAV at an earlier time before the six-month prohibition. (A.R. #1: 285-417)(A.R. #2: 286-418)(A.R. #3: 281-413)

15. Appellees filed an opposition Brief of the Commonwealth on January 2, 2024. They had asserted that Appellant's opening brief was untimely and also stated to the CAV that they believe (note: no written agreement proving this) Appellant was not prohibited from filing in the CAV for six months but was only prohibited from filing in the trial court. The Appellees claimed in footnote 4 that: "Undersigned counsel confirmed this fact with Hill's appointed counsel in his contempt case during the pendency of those proceedings." (A.R. #1: 418-444)(A.R. #2: 419-445)(A.R. #3: 414-440)

16. On January 16, 2024, Appellant filed a motion for sanctions against Justin

Hill of Appellees for false statements and possibly defrauding the court in Appellees opposition Brief of the Commonwealth. The sanctions were because Appellant had multiple secret audio recordings with his court appointed lawyer Fred Dempsey Smith who was appointed in Appellant's criminal case of contempt of court. The secret audio recordings prove that Appellant was directed by Fred Smith not to file anything in the "state court" for six months, and proved that "Justin Hill" (counsel for Appellees) knew "about the six-month thing" according to what Fred Smith had claimed. That means Appellant was prohibited from filing in the CAV and even in this court, in all of the Virginia "state court" for a six-month period by his court appointed lawyer Fred D. Smith. Appellant felt that the Appellees had produced false statements because of what Fred Smith had told Appellees and what Fred Smith told Appellant in those recorded conversations. Appellant felt that by releasing the secret audio recordings of his court appointed attorney and Appellant, would prove this no-filing prohibition and would cause the CAV to allow the untimely brief as considered timely or equitable tolled as timely since Appellant was not even allowed to notify the CAV once he was prohibited from filing. Appellant acted in good faith throughout the appeal proceedings. (A.R. #1: 445-571)(A.R. #2: 446-572)(A.R. #3: 441-467) NOTE: The CAV never acted upon this motion for sanctions proving that Appellant's attorney did prohibit Appellant's filing in the CAV and every Virginia state court for a six-month period. The CAV should have taken action on this motion before dismissing the appeals. Fred Smith had prohibited Appellant from filing in

“state court” but not in the federal court because Fred Smith explained that the state doesn’t have jurisdiction over federal according to the secret audio recordings Appellant had filed.

17. On January 17, 2024, the CAV entered an order dismissing three appeals out of the seven appeals due to not filing an opening brief timely, and stating that: *“Court noted that appellant had not responded to the motion and his time to do so had expired. See Rule 5A:2(a)(2).”* The CAV considered that no brief was filed since it was not filed timely within the 40-day deadline. (A.R. #1: 572-575)(A.R. #2: 573-576)(A.R. #3: 568-571). The CAV did not address the evidence in the Motion for Sanctions filed a day before proving that Appellant was prohibited from filing for six-months by his own court appointed lawyer Fred Smith which violated Appellant’s procedural due process of law as guaranteed by the legal authority set by the Supreme Court of Virginia. See *Husske v. Commonwealth*, 252 Va. 203, 204 (Va. 1996) regarding procedural due process.

18. On January 22, 2024, Appellant had filed his (still pending) Amended Motion for Delayed Appeal pursuant to Virginia Code § 19.2-321.1., proving the facts with five secret conversation recordings with Attorney Fred Dempsey Smith. The facts proving that Appellant was prohibited from filing for six-months and proved that Attorney Fred Smith had been in contact with Justin Hill, counsel for Appellees who had filed an opposition brief with false information or erroneous information that Appellant was somehow not prohibited from filing in the CAV

when in fact he was prohibited from filing in all of the “state court” for a six-month period. (A.R. #1: 814-843, 677-780)(A.R. #2: 812-844, 678-781)(A.R. #3: 810-839, 673-776)

19. Appellees never filed any contest/objection to Appellant’s amended Motion for Delayed Appeal pursuant to Virginia Code § 19.2-321.1. Never disputed the facts, therefore they are uncontested and true facts alleged in that motion. Appellant FOR A FACT was proven to have been prohibited from filing even in the Court of Appeals of Virginia (CAV) for six months until the hearing on October 23, 2023 when the contempt of court charge was dismissed. On January 30, 2024, Appellant filed a timely petition for rehearing and/or petition for rehearing en banc addressing further issues, case law authorities, and concerns. (A.R. #1: 846-895)(A.R. #2: 847-896)(A.R. #3: 842-891)

20. On February 6, 2024, the CAV denied Appellant’s filed petition for rehearing and/or petition for rehearing en banc. (A.R. #1: 896-898)(A.R. #2: 897-899)(A.R. #3: 892-894).

21. Thus the date of the denied rehearing was on February 6, 2024, deadline to file a Petition for Appeal and Notice of Appeal to SCV would be on March 7, 2024 if the date calculations are correct.

### **Assignments of Error**

**Assignment of error 1.** The CAV erred/errored and/or abused discretion in its order dismissing Appellant’s appeals; when the CAV was given good reason by Appellant as to why he would be unable to file a timely opening brief due to a six-



month prohibition being set by the court appointed lawyer Fred Dempsey Smith from his contempt of court case criminal charge by the Trial Court. However, the CAV had denied multiple motions where Appellant was asking for an extension of time prior to being prohibited from filing in the Trial Court and prohibited from filing in the CAV and in any state court.

22. Appellant argues that the CAV had erred/errored and/or abused discretion in its order dismissing Appellant's appeals (A.R. #1: 572-575)(A.R. #2: 573-576)(A.R. #3: 568-571)(See Paragraph 17) when Appellant had filed prior warnings and motions with the CAV giving them good reason and sufficient reason why Appellant would have been unable to have filed timely in his appeals. This proved that Appellant did not willfully violate or did not violate the Rules of the Supreme Court of Virginia regarding deadlines because Appellant was prohibited from filing in his appeals by his own lawyer Fred Dempsey Smith appointed by the Trial Court. See (A.R. #1: 21-123, 135)(A.R. #2: 22-124, 127)(A.R. #3: 18-119, 131)(Paragraph 8) and (A.R. #1: 153-158)(A.R. #2: 154-159)(A.R. #3: 150-156)(Paragraph 9).

23. That means Appellant did file timely motions for extending the time to file his opening brief and designation which complies with the Rules of the Supreme Court of Virginia, but the CAV would not have it. They denied every one of those motions which gave a good reason and/or good excuse why the Appellant was not going to be permitted to file for six months in his appeals. See *Lacava v. Commonwealth*, 283 Va. 465, 469 (Va. 2012) (“[w]hen a motion to extend is filed after the expiration of the original underlying deadline (in this instance, 60 days after

entry of final judgment), but before the specific deadline governing a motion to extend (in this instance, 90 days after judgment), **good cause must be shown as to why an extension was not sought by the original due date.** In other words, the **“good cause” showing must present some persuasive reason** for waiting until **after the expiration of the underlying deadline to file the motion for an extension of time.**”). Appellant did present good cause to the Court of Appeals of Virginia. If they felt that it was not enough evidence to demonstrate that proof, they should have said that the evidence was insufficient but they did not do so when denying Appellant’s timely filed motions to extend the time.

24. The CAV inappropriately denied Appellant’s motions for an extension of time (A.R. #1: 164-165)(A.R. #2: 165-166)(A.R. #3: 160-161)(paragraph 10) on March 29, 2023 when Appellant had shown the copy of the contempt of court charge (A.R. #1: 135)(A.R. #2: 127)(A.R. #3: 131) proving that he was indeed charged with contempt of court for what was argued in the “ATTACHED NOTICES OF APPEAL”. So, this does prove retaliation, direct retaliation by the Trial Court which is unconstitutional against Appellant’s protected freedom of speech and right to petition the appeals court (judicial branch of government) for a redress of grievances. Freedom of speech is protected by the First Amendment of the United States Constitution, and by Article I, Section 12 of the Virginia Constitution. Free speech including criticism of judges is not supposed to be criminalized in America.

**Assignment of error 2.** The CAV erred/errored and/or abused discretion in its order dismissing Appellant’s appeals; when the CAV was given irrefutable

evidence of secret audio recordings recorded by Appellant as to proving why he was unable to file a timely opening brief due to a six-month prohibition set by the court appointed lawyer Fred Dempsey Smith from his contempt of court case criminal charge by the Trial Court. The decision was not ripe for dismissal when the Appellant brought allegations against Appellees counsel Justin Hill requesting sanctions against Appellees counsel Justin Hill. The CAV deprived Justin Hill of an opportunity to respond to Appellant's allegations filed on January 16, 2024. Deprived both Appellees and Appellant of procedural due process of law.

25. Appellant argues that the CAV had erred/errored and/or abused discretion in its order dismissing Appellant's appeals (A.R. #1: 572-575)(A.R. #2: 573-576)(A.R. #3: 568-571)(See Paragraph 17) when Appellant had given filed evidence to the CAV of irrefutable evidence, prima facie evidence of secret audio recordings recorded by Appellant as to proving why he was unable to file a timely opening brief. That was due to a six-month prohibition set by the court appointed lawyer Fred Dempsey Smith from his contempt of court case criminal charge by the Trial Court. The evidence was filed a day before the appeals were wrongfully dismissed. (A.R. #1: 445-571)(A.R. #2: 446-572)(A.R. #3: 441-467)(See paragraph 16 of petition). The motion was never acted upon even though it disproved Appellees claim that Appellant was never prohibited from filing in the CAV (A.R. #1: 418-444)(A.R. #2: 419-445)(A.R. #3: 414-440)(Paragraph 15). That filed motion was not acted upon a day before the appeals were dismissed. That clearly is erroneous and evidence was overlooked. The CAV didn't have time within a day to review over multiple secret audio recordings legally recorded and presented by Appellant, prior to deciding to dismiss Appellant's appeals. The CAV should have reviewed over the entire motion

for sanctions and give Justin Hill an opportunity to respond to Appellant's allegations, and thus Appellees was deprived of its procedural due process of law guaranteed thanks to a ruling by the Supreme Court of Virginia under authority by *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.***”). Appellees should have been given an opportunity to respond to Appellant's allegations against Justin Hill and see what Appellees have to say in response to the evidence presented by Appellant to the CAV accusing Justin Hill of producing false statements to the Court of Appeals of Virginia. It is clear that the decision was not ripe for dismissal.

26. The CAV court, it's panel of judges or any judges over the decision-making in the three appeals, were given clear and convincing evidence, irrefutable evidence, prima facie evidence. Nothing is more provable as evidence than secret audio recordings legally recorded under one party consent under Virginia wiretapping/eavesdropping law (Virginia Code § 19.2-62, Virginia Code § 19.2-61). See the evidence cited: (A.R. #1: 445-571)(A.R. #2: 446-572)(A.R. #3: 441-467)(See paragraph 16 of petition). EXHIBITS: (A.R. #1: 447-507)(A.R. #2: 485-551)(A.R. #3: 443-503). Not just secret audio recordings but true and correct transcripts of the secret audio recordings. It was very easy for the judges to read, review, and understand what was said in the exhibits if it was not overlooked by a quick and rash decision to dismiss Appellant's three appeals without conducting any

inquiry. Appellant has asked not just for sanctions against Appellees but asked for an inquiry. No response was requested of Appellees. Appellees wasn't given any reasonable time to respond to Appellant's motion for sanctions. There was no inquiry as requested by Appellant. The motion was overlooked, not acted upon, and then the appeals were dismissed on January 17, 2024. Appellant believes that this was a major error/err and/or abuse of discretion. That decision was erroneous and needs to be reversed by the Supreme Court of Virginia.

**Assignment of error 3.** The CAV erred/errored and/or abused discretion in dismissing the appeals when the SCV made authoritative law saying that a lower tribunal/court can grant an untimely motion for an extension for time for good reason and/or good excuse. The CAV made the decision for dismissal which overlooked and denied the motions for extension of time and not accepting the evidence of Appellant being prohibited from filing for a six-month period.

27. The CAV erred/errored and/or abused discretion in dismissing the appeals (A.R. #1: 572-575)(A.R. #2: 573-576)(A.R. #3: 568-571)(See Paragraph 17) when the Supreme Court of Virginia (SCV) had made authoritative law and likely any other authoritative law giving a lower tribunal/court the right and duty to grant an untimely motion for an extension of time for good reason and/or good excuse. The panel was given an opportunity to: *“extend and/or modify existing law Lacava v. Commonwealth, 283 Va. 465, 469 (Va. 2012) to hold that the judge or panel or whoever else at the CAV who entered the order on March 29, 2023 had erred and abused its discretion when it denied Appellant's motion for extending the time for the appeals”* (A.R. #1 850-854, 874-878)(A.R. #2 877-881, 853-857)(A.R. #3 872-

876, 848-852). This Court had already made a ruling in that case law authority. See *Lacava v. Commonwealth*, 283 Va. 465, 469 (Va. 2012) (“[w]hen a motion to extend is filed after the expiration of the original underlying deadline (in this instance, 60 days after entry of final judgment), but before the specific deadline governing a motion to extend (in this instance, 90 days after judgment), **good cause must be shown as to why an extension was not sought by the original due date.** In other words, **the “good cause” showing must present some persuasive reason for waiting until after the expiration of the underlying deadline to file the motion for an extension of time.**”).

28. It is clear that Appellant had filed two motions asking for an extension of time for good reason prior to the set deadline by the court, then filed a third motion asking for leave of court to file the brief and designation due to good reason of Appellant being subject to a six-month no-filing prohibition period set by Appellant’s court appointed attorney in exchange for making the contempt of court case go away. See (A.R. #1: 21-123, 135)(A.R. #2: 22-124, 127)(A.R. #3: 18-119, 131)(Paragraph 8) and (A.R. #1: 153-158)(A.R. #2: 154-159)(A.R. #3: 150-156)(Paragraph 9), as well as (A.R. #1: 178-284)(A.R. #2: 179-285)(A.R. #3: 174-280)(Paragraph 13). Appellant had demonstrated good faith and demonstrated that he was warranted the relief sought. The Court never should have denied Appellant’s earlier requests for an extension of time (A.R. #1: 164-165)(A.R. #2: 165-166)(A.R. #3: 160-161)(paragraph 10). It is clear that Appellant has presented

clear and convincing evidence proving that he was prohibited from filing for six months. EXHIBITS: (A.R. #1: 447-507)(A.R. #2: 485-551)(A.R. #3: 443-503). Not just secret audio recordings but true and correct transcripts of the secret audio recordings. Appellant was entitled to the relief sought.

**Assignment of error 4.** The CAV erred/errored and/or abused discretion in dismissing the appeals when the CAV should not have denied Appellant extension of time as Appellant made it clear in affidavit that his lawyer was refusing to fight for Appellant's first amendment right to freedom of speech and only gave Appellant the option of not filing for six months in any of the Virginia "state court" or Appellant would be convicted of criminal contempt of court which would give Appellant severe consequences reaching not just punishment by the Trial Court but would also cause punishment by the U.S. District Court with a supervised release violation risking federal imprisonment.

29. The CAV erred/errored and/or abused discretion in dismissing the appeals (A.R. #1: 572-575)(A.R. #2: 573-576)(A.R. #3: 568-571)(See Paragraph 17) when Appellant's motion for leave of court had contained an affidavit which had made it clear that his lawyer was refusing to fight for Appellant's first amendment right to freedom of speech and only gave Appellant the option of not filing for six months in any of the Virginia "state court" or Appellant would be convicted of criminal contempt of court over his freedom of speech which would give Appellant severe consequences reaching not just punishment by the Trial Court but would also cause punishment by the U.S. District Court with a supervised release violation risking federal imprisonment. (A.R. #1: 216-233, 265-278, 524-526)(A.R. #2: 193-210, 242-255, 464-466)(A.R. #3: 168-229, 261-274, 520-522). Brian explained it

perfectly to the Court of Appeals of Virginia. He said if he had been convicted of criminal contempt of court because his lawyer told Appellant that he will not fight for his freedom of speech because he said: “you will have to find another lawyer” to pursue the stuff Appellant was talking about. He acted as Appellant’s boss rather than as a lawyer, an advocate, and adviser, demanding that Appellant do what he said. It was, do not file for six months or Appellant would have faced the contempt proceeding and would have been found guilty with no first amendment defense from his Attorney Fred Smith. Appellant would have then faced a federal supervised release violation charge while sitting in jail just like with his indecent exposure charge. A lawyer who refused to fight for Appellant’s first amendment right to freedom of speech as a defense to criminal contempt. It is clear that the court appointed lawyer Fred Dempsey Smith is the sole cause of Appellant filing untimely, is the sole cause for why his appeals were dismissed. No doubt about that.

**Assignment of error 5.** The CAV had erred and/or abused discretion in their unconstitutional decision dismissing Appellant’s appeals and unconstitutionally denying Appellant’s rehearing petitions because it sets the precedent where a single court judge can charge a problematic Appellant with criminal contempt of court, then appoint an attorney and use that contempt charge as leverage to cause dismissal of any appeals the judge may disagree with. Appellant asserts that the Trial Court had abused its contempt powers under Va. Code § 18.2-456(A)(3). Appellant asks the Supreme Court of Virginia to hold that the judge of the Trial Court in the City of Martinsville had abused its contempt powers under Va. Code § 18.2-456(A)(3) to interfere with and prohibit Appellant from freely exercising his constitutional right to appeal under Virginia Code § 17.1-406. Appellant asks the Supreme Court of Virginia to hold that there was clear cut evidence of retaliation by the Trial Court attempting to unconstitutionally and illegally quash Appellant’s appeals of right. Appellant asks the Supreme Court of



Virginia to hold that the CAV should have used its inherent and legal powers to prevent the Trial Court from abusing its contempt powers in a move to unconstitutionally prevent the appeals of Appellant from being exercised under due diligence. Appellant asks the Supreme Court of Virginia to hold that the evidence proves with the appointment of Attorney Fred Smith by the Trial Court was to demand that the Appellant not file anything for six months in exchange for the contempt of court charge to be dismissed causing the untimely filing of the opening brief after surpassing the deadlines had proven that Appellant's constitutional right to procedural due process of law had been illegally violated and illegally deprived. The CAV deprived Appellant of procedural due process of law by allowing the Trial Court to interfere with and meddle with Appellant's appeals by charging Appellant with contempt of court then appointing an attorney who demanded that Appellant not file anything in the courts of Virginia including his appeals. His lawyer appeared to have demanded it and was acting as Appellant's boss rather than as an advocate of law according to the five secret recorded conversations with Appellant's court appointed lawyer. Appellant had warned the CAV in petition for rehearing that the new precedent of dismissing Appellant's appeals over being prohibited from filing for six months because of the Trial Court charging Appellant with criminal contempt over his appeals will allow any Circuit Court or tribunal to become a DICTATORSHIP, a DICTATOR because then any judge who doesn't like an appeal can charge the appellant at the trial court level with criminal contempt can abuse the contempt powers to act as dictators who criminalize any criticism and criminalize any appeals.

30. The CAV had erred and/or abused discretion in their unconstitutional decision dismissing Appellant's appeals (A.R. #1: 572-575)(A.R. #2: 573-576)(A.R. #3: 568-571)(See Paragraph 17) and unconstitutionally denying Appellant's rehearing petitions (A.R. #1: 846-895)(A.R. #2: 847-896)(A.R. #3: 842-891)(Paragraph 19) (A.R. #1: 896-898)(A.R. #2: 897-899)(A.R. #3: 892-894)(Paragraph 20) because it sets the precedent where a single court judge can charge a problematic Appellant with criminal contempt of court, then appoint an

attorney and use that contempt charge as leverage to cause dismissal of any appeals the judge may disagree with. Appellant asserts that the Trial Court had abused its contempt powers under Va. Code § 18.2-456(A)(3). It is clear abuse of the court's contempt powers under Va. Code § 18.2-456(A)(3) to abridge the Virginia citizen's freedom of speech and constitutional right to petition the judicial form of government for a redress of grievances. It violates both the First Amendment of the United States Constitution and Virginia Constitution's Article I, Section 12 clause. It says in this clause, in part: "*the right of the people peaceably to assemble, and to petition the government for the redress of grievances.*" The trial court had violated Article I, Section 12 by charging Appellant with criminal contempt for simply criticizing a Trial Court judge (Judge Greer, Hon. Giles Carter Greer) in his NOTICES OF APPEAL (A.R. #1: 1-14)(A.R. #2: 1-15)(A.R. #3: 1-13). It isn't just freedom of speech but had interfered with Appellant's right to bring preserved issues in the trial court record stating that he believed the Trial Court had engaged in wrongdoing and overlooking evidence. All Appellant did was present the honest truth in his NOTICES OF APPEAL (A.R. #1: 21-123, 135)(A.R. #2: 22-124, 127)(A.R. #3: 18-119, 131)(Paragraph 8), and he was charged criminally for that. Appellant had warned the CAV in his petition for rehearing that by allowing Appellant's appeals to be dismissed for untimely filing over proving that Attorney Fred Smith and the Trial Court had interfered with Appellant's appeals by his court appointed lawyer Fred Smith demanding that Appellant not for file for six months

to have his contempt of court case dismissed. Appellant complied but his appeals were dismissed in exchange for his contempt of court case being dismissed. This is obstruction with and interference with Appellant faithfully prosecuting his appeals in good faith. It is retaliation.

31. It is clear that the Trial Court had abused its contempt powers and that abuse had caused direct interference with Appellant's constitutional procedural due process of law guaranteed by the Supreme Court of Virginia in its authority ruling of *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.***”). The contempt of court charge directly denied the Appellant an adequate opportunity to present his claims within the adversary system, with the fear that Appellant would be convicted of contempt of court in the Trial Court if he did not accept prohibition of not filing for six months “in state court” meaning all of the courts of Virginia as far as Attorney Fred Smith was concerned. That messed up his pending appeals.

32. Therefore, Appellant asks the Supreme Court of Virginia to hold that the judge of the Trial Court in the City of Martinsville had abused its contempt powers (A.R. #1: 21-123, 135)(A.R. #2: 22-124, 127)(A.R. #3: 18-119, 131) under Va. Code § 18.2-456(A)(3) to criminalize his constitutional right to freedom of speech under Article I, Sec. 12 of Virginia Constitution and First Amendment of the U.S. Constitution; then using that criminal contempt charge to interfere with Appellant's

appeals and prohibit Appellant from freely exercising his constitutional right to his appeals of right under Virginia Code § 17.1-406, his constitutional right under procedural due process of law. His constitutional right set by the Rules of the Supreme Court of Virginia such as Rule 5A:6. Notice of Appeal., and Rule 5A:16. Perfection of Appeal; Docketing. All of Appellant's statutory and constitutional rights were taken away by being charged with criminal contempt of court over his allegations, his honest and truthful allegations, his freedom of speech (A.R. #1: 21-123, 135)(A.R. #2: 22-124, 127)(A.R. #3: 18-119, 131).

33. Therefore, Appellant asks the Supreme Court of Virginia to hold that there was clear cut evidence of retaliation by the Trial Court attempting to unconstitutionally and illegally quash Appellant's appeals of right by charging Appellant with criminal contempt of court then appointing counsel demanding that Appellant not file in the "state court" for six months causing direct obstruction with and interference with Appellant's constitutional right to procedural due process of law guaranteed by the Supreme Court of Virginia in its legal authority of *Husske v. Commonwealth*, 252 Va. 203, 204 (Va. 1996). It is clear cut prima facie evidence of retaliation when it said: "***CRIMINAL CONTEMPT 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***" (A.R. #1: 135)(A.R. #2: 127)(A.R. #3: 131). Important citation marked in bold and italic. It

directly says that Appellant's notices of appeal are the cause of the criminal contempt charge. That right there is prima facie evidence of RETALIATION which is unconstitutional under the First Amendment of the U.S. Constitution and the Article I, Sec. 12 of the Virginia Constitution. If the judge was concerned if Appellant made any untruthful statement, that should have been addressed rather than a vague charge over the entire NOTICES OF APPEAL. When Appellant made truthful allegations in his NOTICES OF APPEAL against the Trial Court in his petition to the Court of Appeals of Virginia, and NOTICES OF APPEAL, they are considered a petition to the judicial branch of government asking for a redress of grievances. This is clearly protected constitutional free speech Appellant had said in his NOTICES OF APPEAL. He was charged with contempt for his appeals, and that itself violates the Constitution as it is clear cut retaliation, clear cut unconstitutional interference.

34. Appellant asks the Supreme Court of Virginia to hold that the CAV should have used its inherent and legal powers to prevent the Trial Court from abusing its contempt powers to prevent the appeals of Appellant from being exercised. It is clear that once the Appellant had filed his motions for extension of time explaining that he was being targeted with a criminal contempt of court charge directly over his "NOTICES OF APPEAL" (A.R. #1: 135)(A.R. #2: 127)(A.R. #3: 131) and (A.R. #1: 1-14)(A.R. #2: 1-15)(A.R. #3: 1-13), the CAV should have inquired with the Trial Court about this development and make a determination right then and there as to whether the Trial Court was attempting to obstruct Appellant's timely filed

appeals, and inquire as to whether the Trial Court was attempting to interfere with Appellant's timely filed appeals. Theoretically, If Appellant had threatened harm against the judge in his NOTICES OF APPEAL or if Appellant had advocated rebellion or yelled fire in a crowded theater in his NOTICES OF APPEAL, then I can see the need for such a charge of criminal contempt of court and maybe even the arrest of Appellant if Appellant had advocated rebellion or crimes or the things which the U.S. Supreme Court had said was not protected free speech. See *Schenck v. United States* (1919). Was Appellant a clear and present danger? or was Appellant producing any specific criminal threat to the Circuit Court for the City of Martinsville for what he alleged in his NOTICES OF APPEAL??? There clearly is none, and thus Appellant's words in his NOTICES OF APPEAL are protected free speech. He did not deserve his three appeals being dismissed because he was charged with criminal contempt here which caused him to file untimely.

35. Appellant asks the Supreme Court of Virginia to hold that the evidence proves with the appointment of Attorney Fred Smith by the Trial Court was to have his attorney Fred Smith demand that the Appellant not file anything for six months in exchange for the contempt of court charge to be dismissed causing the filing of the untimely filing of the opening brief after surpassing the deadlines had proven that Appellant's constitutional right to procedural due process of law had been illegally violated and illegally deprived. See Appellant's filed amended motion for delayed appeal with evidence. (A.R. #1: 814-843, 677-780)(A.R. #2: 812-844, 678-

781)(A.R. #3: 810-839, 673-776). See Appellant's filed motion for sanctions with the evidence (A.R. #1: 445-571)(A.R. #2: 446-572)(A.R. #3: 441-467). Appellant had proven his claims of interference with the secret audio recordings of Appellant and Attorney Fred Dempsey Smith, court appointed lawyer appointed by the Trial Court over his criminal contempt of court case. It has all been proven with clear and convincing evidence in the records of the Court of Appeals of Virginia (CAV). The CAV deprived Appellant of procedural due process of law by allowing the Trial Court to interfere with and meddle with Appellant's appeals by charging Appellant with criminal contempt of court (A.R. #1: 135)(A.R. #2: 127)(A.R. #3: 131) then appointing an attorney who demanded that Appellant not file anything in the courts of Virginia including his appeals (A.R. #1: 877, 705-708, 725-727, 691-696)(A.R. #2: 856, 706-709, 726-728, 692-697)(A.R. #3: 851, 701-704, 721-723, 687-692). His lawyer appeared to have demanded it and acting as Appellant's boss rather than as an advocate of law who is supposed to advocate for his client according to the five secret recorded conversations with Appellant's court appointed lawyer.

36. Appellant had warned the CAV in petition for rehearing that the new precedent of dismissing Appellant's appeals over being prohibited from filing for six months because of the Trial Court charging Appellant with criminal contempt over his appeals will allow any Circuit Court or tribunal to become a DICTATORSHIP (A.R. #1: 860-863)(A.R. #2: 863-866)(A.R. #3: 858-861), a DICTATOR because then any judge who doesn't like an appeal can charge the

appellant at the trial court level with criminal contempt can abuse the contempt powers to act as dictators who criminalize any criticism and criminalize any appeals. The whole purpose of appeals to the U.S. Supreme Court, U.S. Court of Appeals, Court of Appeals of Virginia, Supreme Court of Virginia, any appeals court is to criticize a judge's verdict or any judge's decision. Justices of any Supreme Court of any state can criticize a judge of a lower court and shouldn't have to worry about being charged with violating Va. Code § 18.2-456(A) ("*3. Vile, contemptuous, or insulting language addressed to or published of a judge for or in respect of any act or proceeding had, or to be had, in such court, or like language used in his presence and intended for his hearing for or in respect of such act or proceeding*"). Imagine now with the abuse of the contempt powers, even the Justices of the Supreme court of Virginia may have to worry about offending/insulting a circuit court judge for anything that judge deems offensive or insulting and then charges that justice with criminal contempt for: "Vile, contemptuous, or insulting language addressed to or published of a judge for or in respect of any act or proceeding". Theoretically, If I were a judge and I felt insulted with what a Supreme Court justice had said about me in his/her legal opinion, then theoretically I could ask the clerk to charge a Virginia Supreme Court justice with criminal contempt of court, as a theoretical judge of a circuit court. It can get out of control and quashes dissent, it quashes freedom of speech faster than what North Korea could do, quashes freedom of speech faster than what Communist China could do, or even a classic example of



quashing freedom of speech faster than what Nazi Germany could do to the Jews, Gays, Jehovah's Witnesses, Gypsies, and political dissidents. Freedom of speech is extremely important here. We can't have a single court judge in the City of Martinsville just decide that he doesn't like my appeals and therefore will charge me with criminal contempt to quash my appeals. This kind of behavior unchecked will be a dictatorship very quickly. Hear the words from the Virginia Constitution's freedom of speech clause, very carefully. It said: "**That the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments;** that **any citizen may freely speak, write, and publish his sentiments on all subjects,** being responsible for the abuse of that right; that the **General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances.**" The trial court should not abuse its powers of criminal contempt to create a dictatorship where any appeals could be quashed by using a single statute of criminal contempt to squash/quash an appeal. What is a dictator exactly??? A dictatorship is a form of government in which one person or a small group possesses absolute power without effective constitutional limitations. The term "dictatorship" originates from the Latin title "dictator," which in the Roman Republic referred to a temporary magistrate granted extraordinary powers to address state crises. A dictatorship is not constitutionally sound, it is illegitimate, unconstitutional, and is extremely dangerous in a republic form of Government in the United States of America. This court should make it clear that

we cannot afford a dictatorship at any cost. A dictatorship should never happen inside of the United States of America under any pretense.

**Assignment of error 6.** Appellant asks the Supreme Court of Virginia to hold that Va. Code § 18.2-456(A)(3) had been unconstitutionally abused by the Trial Court to take away Appellant's constitutional right to freedom of speech and his right to petition the Court of Appeals of Virginia for a redress of grievances in violation of Article I, Sec. 12 of the Virginia Constitution and in violation of the First Amendment of the United States Constitution.

37. Appellant asks the Supreme Court of Virginia to hold that Va. Code § 18.2-456(A)(3) had been unconstitutionally abused by the Trial Court (A.R. #1: 135)(A.R. #2: 127)(A.R. #3: 131) to take away Appellant's constitutional right to freedom of speech and his right to petition the Court of Appeals of Virginia for a redress of grievances (A.R. #1: 814-843, 677-780)(A.R. #2: 812-844, 678-781)(A.R. #3: 810-839, 673-776)(A.R. #1: 445-571)(A.R. #2: 446-572)(A.R. #3: 441-467) in violation of Article I, Sec. 12 of the Virginia Constitution and in violation of the First Amendment of the United States Constitution.

38. It is clear that Appellant had proven with secret conversation recordings under one party consent of Virginia Law, (A.R. #1: 877, 705-708, 725-727, 691-696)(A.R. #2: 856, 706-709, 726-728, 692-697)(A.R. #3: 851, 701-704, 721-723, 687-692) that Attorney Fred Smith had been appointed by the Trial court to represent Appellant over his criminal contempt of court charge, and that the Attorney Fred Smith had demanded or instructed Appellant not to file anything, not to file in the "state court", and to not file anything for six months with no exception for his

appeals which surpasses the deadlines set for 40 days after the Clerk of the Circuit Court aka the Trial Court had filed the record of the Trial Court with the Court of Appeals of Virginia (A.R. #1: 172-174)(A.R. #2: 173-175)(A.R. #3: 168-170). See paragraphs 7-20, pages 3-10 of the petition.

39. The U.S. Constitution, 1st Amendment says: “*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*” This applies to Virginia after the passage of the Fourteenth Amendment of the U.S. Constitution. Citing *Gitlow v. New York*, 268 U.S. 652, (1925) (“*1. Assumed, for the purposes of the case, that freedom of speech and of the press are among the personal rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the States.*”). However, the U.S. Supreme Court ultimately ruled that Gitlow’s speech was not protected under the First Amendment by applying the “clear and present danger” test. Appellant’s words in his NOTICES OF APPEAL do not demonstrate a clear and present danger. Appellant was not charged with making any threats but only for what the Trial Court charged Appellant with making a “Vile, contemptuous, or insulting language...”. It is clear that Appellant does not even meet the bar of clear and present danger. Appellant’s freedom of speech was unconstitutionally criminalized by the Trial Court, and then it was used as a vehicle to disrupt, obstruct, and interfere with Appellant’s procedural due process right to

appeal to the Court of Appeals of Virginia as provided by statute and Rules of the Supreme Court of Virginia. This Court can correct the wrongs done by the Trial Court by ordering the Court of Appeals of Virginia to allow Appellant's opening brief in appeals as timely filed or tolled to allow the brief to prevent the Trial Court from abusing its contempt powers to unconstitutionally quash appeals. This will prevent a single judge from abusing the contempt powers under Va. Code § 18.2-456(A)(3) to quash a constitutionally protected NOTICE OF APPEAL which is a protected freedom of speech and procedural due process of law process. See *Husske v. Commonwealth*, 252 Va. 203, 204 (Va. 1996) regarding procedural due process.

### **STATEMENT OF THE FACTS**

40. The Appellant had proven to the CAV that the judge of the Trial Court had retaliated against Appellant by charging Appellant with criminal contempt of court under Va. Code § 18.2-456(A)(3) for his protected freedom of speech in his NOTICES OF APPEAL. See paragraphs 7-20 in pages 3-10 of this petition, NATURE OF THE CASE AND MATERIAL PROCEEDINGS. Those paragraphs 7-20 have the proper citations to the appeal court record proving that the CAV was informed and given affidavits.

41. The Appellant had proven to the CAV in Appellant's filed Motion for Sanctions (*CAV didn't give Appellees an opportunity to respond to that motion accusing Appellees counsel Justin Hill of producing false statements*)(A.R. #1: 445-571)(A.R. #2: 446-572)(A.R. #3: 441-467)(See paragraph 16 of petition) and in the

Motion for Delayed Appeal (*undisputed by Appellees*)(A.R. #1: 814-843, 677-780)(A.R. #2: 812-844, 678-781)(A.R. #3: 810-839, 673-776)(See paragraphs 18-19 of petition) that he had been prohibited from filing in this court and every other “state court” for six months period by his own court appointed lawyer Fred D. Smith (appointed by the same Trial Court) in exchange for Appellant’s criminal charge of contempt of court to be dismissed upon agreement with the special prosecutor and Attorney Fred D. Smith.

42. Appellant had stated good reason/cause and/or good excuse why the filing was untimely. Upon good faith reasons, the Court normally accepts an untimely motion for an extension of time as long as there is an extraordinary reason why something couldn’t have possibly been filed timely according to Supreme Court of Virginia case law authority under *Lacava v. Commonwealth*, 283 Va. 465, 469 (Va. 2012). As was argued and preserved in the petition for rehearing. (A.R. #1 850-854, 874-878)(A.R. #2 877-881, 853-857)(A.R. #3 872-876, 848-852).

43. The CAV had not acted upon the Appellant’s motion for sanctions on Justin Hill and didn’t give Justin Hill (counsel for Appellees) any time to respond to Appellant’s allegations.

44. Appellees did not dispute the facts alleged in Appellant’s motion for delayed appeal even though Appellees have such right pursuant to Virginia Code § 19.2-321.1(B). Appellees had an opportunity to dispute the facts laid out in

Appellant's motion for delayed appeal with evidence proving the facts alleged including five secret audio recordings obtained by Appellant and filed in support of Appellant's motion for delayed appeal. The transcripts of the secret audio recordings. The affidavit by Appellant. The email response from Justin Hill about not agreeing to file an extension for Appellant to continue his appeals which contradict what Attorney Fred Smith told Appellant's mother over a recorded phone conversation. Appellant had proved with irrefutable evidence, prima facie evidence, that Appellant was prohibited from filing for six months by his own court appointed lawyer appointed by the very same judge over Appellant's contempt of court criminal case. (A.R. #1: 814-843, 677-780)(A.R. #2: 812-844, 678-781)(A.R. #3: 810-839, 673-776)

45. Appellant did present a statement of the facts in his appeal brief but the CAV would not consider it because of it being deemed as untimely filed. (A.R. #1 394-404)(A.R. #2 345-355)(A.R. #3 340-350). Also, Appellant presented an informal statement of the facts regarding him being told he would be on state probation for six months until that later got shelved by Appellant's lawyer to simply have Appellant be prohibited for filing for six months in exchange for his criminal contempt of court case to be dismissed over his notices of appeal. (A.R. #1 154-155)(A.R. #2 155-156)(A.R. #3 151-152)

## **ARGUMENT**

**i. Standard of Review**

All errors assigned on appeal are errors of law, errors of fact. All Assignments of error involve mixed questions of law and fact. This Court’s review therefore is de novo and based on the facts of the case including Appellant’s first amendment right to freedom of speech. E.g., *Palace Laundry, Inc. v. Chesterfield County*, 276 Va. 494, 498, 666 S.E.2d 371, 374 (2008). For all assignments of error, the Court must conduct an “independent examination of the entire record” to ensure that the judgment/order does not violate constitutional rights, to ensure that the law is being followed. *The Gazette, Inc. v. Harris*, 229 Va. 1, 19, 325 S.E.2d 713, 727-28 (1985); see also, e.g., *United States v. Friday*, 525 F.3d 938, 949-50 (10th Cir. 2008), cert. denied, 129 S. Ct. 1312 (2009), and cases cited therein (the independent review standard); *New Life Baptist Church Academy v. Town of East Longmeadow*, 885 F.2d 940, 941 (1st Cir. 1989) (Breyer, J.), cert. denied, 494 U.S. 1066 (1990) (“First Amendment questions of “constitutional fact” compel... de novo review”) (citations omitted).

All legal arguments and factual arguments are already argued in each assignment of error. Do not need to reduplicate what is already argued, for the sake of brevity.

**CONCLUSION**

Appellant requests from this court for the following relief:

Appellant asks that the Supreme Court of Virginia consider GRANTING

Appellant's petition for appeal to allow the perfecting of Appellant's appeal (perfecting the appeal) and give this Court an opportunity to resolve the issues set within the Assignments of Error and in the Statement of the Facts.

Granting the Petition for Appeal would allow Appellant to further request relief from: The judgments/orders on February 6, 2024, January 17, 2024, and March 29, 2023 by the Court of Appeals of Virginia should be reversed/vacated, and the case should be remanded for further proceedings based on the Assignments of Error and the Statement of the Facts, as well as the grounds raised.

Appellant requests relief accordingly and asks for any other relief that the Supreme Court of Virginia may deem proper and just.

### **REQUEST FOR ORAL ARGUMENT**

As this appeal raises important constitutional, authoritative case law, evidential, and legal issues which were believed overlooked or were not taken into consideration by the Court of Appeals of Virginia before wrongfully dismissing the appeals, the Appellant requests oral argument.

Respectfully Filed/Submitted on February 27, 2024,



**BRIAN DAVID HILL**

**Pro Se**

*Brian D. Hill*  
*Signed*

**Brian D. Hill**

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**CERTIFICATE OF COMPLIANCE**

1. This brief complies with Rule 5:17(f) regarding the type-volume limits (word limit 6,125 or page limit at 35 pages) pursuant to Rule 5A:19(a), excluding the parts of the document exempted by Rule 5A:19(a) (appendices, the cover page, table of contents, table of authorities, signature blocks, or certificate):

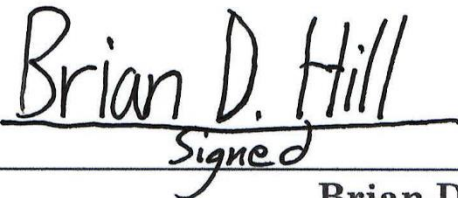
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\_\_\_\_\_  
**Brian D. Hill**

Dated: February 27, 2024



Brian David Hill – Ally of Qanon  
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*Pro Se Appellant*

## CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 27th day of February, 2024, I caused this “APPELLANT’S PETITION FOR APPEAL” 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) on the Commonwealth of Virginia and City of Martinsville (Appellees) through the ~~Commonwealth Attorney’s Office of Martinsville City; as well as to the~~ (recused himself from the Circuit Court case, special prosecutor appointed in contempt of court case, so Commonwealth Attorney may have recused himself from all of the case in the Trial Court) 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 PLEADING shall satisfy the proof of service was required by Rule 5A:2(a)(1) and Rule 5A:1(c)(4):

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

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**Brian D. Hill**

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



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