

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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MARK O. WRIGHT- PETITIONER

vs.

COMMONWEALTH OF VIRGINIA - RESPONDENT(S)

ON A PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF VIRGINIA

PETITION FOR WRIT OF CERTIORARI

Mark O. Wright, #1141826  
Augusta Correctional Center  
1821 Estaline Valley Road  
Craigsville, VA 24430

## QUESTION(S) PRESENTED

1. Can a state Supreme Court enforce a judgment against a criminal defendant for an offense that was never charged and which was not a lesser included offense of any offense that was charged or is such a judgment void *ab initio*?

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties do not appear in the caption of the case on the cover page.  
A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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## OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix **A** to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the Rockingham County Circuit Court appears at Appendix **B** to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

## JURISDICTION

☐ For cases from federal courts:

The date on which the highest state court decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

☒ For cases from **state courts**:

The date on which the highest court decided my case was 4-12-18. A copy of that decision appears at Appendix A.

The jurisdiction of this court is invoked under 28 U.S.C. §1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment Notice Clause

Fourteenth Amendment Due Process Clause



## STATEMENT OF THE CASE

Mark O. Wright was convicted of a crime he was never charged with committing in violation of the Sixth Amendment of the federal Constitution's Notice Clause and the Fourteenth Amendment's Due Process Clause. Although the Virginia Courts are aware that Wright was convicted of a crime not charged, they have refused to grant Wright relief for this well-known due process violation. Wright ("Wright") was tried before a jury in the Rockingham County Circuit Court ("trial court") in December 2012 upon indictments charging felony malicious bodily injury by means of a caustic substance in violation of Code § 18.2-52, felony robbery as a principal in the second degree in violation of Code § 18.2-58, (See Indictment 00783, Exhibit #1), felony assault and battery of a law enforcement officer in violation of Code § 18.2-57, obstruction of justice in violation of Code § 18.2-460, contributing to the delinquency of a minor in violation of Code § 18.2-371, and petty larceny in violation of Code § 18.2-96. Wright was represented by Andrew Graves, Esq. at trial. Wright was convicted of felony malicious bodily injury by means of a caustic substance, grand larceny from a person, (which he was not charged with, See: sentencing order, Exhibit #2 CR12000783-00), assault and battery law enforcement officer, obstruction of justice, contributing to the delinquency of a minor, and sentenced to a total of twenty-two and a half(22 ½) years. Wright, through new counsel, appealed to the Court of Appeals, challenging his conviction of grand larceny from the person because it was not a lesser-included offense of any offenses with which he had been charged and because the evidence was insufficient to convict him of that offense and the other

charges. The Court of Appeals, in a per curiam order, held that by operation of Rule 5A:18, Wright had waived his challenge to the conviction of grand larceny from the person because it was not a lesser-included offense of the charged offenses, noting that he had not raised that issue at trial. *Wright v. Commonwealth*, Record No. 0585-13-3 (December 6, 2013). The Court refused to consider the issue under the “ends of justice” or “good cause” exception to that rule. *Wright v. Commonwealth*, Record No. 0585-13-3 (February 20, 2014). In an unpublished memorandum opinion, a three-judge panel of the Court of Appeals also refused to consider Wright’s argument that the evidence was insufficient to sustain the grand larceny of the person conviction because there was no evidence of the value of the items Wright was charged with taking. *Wright v. Commonwealth*, Record No. 0585-13-3, 2014 Va. App. LEXIS 376, at \*3, n.1 (Nov. 18, 2014). This argument, the Court concluded, was not raised by an assignment of error and therefore, under Rule 5A:12(c), would not be considered. *Id.* The Court also noted that Rule 5A:12(c) does not contain any exceptions for “the ends of justice” or “good cause.” *Id.* The Court concluded that the evidence was sufficient to sustain all convictions and affirmed the judgment of the trial court. The Virginia Supreme Court awarded Wright an appeal limited to five assignments of error. On his first assignment of error, Wright, by counsel, asserted that the Court of Appeals erred in holding that the trial court did not err by violating his due process rights when it entered judgment on the jury verdict finding Wright guilty of grand larceny from the person when Wright was not charged with that crime and it is not a lesser-included offense of any of the crimes with which Wright was charged. As pointed out

above, although Wright raised this issue as an assignment of error in the Court of Appeals, the Court of Appeals refused to consider this assignment of error, applying Rule 5A:18. The first assignment of error raised by Wright's new counsel, to the Supreme Court, did not address the Court of Appeal's application of Rule 5A:18 or its refusal to apply "the ends of justice" exception to that rule. Under Rule 5:17(c)(iii), "an assignment of error that does not address the findings or rulings in the trial court or other tribunal from which an appeal is taken,... is not sufficient." Accordingly Rule 5:17(c)(iii) precluded the Supreme Court from considering this first assignment of error. Wright's second assignment of error was that the Court of Appeals erred when it affirmed Appellant's conviction for grand larceny from the person because there was no evidence establishing the value of the item(s) taken from the person of the Martin's employee, and appellant preserved this argument in the Court of Appeals. The Supreme Court applied Rule 5:17(c)(iii) and did not hear this issue either. The Supreme Court gave the 2<sup>nd</sup> assignment of error an alternative interpretation, but also declined to hear the assignment due to "procedural infirmity." The Supreme Court then heard the three remaining assignments of error and reversed and vacated the convictions of felony malicious bodily injury by use of a caustic substance, assault and battery of a law enforcement officer, and obstruction of justice on the grounds of insufficient evidence. Because he was convicted of a crime that he was never charged with committing, Wright then brought a Motion to Vacate a void judgment to the Circuit Court for Rockingham County for entering a judgment absent notice for the specific offense in violation of the Sixth Amendment's Notice Clause and the

Fourteenth Amendment's Due Process Clause. The Circuit Court denied Wright's Motion to Vacate, allowing the judgment entered for a crime not charged to stand. Wright appealed that decision to the Virginia Supreme Court who, on 4-12-18, claimed that they found no reversible error in the Circuit Court's ruling to let the conviction for a crime not charged stand. Wright now brings Certiorari to challenge the Virginia Courts' rulings

## REASONS FOR GRANTING THE PETITION

Mark O. Wright is being deprived of his liberty without having been afforded “Due Process” of law in violation of the United States Constitution’s Sixth Amendment Notice Clause and the Fourteenth Amendment’s Due Process Clause. It is the law of the land settled by this Court that: “No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal. Cole v. State of Ark., 333 U.S. 196 (U.S.Arkt. 1948). Wright was charged with robbery, *inter alia*, but was found guilty of grand larceny from a person. Robbery has, as an element, force or intimidation, which grand larceny from a person does not have. Grand larceny from a person has, as an element, a specific amount, which robbery does not have. Because of these differences in elements, under the Virginia Supreme Court’s holding in Com. v. Hudgins, 269 Va. 602 (Va. 2005), grand larceny from the person is not a lesser-included offense of robbery. Due to attorney errors at trial, and on appeal, this issue has never been adjudicated on its merit and has been labeled as “procedurally barred” in every proceeding in which it was raised. Wright has a petition for a writ of habeas corpus pending in the Virginia Supreme Court on ineffective assistance of counsel at trial, and on appeal, but he should not have to wait on the Virginia Supreme Court’s convenience to have this judgment vacated. This court has long held that: “Notice to the defendant, actual or constructive, is an essential prerequisite of jurisdiction.” and also that: “No man shall be condemned in

his person or property without notice, and an opportunity to be heard in his defence, is a maxim of universal application; and it affords the rule of decision in this case.” Earle v. McVeigh, 91 U.S. 503 (U.S.Va. 1875). Mark Wright was never given notice for the offense of grand larceny from a person, so it can only be concluded that the Virginia Courts never acquired jurisdiction over Wright to enter this judgment. Wright has been condemned in his person for grand larceny from a person by a court which never acquired jurisdiction to enter that judgment. Such an occurrence violates the Sixth Amendment’s Notice Clause and the Fourteenth Amendment’s Due Process Clause and the resulting judgment being challenged in this petition is void *ab initio* because of that.

## CONCLUSION

The judgment in this case must be vacated because it was entered absent jurisdiction in violation of due process and is void *ab initio*.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mark B. Wright

Date: 6-7-18