
IN THE
SUPREME COURT OF THE UNITED STATES

CARROLL ERMAN CRIDER #1182412

– PETITIONER
(Your Name)

VS.

Commonwealth of Virginia– RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI

Virginia Supreme Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CARROLL ERMAN CRIDER #1182412

(Your Name)

Augusta Correctional Center 1821 Estaline Valley Road City of Craigsville

(Address)

Commonwealth of Virginia 24430

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

#1. Did the Supreme Court of Virginia err when it didn't determine that Crider was entitled to relief to vacate the judgment when the statute of Virginia was violated Va.

§ Code 19.-220 by the Commonwealth not giving Crider an adequate indictment notice to defend himself?

Should Crider's Convictions be vacated because the commonwealth never acquired jurisdiction over his person or the case because it was never proven on the face of the record that the alleged crimes were committed in the Commonwealth of Virginia?

LIST OF PARTIES

[X] 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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OTHER

**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

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☒ is unpublished.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☒ is unpublished.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 The Virginia Supreme court _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Circuit Court of **Rockingham County Virginia** 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 court**:

The date on which the United States Court of Appeals decided my case was (none).

☐ 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 state court decided my case was. June 11, 2018
A copy of that decision appears at Appendix A

☐ A timely petition for rehearing was thereafter denied on the following date:
NONE 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 NONE (date) on _____ (date) in Application No. ____A____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

#1 Violation of Virginia Code Ann § 19.2-220

#2 United States Constitution 5th Amendment for an adequate notice of the alleged crimes indictment.

#3 Lack of subject matter jurisdiction of the court to enter an order of conviction and failure to take judicial notice a violation of the 14th amendment.

STATEMENT OF THE CASE AND FACTS

On September 13, 2012, the Appellant (Hereinafter Crider) was tried before a felony venire in Rockingham County and found to be guilty of certain criminal charges. The indictments upon which Crider was tried do not contain a "certain date" as required by Code of Virginia § 19.2-220. In 2017, Crider filed a Motion to Vacate a Void Judgment in the Rockingham County Circuit Court pointing out to the court that "a court acquires no jurisdiction over a person until he is served process in the manner provided by statute." That Court denied his motion and Crider now appealed to the Virginia Supreme Court and this court denied the Petition on June 11, 2018. The Circuit Court also didn't prove "subject matter jurisdiction" by the record that the alleged crimes were committed in the Commonwealth of Virginia and that the Court took judicial notice the alleged crimes were committed in the commonwealth making the judgment void *ab initio*. The Petitioner is falsely imprisoned.

REASONS FOR GRANTING THE PETITION

In the courts of these United States, there are several occurrences at trial that will render a subsequent judgment void *ab initio*. Virginia, in particular, has been citing Rule 1:1 of the Rules of the Supreme Court to avoid hearing cases which challenge jurisdiction by splitting the subject of jurisdiction

into parts and claiming that only a lack of "subject-matter jurisdiction" will render a judgment void. That holding is a direct contradiction of the settled law of the U.S. Supreme Court and the Courts of Virginia.

The U.S. Supreme Court holds that: "Though the court may possess jurisdiction of a cause, of the subject-matter, and of the parties, it is still limited in its modes of procedure, and in the extent and character of its judgments. It must act judicially in all things, and cannot then transcend the power conferred by the law." See: *Windsor v. McVeigh*, 93 U.S. 274 (U.S.Va. 1876). (This demonstrates, and it is settled law, that a court can render a void judgment even though it has "subject-matter jurisdiction." However, in this case, the court never had jurisdiction over Crider from the beginning).

The Virginia Supreme Court adopted that holding and cited it in 2001 when it held: "An order is void ab initio if entered by a court in the absence of jurisdiction of the subject matter or over the parties, if the character of the order is such that the court had no power to render it, or if the mode of procedure used by the court was one that the court could "not lawfully adopt." *Evans v. Smyth-Wythe Airport Comm'n*, 255 Va. 69 (1998) (quoting *Anthony v. Kasey*, 83 Va. 338 (1887)). The lack of jurisdiction to enter an order under any of these circumstances renders the order a complete nullity and it may be "impeached directly or collaterally by all persons, anywhere, at any time, or in any manner." *Barnes v. Am. Fertilizer Co.*, 144 Va. 692 (1925). Consequently, Rule 1:1 limiting the jurisdiction of a court to twenty-one days after the entry of the final order does not apply to an order which is void ab initio." See: *Singh v. Mooney*, 261 Va. 48 (Va. 2001). The *Anthony* case cites *Windsor*, showing that the Virginia Supreme Court adopted that particular holding. These holdings are settled law and binding upon the Circuit Courts in Virginia.

Code of Virginia §19.2-220 mandates the contents of criminal process in Virginia. In relevant part, the statute mandates that the indictment be: "a plain, concise and definite written statement, (1) naming the accused, (2) describing the offense charged, (3) identifying the county, city or town in which the accused committed the offense, and (4) reciting that the accused committed the offense on or about a certain date." (Emphasis added).

The indictments in this case claim that "On or about between the 1st day of January, 2009, and the 31st day of December, 2009 in the County of Rockingham, Virginia, Carroll Earman Crider did unlawfully and feloniously..." See: Exhibits #1 & 2 attached to Crider's Motion to Vacate.

This service of process is not in conformance with the statutory mandate of the Virginia General Assembly. The Courts of Virginia have no authority to change, alter, or amend the statutory mandate of the General Assembly through judicial precedent.

The settled law in Virginia, on this subject, is that: "A court acquires no jurisdiction over the person of a defendant until process is served in the manner provided by statute, **Broyhill v. Dawson**, 168 Va. 321 (1937), and a judgment entered by a court which lacks jurisdiction over a defendant is void as against that defendant, **Finkel Products v. Bell**, 205 Va. 927 (1965). See: **Slaughter v. Com.**, 222 Va. 787 (Va. 1981).

The court never activated its "potential" jurisdiction in Crider's case to enter any judgment because it did not serve him with process in the "manner provided by statute." This is a jurisdictional defect that vitiates every act of the court that followed it. There can be no waiver of rights, statutory or constitutional, where the court failed to acquire jurisdiction in

the first instance. This is not an issue of challenging the sufficiency of the indictment. This is an attack on a jurisdictional defect that renders every act of the court following it void *ab initio*.

The states are given broad latitude when formulating their criminal procedures. However, once they formulate them, the courts have no course but to adhere to them. To do otherwise violate the U.S. Constitutional Amendment's guaranteeing due process in the Fifth and Fourteenth Amendments.

In this case, the Virginia General Assembly has mandated that a criminal indictment contain that a crime occurred "on or about a certain date." That is what the statute prescribes. That did not happen in this case, and because of that, the court never acquired jurisdiction to enter the judgments in this case. The judgments are void *ab initio*. Crider has been denied federal due process because the Rockingham County Circuit Court deprived him of his liberty without ever serving process in the manner prescribed by statute, which means that the court never acquired jurisdiction over the person of Crider to enter any judgment. The following settled legal maxims will conclusively show this.

It is settled law in Virginia that: "A court acquires no jurisdiction over the person of a defendant until process is served in the manner provided by statute, Broyhill v. Dawson, 168 Va. 321 (1937), and a judgment entered by a court which lacks jurisdiction over a defendant is void as against that defendant," Finkel Products v. Bell, 205 Va. 927 (1965). See: Slaughter v. Com., 222 Va. 787 (Va. 1981). In the case at bar, Crider was never served process in the manner provided by Code of Virginia §19.2-220, which requires that the notice contain a "certain date," and, for that reason, the Circuit Court never acquired jurisdiction over his

person to enter any judgment against him.

The question that must be answered in this case is: What is subject-matter jurisdiction? The Virginia Supreme Court has, in the criminal context, settled that subject-matter jurisdiction in Virginia is that which is conferred upon the Circuit Courts of the Commonwealth by Code of Virginia §17.1-513. In **County School Bd. of Tazewell County v. Snead**, 198 Va. 100 (Va. 1956), the Virginia Supreme Court explained §17-123 (now §17.1-513) in the following manner:

"This is 'potential' jurisdiction which, after valid service of process on the parties, gives the court 'active' jurisdiction and empowers it to hear the case and enter a valid judgment therein." (Emphasis added).

A valid service of process in a criminal prosecution, under §19.2-220, must contain a "certain date." Crider was never served process in the manner provided by statute and as a result the court never "activated" its otherwise "potential" subject-matter jurisdiction to enter any judgment against him.

The respondent's theory of why Crider has not made a valid claim is hinged on the supposition that since the indictment requirement in Virginia is statutory, rather than constitutional, "the accused may waive the right to be tried by such." That supposition is premised on a claim that Crider did not make. Crider's claim is that he was never served process in the manner provided by statute and that as a result the court never acquired jurisdiction to enter any judgment.

The logic applied by the Court that made the above determination is flawed. The Federal Constitution guarantees the right to counsel in Amendment VI. That right stands as a jurisdictional bar to a court entering judgment absent counsel.

Nevertheless, the U.S. Supreme Court has also stated that the right to counsel, which *is* constitutional, can be waived. Johnson v. Zerbst, 304 U.S. 458 (U.S.Ga. 1938). Therefore, the fact that an indictment can be waived does not mean that it is not jurisdictional because even constitutional rights that *are* jurisdictional can be waived.

The Federal Constitution's Sixth Amendment also mandates that a defendant in a criminal prosecution be given notice. The U.S. Supreme Court stated in reference to the Sixth Amendment's Notice Clause that: "A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place, and circumstances. U.S. v. Cruikshank, 92 U.S. 542 (U.S.La. 1875). The Sixth Amendment's Notice Clause stands as a jurisdictional bar to judgment being entered absent notice; and the Due Process Clause of the Fourteenth Amendment stands as a jurisdictional bar to a state depriving someone of their liberty without strictly adhering to their own statutorily mandated process.

The respondent then exacerbates their misunderstanding of the law, and Crider's claim, by citing Waitt v. Commonwealth, 207 Va. 230 (1966). That case was heard before the Code of Virginia was revised in c. 495 of the Acts of the Virginia General Assembly in 1975. There was no Code of Virginia §19.2-220 in 1966. The case brought by Crider to establish that process must be served in the manner provided by statute is from the previous year to the case brought by the respondent. In 1965, the Virginia Supreme Court recognized as settled law that: "Jurisdiction is the power to adjudicate a case upon the merits and dispose of it as justice may require. There must be jurisdiction of the subject matter of the litigation and also over the parties thereto. If either is wanting the resulting judgment is void. The defendant must be properly

brought before the court, else there will be no jurisdiction over him and a judgment against him will be void. Shelton v. Sydnor, 126 Va. 625 (1920). 'Judgments without personal service of process within the state issuing it, or its equivalent, or upon a service of process in a manner not authorized by law, are void judgments, and may be so treated in any proceeding, direct or collateral. * * * Burks Pl. & Pr., 4 ed., § 353, pp. 667-8. Finkel Outdoor Products, Inc. v. Bell, 205 Va. 927 (Va. 1965). (Emphasis added). The process served on Crider, in this case, did not give the requisite "certain date" required by §19.2-220, and was, therefore, service in a manner not authorized by law.

Every citizen of the United States has a federally secured right to liberty. If a state intends to deprive a person of their liberty, then they must afford that person due process of law. States are given broad latitude in formulating their criminal procedures, however, once they have formulated them, they must adhere to them. In this case, the Virginia General Assembly, in §19.2-220 has mandated that the indictment contain a "certain date." The process served on Crider did not contain a "certain date," as required by statute. Therefore, Crider was not served process in the manner provided by statute and the court never acquired jurisdiction to enter any judgment.

A correct statement of the law is that: "Where notice is required, a failure to give notice in strict conformity with the statute is violative of due process and void. The record must affirmatively show strict compliance with the statute as to the giving of such notice. A failure to give notice implicates a substantive due process violation." In this case, the indictments produced by Crider definitively prove that he was not given a "certain date" as required by statute.

An absence of personal jurisdiction may be said to destroy "all jurisdiction" because the requirements of subject matter and personal jurisdiction are conjunctional. Both must be met before a court has authority to adjudicate the rights of parties to a dispute. If a court lacks jurisdiction over a party, then it lacks "all jurisdiction" to adjudicate that party's rights, whether or not the subject matter is properly before it. See, e. g., Kulko v. Superior Court, 436 U.S. 84 (1978); Rankin v. Howard, 633 F.2d 844 (C.A.9 (Ariz.) 1980). The Virginia Courts that have held that only a lack of subject-matter jurisdiction will make a judgment void are mistaken. There are numerous cases which identify actions taken by a court with subject-matter jurisdiction that are nonetheless void. See: Evans v. Smyth-Wythe Airport Comm'n, 255 Va. 69 (1998); Anthony v. Kasey, 83 Va. 338 (1887); Barnes v. Am. Fertilizer Co., 144 Va. 692 (1925); Singh v. Mooney, 261 Va. 48 (Va. 2001); Windsor v. McVeigh, 93 U.S. 274 (U.S.Va. 1876). The Court cannot summarily dismiss Crider's claim. The court is obliged to conduct the requisite inquiry as to how it lawfully obtains jurisdiction over a person to enter a valid judgment. When it does so, it must conclude, as Crider has alleged, that Crider was not served process in the manner provided by statute and that the resulting judgment is void.

The respondent argued that, under Clinebell v. Commonwealth, 3 Va. App. 362 (1986), time was not of the essence in Crider's case. It is wholly irrelevant to Crider's argument whether time was an element of the crime or not. The court could never reach the point where it could conduct an elements test because it never served process in the manner provided by statute and, as a result, never activated its jurisdiction to enter any judgment. Clinebell's judgment is void for lack of statutorily mandated process as well.

The Respondent's other defense to this Motion is absurd. The Respondent suggests that code of Virginia 19.2-226 which, in relevant part reads: "No indictment or other accusation shall be quashed or deemed invalid:... (6) For omitting to state, or stating imperfectly, the time at which the offense was committed when time is not the essence of the offense;" First, the Court must construe a statute under familiar principles. To-wit: "The primary objective of statutory construction is to ascertain and give effect to legislative intent. When a given controversy involves a number of related statutes, they should be read and construed together in order to give full meaning, force, and effect to each. Therefore we accord each statute, insofar as possible, a meaning that does not conflict with any other statute. When two statutes seemingly conflict, they should be harmonized, if at all possible, to give effect to both." *Lawlor v. Com.*, 285 Va. 187 (Va. 2013). The Respondent's argument would make 19.2-226's provision render Code of Virginia 19.2-220's requirement of a certain date of no effect at all. Furthermore, Crider is not alleging that the indictment should be quashed or that it failed to state the correct "time" in which the offense occurred. Crider's claim is that he was not served process in the manner provided by statute and he has proven that fact. Nothing that the Respondent produces as a defense can deny the only relevant fact in Crider's motion. Was Crider served process in the manner provided by statute? No! He wasn't. Therefore, it is settled as law that the court never acquired jurisdiction over him. It is incontrovertible.

The indictments that was passed on Crider are fatally defective and a violation of the 5th amendment of the United States Constitution as it is well settled in federal law that:

The trial court also never acquired jurisdiction over Crider's person because the Commonwealth never stated on the record that the alleged crimes were committed in the commonwealth of Virginia

(Or that the court took judicial notice (Tr.145-48 9/13/12)The rule of law in The Virginia Supreme Court Of Virginia is well settled that [S]ubject matter jurisdiction "must affirmatively appear on the face of the record, that is, the record must show [36 Va.App. 333] affirmatively that the case is one of a class in which the court rendering the judgment was given cognizance."

THOMAS v. COMMONWEALTH 549 S.E.2d 648 (2001)

Citing OWUSU v. Commonwealth 401 S.E.2d 431 (1991) we described the failure of locational proof as a failure to prove "subject matter jurisdiction." "This failure of proof impaired the trial

court's "subject matter jurisdiction" because it impaired the ability of the trial court to try the accusation before it." The court also stated in the Thomas case supra that "Judicial notice permits a court to determine the existence of a fact without formal evidence tending to support that fact." Scafetta v. Arlington County, 13 Va.App. 646, 648, 414 S.E.2d 438, 439, (1992) judicial notice must appear from the record." Sutherland, 6 Va.App. at

383, 368 S.E.2d at 298 (1988)(citing Keese v. Commonwealth, 216 Va. 174, 175, 217 S.E.2d 808, 809 (1975)). The record discloses neither that the trial court took judicial notice of the location of the alleged offences as a matter of common knowledge, located within the Commonwealth of Virginia. Furthermore the Commonwealth can't reissue this process on the major defect as the language reads in Linda K. AVERY v.VIRGINIA RETIREMENT SYSTEM 532 S.E.2d 348 (2000)

The term jurisdiction embraces several concepts including subject matter jurisdiction, which is the authority granted through constitution or statute to adjudicate a class of cases or controversies; territorial jurisdiction, that is, authority over persons, things, or occurrences located in a defined geographic area; notice jurisdiction, or effective notice to a party or if the proceeding is in rem seizure of a res; and "the other conditions of fact must exist which are demanded by the unwritten or statute law as the prerequisites of the authority of the court to proceed to judgment or decree."

While these elements are necessary to enable a court to proceed to a valid judgment, there is a significant difference between subject matter jurisdiction and the other "jurisdictional" elements. Subject matter jurisdiction alone cannot be waived or conferred on the court by agreement of the parties. A defect in subject matter jurisdiction cannot be cured by reissuance of process, passage of time, or pleading amendment. While a court always has jurisdiction to determine whether it has subject matter jurisdiction, a judgment on the merits made without subject matter jurisdiction is null and void. Likewise, any subsequent proceeding based on such a defective judgment is void or a nullity.

Even more significant, the lack of subject matter jurisdiction can be raised at any time in the proceedings, even for the first time on appeal by the court sua sponte.

The Petitioner was harmed and prejudiced because the indictment was fatally defective and he was unable to prepare his defense for trial.

The indictment does not give a certain date as required by statute and is mandatory Va code §19.2-220 the Petitioner was denied to call for an alibi witness to verify of his whereabouts on the specific times in question.

The law held in Virginia is that failure of an opposing party to follow prerequisites that are mandatory such as Va code §19.2-220 for a proper notice will prevent a court from acquiring jurisdiction if the opposing party can show that he was harmed by failure to follow the procedure.

Marrisson V. Dept. of Family Services 717 SE. 2d 146 (2011)

Justice(Ginsburg)stated of the United States Supreme Court stated that:

“Subject matter jurisdiction delineations must be policed by the courts on their own initiative at the highest levels” Ruhrgas AG.v Marathon oil Co. 119S.Ct.1563

(1999)

Conclusion

Carroll Crider is being unlawfully detained. It is incontrovertible that Crider was not served process as mandated by Code of Virginia §19.2-220. Because of that, it is settled law that the court never acquired jurisdiction over him to enter any judgment. The judgments entered against him were entered without jurisdiction in two instances and are void *ab initio*. Any other conclusion is a violation of Federal Due Process. Crider formally requests this Court to vacate his judgments and release him from his place of confinement.

CERTIFICATE

Carroll Crider certifies, under the penalty of perjury, pursuant to Code of Virginia §8.01-4.3, that the foregoing is true and correct, and that he mailed a copy of this Appeal to the Attorney General of Virginia at 202 North Ninth Street, Richmond, VA 23219.

Carroll E. Crider #1182412

Carroll E. Crider #1182412
Augusta Correctional Center
1821 Estaline Valley Road
Craigsville, VA 24430

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Carroll Eamon Crider

Dated: July 19, 2018