

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

IN THE  
SUPREME COURT OF THE UNITED STATES

Robert Eugene Johnson, Jr. — PETITIONER  
(Your Name)

vs.

Commonwealth of Virginia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Virginia  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert Eugene Johnson, Jr., #1155697  
(Your Name)  
Wallens Ridge State Prison  
P.O. Box 759  
(Address)

Big Stone Gap, Virginia 24219  
(City, State, Zip Code)

N/A  
(Phone Number)

QUESTION(S) PRESENTED

1) Can A State's Highest Court Uphold  
A Criminal Conviction After Being  
Made Aware That There Was Absolutely  
No Evidence Presented At Trial That  
The Crime Had Occurred?

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## 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:

## TABLE OF AUTHORITIES CITED

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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[ ] is unpublished.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[ ] is unpublished.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 \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the Virginia Beach 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 is unpublished.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 United States Court of Appeals 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 state court decided my case was February 7, 2018.  
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied 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. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Due Process And Equal Protection  
clauses of the Fourteenth Amendment  
to the United States Constitution,

"...nor shall any state deprive any person  
of life, liberty, or property, without due  
process of law; nor to deny any person  
within its jurisdiction the equal protection  
of the laws".

## STATEMENT OF THE CASE

1. Can A State's Highest Court Uphold A Criminal Conviction After Being Made Aware That There Was Absolutely No Evidence Presented At Trial That The Crime Had Occurred?

The Fourteenth Amendment to the United States Constitution states:

"...nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Petitioner was indicted for the specific crime of Inanimate Object Sexual Penetration. He was subsequently found guilty and given a thirty (30) year active, consecutive sentence. However, at trial there was NO testimony, or any other evidence, that any type of Inanimate Object was used for any type of penetration.

This is a manifest fundamental miscarriage of justice and blatant violation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

### Procedural History

On October 30, 1995, in the Circuit Court for the City of Virginia Beach, Petitioner was brought to trial for five (5) felony charges stemming from one alleged incident: Attempted rape; Statutory burglary; Aggravated sexual battery; forcible oral sodomy; and Inanimate Object Sexual Penetration - Commonwealth of Virginia v. Robert Eugene Johnson, Jr., Case No. CR95-1813.

The jury reached impasse with four (4) of the jurors deciding "Not guilty" on all charges. The Allen charge was given.

Sufficiency of evidence was raised on direct appeal. The appeal was denied. (Petitioner had not been provided with a complete Trial Transcript and was not aware of the "No Evidence" of Inanimate Object Sexual Penetration until after Federal habeas proceedings).

Petitioner filed a State habeas petition, which was denied. The subsequent appeal was denied due to procedural default.

Petitioner filed a Federal 32254 petition, raising ineffective assistance of counsel. The petition and subsequent appeal were both denied.

Petitioner learned of "No Evidence" at trial of Inanimate Object Sexual Penetration, as well as, the Prosecutor having committed extrinsic fraud upon the Trial Court.

In 2009, Petitioner stumbled upon a case law and he learned he could file a motion to vacate void judgment in the Trial Court; which he did in March, 2009. The court never properly filed the motion; it was a collateral attack and therefore a civil action. No Order was issued requiring any response from the Attorney General. The court refused to respond to any of Petitioner's correspondence.

After over two (2) years - Petitioner had sent a complaint to the Attorney General and copies to the court and news media - Petitioner finally received a response from the court in April, 2011. The

Court had withheld the Order dated November 15, 2010, until after the time limit to appeal had expired.

In 2017, Petitioner discovered that Res Judicata did not apply to his filing a new "Motion to Vacate Void Judgment" for two reasons: 1) In the first "Motion To Vacate Void Judgment" the Circuit Court, 1) Did not rule on the merits of the case; 2) Violated Due Process by preventing an appeal to the Supreme Court of Virginia.

Petitioner filed a new "Motion to Vacate Void Judgment" (For Res Judicata issue, please see pages 2 through 5 of the "Brief In Support of Motion To Vacate Void Judgment") Aside from the "No Evidence" ground, Petitioner also raised grounds that the Prosecutor committed extrinsic fraud upon the Trial Court.

The motion was denied.

The subsequent appeal was denied by the Supreme Court of Virginia on February 7, 2018, stating the Circuit Court made "...no reversible errors".

## REASONS FOR GRANTING THE PETITION

This is an extremely rare; perhaps even unique; case which calls upon the powers and authority of this Honorable Court.

To permit a criminal conviction to be enforced when there was absolutely No Evidence - testimonial or otherwise - presented at trial, that the crime ever occurred, would be an affront to everything the Constitution of the United States of America stands for.

Further, Petitioner prays this Honorable Court to set clearly established Federal law to prevent ANY State from enforcing a criminal conviction in which no evidence, of the crime occurring, was presented at trial.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert Eupper Johnson Jr.

Date: April 10, 2018

Date: June 21, 2018