

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 7th day of February, 2018.

Robert Eugene Johnson, Jr.,

Appellant,

against Record No. 171051
 Circuit Court No. CR95-1813

Commonwealth of Virginia,

Appellee.

From the Circuit Court of the City of Virginia Beach

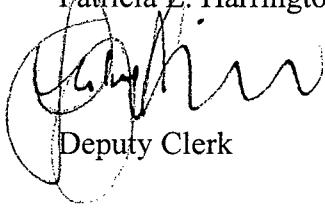
Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By:


Deputy Clerk

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

Commonwealth of Virginia

v.

Case No.: CR95-1813

Robert Eugene Johnson Jr., Defendant

Order upon a Postconviction Motion

The defendant, a prisoner in a state correctional facility, has filed, on May 8, 2017, a pro se postconviction motion entitled *Motion to Vacate Void Judgment*.

A response from the attorney for the commonwealth is dispensed with as this Court can rule upon the record before it and upon prevailing case law.

Background

Final judgment was imposed on January 23, 1996.

On October 24, 1996 the Virginia Court of Appeals denied the defendant's appeal. On February 21, 1997 the Supreme Court of Virginia refused the petition for appeal.

On January 26, 2005, this Court denied defendant's pro se postconviction motion to vacate sentence.

On November 15, 2010, this Court denied defendant's pro se postconviction motion to vacate.

Ruling

The sufficiency of evidence claim is not cognizable and the defendant may not collaterally attack his conviction through this postconviction motion to vacate for this alleged non-jurisdictional claim. See *Collison v. Underwood*, 1 Va. App. 443, 444 (1986); *Pettus v. Peyton*, 207 Va. 906, 911 (1967). The time for this sufficiency of evidence claim is at trial and on appeal.

The defendant's fraud allegations (improper use by prosecutor of a confidential letter to pastor and that defense counsel and the prosecutor "collaborated to procure" judgment against the defendant) are insufficient as a matter of law to set aside the defendant's convictions. In addition, the fraud allegations were decided in a previous postconviction motion to vacate and therefore deemed res judicata. See November 15, 2010 Order of this Court.

Accordingly, the defendant's postconviction motion to vacate and accompanying motion for evidentiary hearing are DENIED.

The clerk shall provide a copy of this Order to the defendant at Wallens Ridge State Prison, 272 Dogwood Drive, P. O. Box 759, Big Stone Gap, VA 24219, and to the attorney for the Commonwealth.

CERTIFIED TO BE A TRUE COPY
OF RECORD IN MY CUSTODY
TINA E. SINNEN, CLERK
CIRCUIT COURT OF VIRGINIA BEACH, VA
BY Debra Mason
DEPUTY CLERK

ENTER: 5-23-17

JUDGE: WTM