

ADD.

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT EARL TIPPEN, JR. - PETITIONER

VS.

COMMONWEALTH OF VIRGINIA, and

THOMAS W. CLARKE, Jr. of V.D.L. - RESPONDENTS

ON PETITION FOR A WRIT OF HABEAS CORPUS TO
THE SUPREME COURT OF VIRGINIA

PETITION FOR WRIT OF HABEAS CORPUS

Robert Earl Tippen, Jr. No. 1430105
Baltimore Correctional Center
4150 Havel Mill Road
Baltimore, Virginia 23915
(434) 447-3857

QUESTIONS PRESENTED

In Petitioner's case, trial judge doubted the sufficiency of the indictment charging Petitioner with attempted capital murder

on a law enforcement officer to commit a conviction of that offense. But two of the jurors that the facts stated were sufficient to

convict the crime of attempted murder standing on a law enforcement

officer and with the Commonwealth's consent, the charge was

amended to the latter offense by court order. The questions presented

are:

1. Will it improve for trial court to amend the offense
fired by the grand jury concerning Petitioner's criminal
intent that had the effect of amending the offense where
by the grand jury?

2. Did the state court err in holding that Petitioner's challenge
is unfounded under Va. Code Section 8.01-428(c)?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED

PETITION FOR A WRIT OF HABEAS CORPUS

OPINIONS BEING

JURISDICTION

STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

REASONS FOR GRANTING THE PETITION

I. THERE ARE COURTS IN THE STATE COURT
OF THE COMMONWEALTH ON THE QUESTIONS
PRESENTED.

A. The state appellate court of the Commonwealth
have reached conflicting decisions regarding whether
their final court act in committing the offense fixed by
the grand jury will be void if authority supports the
conclusion that an error occurred by the state (801-42860)
has been made.

B. The state court of the Commonwealth have reached conflicting
decisions regarding whether their final court have jurisdiction to void
a conviction based on the error of committing the individual
charge was not such as it had power to render.

TABLE OF CONTENTS - Continued

Page

II. THE STATE COURT OF THE COMMONWEALTH OF VIRGINIA DECISION IS ERRONEOUS 7

III. THE QUESTIONS PRESENTED ARE RECURRING ISSUES OF NATIONAL IMPORTANCE THAT WARRANT THIS COURT'S IMMEDIATE RESOLUTION 8

CONCLUSION 9

APPENDIX:

Appendix-A. Final order of Circuit Court of Mecklenburg County. .

Appendix-B. Final order of the Supreme Court of Virginia

Appendix-C. Verge of the Grand Jury indictment

TABLE OF AUTHORITIES

CASES	Page
Anthony v. Kasey, 83 Va. 338, 5 S.E. 176 (1887)	5 i 7
Commonwealth v. Adams, 1891, 92 Ky. 134, 17 S.W. 126	6 i 8
Kornegay v. State, 596 A. 481 (201)	6 i 8
Marshall v. Holmes, 141 U.S. 589, 12 S.Ct. 62, 35 LEd. 870 (1891) .	5
Rawls v. Commonwealth, 278 Va. 213, 221, 683 S.E. 2d 544, 549 (2009),	5 i 7
STATUTES	
VIRGINIA CODE SECTION 8.01-428 (b)	2 i 7 i 8
OTHER AUTHORITIES	
U.S. Constitution, Article III	7
U.S. Constitution, Amendment XIV	8
VA. CONSTITUTION Article I section 11	8
VA. SUP. CT. RULE 1.1	2 i 4

PETITION FOR A WRIT OF HABEAS CORPUS

Robert E. Timpe, Jr., on behalf of himself, and all other similarly situated, respectfully petitions for a writ of habeas corpus to review the judgment of the state court of the Commonwealth of Virginia. Record No. 180403 and Case No. CL18-158

OPINIONS BELOW

The opinion of the state court of the Commonwealth of Virginia dismissing petitions collections of extrinsic fraud under Rule 1:1 of Va. Sup. Ct. Appendix-A and Appendix-B attached hereto.

JURISDICTION

The Metkovich county circuit court dismissing petitions independent Action March 13, 2018 under Rule 1:1, and the Supreme Court of Virginia dismisses petitions for appeal pursuant to Rule 1:1 June 25, 2018. The court's jurisdiction is invoked under 28 U.S.C. section 1254(1).

STATUTORY PROVISIONS INVOLVED

VA. CODE SECTION 8.01-428 (b)

D. Other Judgments or Proceedings - This section does not limit the power of the court to entertain at any time an independent action to relieve a party from any judgment or proceedings, or to grant relief to a defendant not served with process as provided in section 8.01-322, or to set aside a judgment or decree for fraud upon the court.

VA. SUP. CT. RULE 1:1

All final judgments, orders, and decrees, irrespective of terms of court, shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and also longer. But notwithstanding the finality of the judgment, in a criminal case the trial court may postpone execution of the sentence in order to give the court an opportunity to carry for a writ of error and supersedeas. Such postponement, however, shall not extend the time limits hereinafter prescribed for carrying for a writ of error.

STATEMENT OF THE CASE

This case seeks relief for thousands of inmates in Virginia prisons who are deprived of years of their liberty by the "mode of procedure used" scheme by Appellate Attorney, forcing inmates to jury trial on indictments Appellate know would go unfounded, requesting trial judge to improperly amend the offense fixed by the grand jury concerning inmates criminal intent that had the effect of amending the offense charge by the grand jury, which is nothing more than extrinsic fraud. Replevants obtained thousands of convictions from inmates off of this scheme. Like thousands of other inmates, Replevants is a victim of this "scheme" mode of procedure used to convict Replevants of the lesser-included offense of the amended charge not included in the grand jury's indictment. When Replevants filed his independent action pursuant to Va. Code § 801-425 (a) alleges his conviction was obtained by fraud. Trial court dismissed Replevants' independent action under Civ. R. 11. Replevants then filed a motion to vacate trial court's order entered March 17, 2018 alleging that the mode of procedure used when trial judge admitted the sufficiency of the murder indictment to support a conviction for that offense, and struck the murder indictment, but used of the opinion that Replevants' criminal intent had the effect of amending a charge "attempted unlawful kidnapping by court order, forced the jury to find Replevants guilty of the lesser-included offense of the amended offense which exists not in equity and good conscience to be enforced was a mode of procedure used trial court could not lawfully admit, rendering Replevants' conviction and sentence void ab initio because if,

Note: Replevants was only indicted for attempted Capital Murder because Replevants refuse a plea offer, see date of charge for Abbott and Felton Felton eluding, and then see date of Murder indictment.

Petitioner suffers injury-in-fact under Va. Supr. Ct. Rule 1:1 based on the long recognized right to bring an independent action in equity to relieve a defendant from the detrimental consequences flowing from an earlier judgment which could not, in equity and good conscience, be enforced. The court below disposes, holding that the petitioner's challenge is timely and that the court should not have jurisdiction to void his conviction under Rule 1:1 of the Va. Supr. Ct. essentially, this holding permits, if the Commonwealth consent, trial court the power to assume the grand

A. The state appellate court of the Commonwealth have received findings of fact regarding whether trial court act in committing the offense fixed by the grand jury was beyond its authority support the conclusion that an error occurred by Va. Code. Sec. 801-428 (a) has been made.

1. THERE ARE CONFLICTS IN THE STATE APPELLATE COURT OF THE COMMONWEALTH ON THE QUESTIONS PRESENTED

PERSONS FOR BRATING THE PETITION

trial court could make an amendment to the offense fixed by the grand jury, then it had the power to say that the petitioner, if the Commonwealth consented, could be tried on a charge different from that found by the grand jury to find an indictment and say what charge petitioner should be assigned and the judge had no power to assume the grand jury duties and after the charge fixed by the grand jury, such a practice is contrary to good policy, and highly dangerous to the public interest.

Jury duties and after the charge fixed by the grand jury, with no legal recourse for the damage if juror holds lenient with decisions of other appellate courts when relieves defendants, such as relieves from the delimited lenienter flows from earlier judgments which ought not in equity and good conscience to be ignored.

In Muswell v. Hulme, 141 U.S. 589, 12, 517, 62, 35, 141, 870 (1891)

there have existed alongside the term rule of equity to the effect that under certain circumstances, one which is after dilatory fraud, relief will be granted against judgments regardless of term of their entry.

Similarly, in Qualls v. Commonwealth, 278 Va. 213, 221, 643, 5.E. 2d.

544, 549 (2009) under Virginia law a sentence order is void ab initio if the character of the judgment was not such as the trial court had the power to render. (quoting Anthony v. Kaley, 83 Va. 338, 5, 176 (1887)).

In relieves case, the same rules should apply with equal logic to the state court of the Commonwealth of Virginia. However, state court of this Commonwealth of Virginia refusal to recognize relieves power on that basis lenient with the court's holdings if the above authorities.

B. The state court of the Commonwealth have reached lenient decisions regarding whether trial court have jurisdiction to void a conviction based on the character of amendments the individual chose was not such as it had power to render

The complete court of the Commonwealth also are divided and there is sufficient confusion on the question on whether trial court cut to

mean the offense fixed by the grand jury was beyond

its authority. The state appellate court of this Commonwealth of Virginia held that trial court had no jurisdiction to void Appellants' conviction on the foregoing basis. This holding is in conflict with the appellate court of the Commonwealth of Kentucky decision in Commonwealth v. Adams 1891, 92 Ky. 134, 17 S.W. 126.

In Kearney v. State, 596 A.481 (Del.) it was improper for trial court to change the offense fixed by the grand jury concerning defendant's criminal intent that had the effect of changing the offense fixed by the grand jury. All in Kearney v. State, so should be in Appellants case, it was improper for trial court to amend the offense fixed by the grand jury concerning Appellants' criminal intent that had the effect of trial court amending the offense fixed by the grand jury.

Similarly, in Commonwealth v. Adams, 1891, 92 Ky. 134, S.W. 226. The trial judge admitted the sufficiency of an indictment charging felony to support a conviction of first offense, but was of the opinion that the facts stated were sufficient to establish the crime of obtaining goods under false pretense, and with defendant's intent, but over the objection of prosecution Appellants, the case was changed to the latter offense by court order. The court held that trial court's act was beyond its authority, and not a mere irregular exercise of power which could be cured by amendment, and declares that if trial court could make a change, then it had the power to say that the conviction, if he intended, could be tried on a charge different from that found

by the Grand Jury to find an indictment and say when what charge defendant should be arraigned, and that the Judge had no power to cullume the Grand Jury either and either the charge find by the Grand Jury, such a practice would be contrary to good policy, the court said, and highly dangerous to the public interest.

11. THE STATE COURT OF THE COMMONWEALTH OF VIRGINIA DECISION IS ERRONEOUS

The Jurisdiction of federal court is limited to "cases or controversies"; U.S. Const. Art III, Sec 11. This court held that the actual or threatened injury required by Art III may exist solely by virtue of statute creating legal rights. Virginia Code Section 8-01-428 (10) creates the long-recognized right to bring an independent action in equity to relieve a defendant from judgments, proceedings, or to grant relief to a defendant not bound with process, as required in Section 8-01-322, or to set aside a judgment or decree for extrinsic fraud on the court. The decision below is based on a mistaken belief that the court has no jurisdiction to void judgments or division for attempted unlawful judgments because it was not based on extrinsic fraud. This is not true. In Qualls v. Commonwealth, 278 Va. 213, 221, 683 S.E. 2d 544, 549 (2009), under Virginia law, a sentence order is void ab initio if the character of the judgment was not such as the trial court had the power to render (Qualls v. Commonwealth, 83 Va. 338, 5 S.E. 176 (1887)). If will empower for trial court to amend a charge concerning defendant's criminal intent that had the effect of striking the offense charged in the Grand Jury indictment.

The proper procedure for trial court was to grant petition a continuance, and have petition re-indited by the Grand Jury on the amended charge, failure to do so was not only erroneous, but void.

The Judge had no power to assume the grand jury duties and after the charge fixed by the grand jury, such a practice is contrary to good policy, and highly dangerous to the public interest Commonwealth v. Adams, 1891, 92 Ky. 134, 17 s.w. 226.

The supreme court of Virginia should have reviewed petitioner's allegations as initio because the proffer are sufficient as a matter of law to establish prima facie case under Va. code section 8.01-428(a) and a new decision must be rendered.

111. THE QUESTIONS PRESENTED ARE RECURRING ISSUES OF ADDITIONAL IMPUTABLE THAT WARRANT THIS COURT'S IMMEDIATE RESOLUTION

The state courts of the commonwealth of Virginia's holding in this case raises issues of great practical importance and constitutional significance. This court's intervention. The issue of whether the trial courts act to amend the offense fixed by the grand jury will be beyond its authority supports the conclusion that an error covered by section 8.01-428(a) has been made. Pointing out that the offenses were distinct and it likely to recur, although frequently. This court has acknowledged the importance of this issue in considering a prior petition for review of a commonwealth decision in Commonwealth v. Adams, 1891, 92 Ky. 134, 17 s.w. 226.

Resolving this issue is even more critical in the face of the mode of procedure used "scum" to lengthen. Offended sentences, who are denied equal protection of law, like the one perpetuated by respondents here. It is totally improper for trial court to amend the offense fixed by the grand jury concerning petitioner's criminal intent that had the effect of changing the offense by charged by the grand jury. Kornegay v. State, 596 A.2d 481 (2011) and a Violation of Va. Const. Article 1 § 11

CONCLUSION

For the foregoing reasons, Petitioner respectfully request that the Petition for a writ of certiorari be granted.

Respectfully Submitted

Robert E. Tippen, Jr.

Pro se

Robert E. Tippen Jr.
Bucksville Correctional Center
4150 Hayes Mill Road
Bucksville, Virginia 23915

