

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Duan L. Williams — PETITIONER, *pro se*
(Your Name)

vs.
Commonwealth of Virginia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Duan L. Williams #1115208
(Your Name)

Sussex I State Prison 24414 Musselwhite Dr.
(Address)

Waverly Va. 23891
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

I. The Trial Court Erred By Ruling That Section 19.2-327.1 Was Constitutional Because Section 19.2-327.1 Denies The Appellant The Ability To Have Non-Biological Evidence Tested. (Tr. 9-13, 1/29/18).

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 CONTENTS

| | |
|--|-------|
| OPINIONS BELOW | 1 |
| JURISDICTION..... | 2 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | 3 |
| STATEMENT OF THE CASE | 4-9 |
| REASONS FOR GRANTING THE WRIT | 10-17 |
| CONCLUSION..... | 17 |

INDEX TO APPENDICES

| | |
|------------|--|
| APPENDIX A | Decision of State Supreme Court Denying Appeal |
| APPENDIX B | Decision of Circuit Court Denying Analysis |
| APPENDIX C | Court Order Appointing Counsel |
| APPENDIX D | Transcripts of Scientific Analysis Hearing |
| APPENDIX E | |
| APPENDIX F | |

TABLE OF AUTHORITIES CITED

| CASES | PAGE NUMBER |
|---|-------------|
| Branche v. Commonwealth, 25 Va. App. 480 (1997) . . . | 14 |
| McGowan v. Maryland, 366 U.S. 420 (1961) . . . | 14 |
| Shivae v. Commonwealth, 270 Va. 112 (2005) . . . | 10 |
| Williams v. Commonwealth, 57 Va. App. 341 (2010) . . | 10, 11 |

| STATUTES AND RULES | |
|--|--------|
| Virginia Code Section 19.2-327.1 | 10-17 |
| Virginia Code Section 19.2-327.2 | 15 |
| Virginia Code Section 19.2-327.10 | 15 |
| U.S. Constitutional Fourteenth Amendment | 11, 14 |

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

~~N/A~~ 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.

~~X~~ 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,
~~X~~ 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,
~~X~~ is unpublished.

JURISDICTION

N/A 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).

X For cases from **state courts**:

The date on which the highest state court decided my case was 7-26-18.
A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (date) on _____ (date) in Application No. ____ A ____.

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

2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Fourteenth Amendment
The Equal Protection Clause 11, 14

STATEMENT OF THE CASE

Duan Leonard Williams (Appellant) was convicted in January 2015 in the Virginia Beach Circuit Court for one count of Object Sexual Penetration, one count of Malicious Wounding, one count of Assault and Battery Against a Family Member, Third or Subsequent Offense and Petty Larceny. He received a life sentence plus twenty-five years. The Appellant appealed his convictions. His appeal was denied in the Virginia Court of Appeals in September 2015 and was refused by the Virginia Supreme Court in March 2016. The Appellant's Petition for Habeas Corpus was refused by the Virginia Supreme Court in July 2017 and he

currently has a habeas corpus proceeding pending in the District of Virginia entitled Duan L. Williams v. H. W. Clarke, Director of Virginia Department of Corrections.

On November 17, 2017, the Appellant filed multiple pro se motions in the Virginia Beach Circuit Court. He filed a motion by a convicted felon for Scientific Analysis of Newly Discovered or Previously Untested Evidence under Virginia Code Section 19.2-327.1, a motion for the Preservation of Human Biological Evidence under Virginia Code Section 19.2-270.4:1 and a motion for Appointment of Counsel. (Court Record: Motion Appoint Counsel, Motion Scientific Evidence, Motion Preserve Evidence). Attorney Kristin Paulding was appointed to represent the Appellant.

On January 29, 2018, Judge Padrick granted the motion

to preserve the evidence but denied the motion for Scientific Analysis. (Tr. 14-17, 1/29/18). The final order was entered on February 21, 2018. The Appellant filed a Notice of Appeal and Piled the transcript from the January 29th hearing.

The Appellant and the victim were in an on and off again relationship for many years. In 2008 the victim suffered an anal injury that required her to go to the hospital and receive surgery. Charges were brought against the Appellant, but the victim did not wish to go forward. They continued their relationship and had a child. (Court Record: Court of Appeals Order 8/5/15, Pg. 2). In 2013, the victim ended her relationship with the Appellant. In June 2013, the victim filed charges for a 2013 unauthorized use of a vehicle and the Commonwealth indicted the Appellant on charges of Object Sexual

Penetration and Malicious Wounding from the 2008 incident where the victim's anus was injured.

At the trial the victim testified that she was with the Appellant on Christmas Day in 2008. She was on the bed with her knees up when she felt the Appellant penetrate her anus with his shotgun. She was wearing jogging pants when this occurred. She was hurt and went to the hospital. She lied to the hospital staff and said she was injured from rough consensual sex. (Court Record: Court of Appeals Order 8/5/15, Pg. 2). The victim suffered injuries to her rectum, vagina, bladder and intra-abdominal area. Her doctor found a piece of her clothing in her abdominal cavity.

At trial the Appellant testified that the victim jumped on his back on Christmas Day. When he went to put her down on a wooden chair, the spindle was broken and

the spindle anally penetrated her. He testified that this was an accident and it was not intentional. (Court Record: Court of Appeals Order 8/5/15, Pg. 4). The two stayed together for several years and the charges came back up in 2013 because the victim accused him of cheating on her.

The shotgun was never recovered and the pants the victim was wearing were not tested for gun shot residue to corroborate her story that a shotgun was used to anally penetrate her. The Court found the Appellant guilty of the Object Sexual Penetration, Malicious Wounding Assault and Petty Larceny. Judge Padrick sentenced him to life on the Object Sexual Penetration plus twenty-five additional years on the remaining charges.

The Appellant's appeals were denied in the Virginia Supreme Court. In November 2017 the Appellant filed, pro se,

a motion for the Preservation of Evidence, a Motion for Scientific Analysis of Previously Untested Evidence and a Motion for Appointment of a Lawyer. (Court Record: Motion Appoint Counsel, Motion Scientific Evidence, Motion Preserve Evidence). The Appellant was granted an attorney and on January 29, 2018, Judge Padrick denied the motion for Scientific Analysis. The Motion for Preservation of Evidence was granted.

REASONS FOR GRANTING THE PETITION

Argument

1. The Trial Court Erred By Ruling That Section 19.2-327.1 Was Constitutional Because Section 19.2-327.1 Denies The Appellant The Ability To Have Non-Biological Evidence Tested.

Standard of Review

The Court uses a de novo standard of review when examining a challenge to the constitutionality of a statute. *Shivore v Commonwealth* 270 Va. 112 (2005).

"The Court is guided by the principle that all acts of the General Assembly are presumed to be constitutional." *Williams v. Commonwealth*, 57 Va. App. 341 (2010). Under the presumption, "courts must resolve any reasonable doubt regarding the constitutionality of the law in favor of it's

validity". No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United 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." The Fourteenth Amendment of The United States Constitution.

Argument

Virginia Code Section 19.2-327.1 violates the Appellant's due process and equal protection rights under the Virginia and United States Constitutions because it limits the type of evidence that can be tested to biological evidence. Virginia Code Section 19.2-327.1 is entitled, "Motion by a convicted felon or person adjudicated delinquent for scientific analysis

of newly discovered or previously untested scientific evidence; procedure." The statute then goes on to limit the type of scientific investigation to "human biological evidence."

Biological evidence would include DNA, fingerprints and blood, but would not include ballistic gunshot residue or fiber analysis. Many cases are dependant on nonbiological scientific evidence and Virginia Code Section 19.2-327.1 denies an individual the right to request or have post-conviction scientific testing of any nonbiological evidence.

In this case, the Appellant's request was to have additional scientific testing of nonbiological evidence. At trial, the victim testified that the Appellant's shotgun was used to fatally penetrate her. The Appellant testified that this did not occur. He described how the victim accidentally sat down on a broken chair and a wooden

spindle penetrated her (Court Record: Court of Appeals Order 8/5/15, Pg. 24.). There were no other witnesses present and the incident was several years old because the victim did not come forward until the two parties broke up years later. No shotgun was ever recovered and the Appellant was convicted and sentenced to life in prison. The Appellant's motion for scientific testing asked the Circuit Court to have the victim's clothing analyzed for gunshot residue and examined for wood fibers. (Court Record: Motion Scientific Evidence). Gunshot residue and fiber analysis are not human biological evidence and do not fall under Virginia Code Section 19.2-327.1. Judge Padon noted this in his denial of the motion. (TR. 14-15, 1/29/18). The denial of the motion under Virginia Code Section 19.2-327.1 leaves the Appellant with no other avenue to have the scientific testing completed.

"The Equal Protection Clause of the Fourteenth Amendment provides that no state shall deny any person... the equal protection of the laws. This is essentially a direction that all persons similarly situated should be treated alike." Branch v. Commonwealth, 25 Va. App. 480 (1992). However, the equal protection clause "does not bar statutory classifications. It only requires them to have a rational basis." McGowan v. Maryland, 366 U.S. 420 (1961). "The Constitutional safeguard is offended only if the State's objective." Id.

Title 19.2 of the Virginia Code deals with Criminal Procedure. Chapter 19 of that title has three provisions. Chapter 19.1 discusses post-conviction scientific testing and Chapters 19.2 and 19.3 discuss writs of actual innocence. They are all included under the same chapter because the three sections

are interrelated. The Virginia legislature anticipated that there would be situations where both biological and nonbiological evidence could reverse a conviction and they enacted two statutes to address this. Virginia Code Sections 19.2-327.2 and 19.2-327.10 allow convicted felons to petition the court for a writ of actual innocence. Virginia Code Section 19.2-327.2 allows that petition to be based on biological evidence and Virginia Code Section 19.2-327.10 allows the petition to be based on nonbiological evidence. It is therefore irrational that Virginia Code Section 19.2-327.1 would allow post conviction scientific testing of biological evidence that could be used to later petition the court for a writ of actual innocence, but the same would not be allowed for nonbiological evidence.

Today many convictions rest on the strength of nonbiological

evidence. The Virginia Department of Forensic Science has several sections that perform scientific on nonbiological evidence. They conduct scientific testing on Digital and Multimedia Evidence, Firearms and Toolmarks and Trace Evidence. This is because gunshot residue, video evidence, fibers, lands and grooves on a bullet and paint transfers are just some examples of the types of nonbiological evidence that are being used in trials across Virginia. A judge or jury may find fingerprint evidence just as compelling as video evidence or evidence of gunshot residue on a defendant's hands after a shooting. However, the statute treats these two types of evidence differently, making it impossible for convictions based on these various types of nonbiological evidence to ever be scrutinized with new scientific testing.

There is no rational basis for excluding scientific testing

of nonbiological evidence from Section 19.2-327.1 and this statute creates a class of individuals who are prevented from requesting post-conviction testing of nonbiological evidence.

Therefore, the Appellant's constitutional rights under the equal protection and due process clauses are violated.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Don A. Williams

Date: 10.13.18