

APPENDIX A

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 13th day of June, 2018.

Jacques Villafana,

Appellant,

against

Record No. 171009

Circuit Court No. CL16004620-00

Director, Department of Corrections;

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.

Justice Kelsey took no part in the resolution of the petition.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By:



Deputy Clerk

APPENDIX B

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

JACQUES VILLAFANA,

Petitioner,

v.


CL16004620-00

**DIRECTOR OF THE DEPARTMENT
OF CORRECTIONS,**

Respondent.

ORDER

Upon mature consideration of the petition of Jacques Villafana for a writ of habeas corpus, the memorandum of law in support thereof, the motion to dismiss of the respondent, petitioner's objection to the respondent's motion to dismiss, the respondent's response to this Court's order of March 2, 2017, the petitioner's objection to that response and the authorities cited therein and the exhibits attached thereto and a review of the record in the criminal case of Commonwealth v. Jacques Villafana, which is hereby made a part of the record in this matter, the Court finds for the reasons stated below that the petitioner is not entitled to the relief sought.



The petitioner raised the following claims in his petition:

1. The trial court improperly removed petitioner's retained counsel;
2. Because claim 1 is novel the state's procedural bars do not apply;
3. The Commonwealth's Attorney denied the petitioner due process by withholding key eyewitness statements;
4. The court denied the petitioner due process when it destroyed evidence without notice.

The Court finds that this petition was filed more than 11 years after petitioner's sentencing and more than 9 years after his appeal became final. The Court further finds that there are no exceptions to Virginia Code § 8.01-654(A) (2) set forth in that statute and that the petitioner has not shown that an exception is available under Code § 8.01-229(D). The Court finds that the petitioner's claim 1 is not novel and therefore would not justify ignoring the state procedural bars. The Court further finds that the petitioner has not shown any viable exception to application of the statute of limitations. The Court further finds that the Commonwealth was not guilty of obstructing presentation of any of the petitioner's claims. The Court further finds that the petitioner and his counsel were aware of the existence of the allegedly exculpatory statement of Mya Rodriguez at the time of trial.

The Court further finds the Court itself did not obstruct the filing of petitioner's claims 1 and 4.



The Court further finds that these claims could have been raised at trial and on appeal. The Court further finds that the petitioner has previously filed other petitions for a writ of habeas corpus attacking this judgment.

The Court further finds that the petitioner did not act diligently in seeking the statement of Mya Rodriguez. The Court further finds that Mya Rodriguez was the girl-friend of Marc Villafana, the petitioner's brother, who was killed by the victim of the attack. The Court further finds that the statement of Mya Rodriguez would not have been exculpatory because she was not present at the time of the shootings. The Court further finds that there is no evidence that Rodriguez would have testified at trial.

The Court further finds that the weapon used in the crime was properly destroyed without notice to the petitioner under Code § 19.2-386.29. The Court further finds that there was no evidence that an examination of the gun would have provided exculpatory evidence.

Consequently, the Court rules that this petition is barred by the statute of limitations, Virginia Code § 8.01-654(A) (2). The Court further rules that since these claims could have been raised at trial or on appeal, they are barred by *Slayton v. Parrigan*, 215 Va. 27, 205 S.E.2d 680 (1974), as not cognizable in habeas corpus. The Court further rules that this successive petition is barred by Code § 8.01-654(B) (2). The Court further rules that the Commonwealth did not withhold exculpatory evidence from the defense. The Court further rules that the order for destruction of the gun used in the crimes was properly



entered under the relevant statutes.

For the foregoing reasons, the Court believes that the petition for a writ of habeas corpus should be denied and dismissed; it is, therefore,

ADJUDGED and ORDERED that the petition for a writ of habeas corpus be, and is hereby, denied and dismissed, to which action of this Court the petitioner's exceptions are noted, and it if further

ORDERED that, in light of the above ruling, the petitioner's request for an evidentiary hearing is denied. It is further ordered that the petitioner's endorsement of this order is dispensed with pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia.

The Clerk is directed to forward a certified copy of this Order to the petitioner, and Eugene Murphy, Senior Assistant Attorney General, counsel for the respondent.

Enter this 10th day of July, 2017

Arthur Adams
Judge

I ask for this:

[Signature]
Counsel for Respondent

4b

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

APPENDIX C

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 4th day of October, 2018.

Jacques Villafana,

Appellant,

against Record No. 171009
 Circuit Court No. CL16004620-00

Director, Department of Corrections,

Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 13th day of June, 2018 and grant a rehearing thereof, the prayer of the said petition is denied.

Justice Kelsey took no part in the resolution of the petition.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By:



Deputy Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**