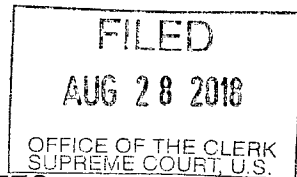


No. 18-7815

IN THE

SUPREME COURT OF THE UNITED STATES



Shea Pascal Dease — PETITIONER
(Your Name)

VS.

Commonwealth of Virginia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

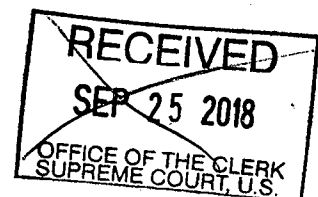
Virginia Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shea Pascal Dease #1016431
(Your Name)
Augusta Correctional Center
1821 Estaline Valley Road
(Address)

Craigsville, VA 24430
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

1. Can a state maintain a criminal judgment for which it did not serve process in the manner required by its own statute?

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:

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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 Circuit Court of York County 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☒ is unpublished.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION.....	8

INDEX TO APPENDICES

APPENDIX A - Virginia Supreme Court Appeal Refusal

APPENDIX B - York County Circuit Court Opinion

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Broyhill v. Dawson, 168 Va. 321 (1937)	4
Commonwealth v. Frye, 48 Va. Cir. 216 (1999)	6
Slaughter v. Commonwealth, 222 Va. 787 (1981)	4

STATUTES AND RULES

Code of Virginia § 19.2-220, 223, 226, 227

OTHER

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 June 11, 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

U.S. Constitution Amendment VI (Notice Clause)

U.S. Constitution Amendment XIV (Due process)

Code of Virginia § 19.2-220, 223, 226, 227

STATEMENT OF THE CASE

Shea Dease is serving a 20 year sentence for alleged embezzlement. In Virginia, the legislature requires an indictment to allege that the crime happened on or about a "certain date." Dease's indictment charged that "on or about February 15, 2000 through March 11, 2000". This is not a "certain date". Virginia case law states that: "A court acquires no jurisdiction over the person of a defendant until process is served in the manner provided by statute. Broyhill v. Dawson, 168 Va. 321 (1937); Slaughter v. Com., 222 Va. 787 (1981). The last court to hear this case on its merit held that Code of Virginia (COV) 19.2-223 "expressly provides that several distinct acts of embezzlement may be combined to charge a single count of embezzlement provided the distinct acts were committed within six months of each other." The court failed to note, however, that Dease's indictment does not give a "certain date" for any of the alleged "distinct acts" as required by COV 19.2-220. The court then reasons that COV 19.2-226, (which provides that "[n]o indictment

or other accusation shall be quashed or deemed invalid... (6) For omitting to state, or stating imperfectly, the time at which the offense was committed when time is not the essence of the offence," allows the court to not give adequate notice if the defendant fails to object before pleading. Again, however, the Court fails to note that if the defendant was not served process in the manner required by statute, then the court has no jurisdiction to accept a plea. The correct service of process is a prerequisite to the court accepting a plea, so a plea cannot waive the notice of process mandate. Such an interpretation of Code of Va. 19.2-226 is unconstitutional under the U.S. Constitution's Sixth Amendment Notice Clause. The Court in Dease's case then reasoned that COV 19.2-227, (which provides that objections to an indictment are waived if not made before verdict) also allows the court to proceed without jurisdiction. There is actually a Circuit Court Precedent in Virginia that correctly states the law.

In Com. v. Frye, 48 Va. Cir. 216 (1999), Circuit Judge Horne correctly noted that: "Where notice is required, a failure to give actual notice or notice in strict conformity with the statute is violative of due process and void." The U.S. Constitution's 6th and 14th Amendments require that notice be given that is reasonably particular with respect to time, place, and circumstance. Such notice is a prerequisite to a court's exercise of its jurisdiction. COV § 19.2-220 requires a "certain date" on the process being served, and the Court has no option in the lawful exercise of its power but to give the required "certain date." In this case, Dease was never served process in the manner required by statute, and, thus, the Court never acquired jurisdiction over his person to enter any judgments against him. Nevertheless, Virginia continues to enforce the judgment.

REASONS FOR GRANTING THE PETITION

The Courts in Virginia are entering and maintaining judgments for which process was not served in strict conformity with their statutory prescriptions. The Courts in Virginia are bound to afford criminal defendants due process of law. Process, in Virginia, requires that criminal defendants be given a "certain date" in their indictment. Such process is a prerequisite to the courts' exercise of their powers. The Courts, in Virginia, however, refuse to enforce the lawful service of process. Judgments entered by a court that does serve lawful process are unconstitutional and void. This Court should grant this petition because the Virginia Supreme Court refuses to enforce the jurisdictional service of process mandate set forth in Code of Va. §19.2-220, which requires a "certain date" be given in the lawful process of a criminal indictment. The Petitioner has a right to due process of law and if this Court refuses to hear this claim, then he will be denied due process of law and his right to petition the court for redress of grievances.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 9-1-18