No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RAHMAT JEVON BARRETT - PETITIONER

VS.

HAROLD W. CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS

ON PETITION FOR WRIT OF CERTIORARI TO

SUPREME COURT OF VIRGINIA

PETITION FOR A WRIT OF CERTIORARI

RAHMAT JEVON BARRETT/#1474972
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QUESTIONS PRESENTED

I. To what extent does the Constitution prohibit conviction and punishment of an accused whereby trial counsel failed to raise exculpatory evidence during trial?

II. To what extent does the Constitution prohibit conviction and punishment of an accused whereby the Trial Court appointed trial counsel to appear as appellate counsel, then subsequently bars the accused's pro se habeas claims because appellate counsel failed to raise claims on delayed appeal?

III. Did Mr. Barrett, Petitioner, have a reasonable expectation of Constitutional protection when he was convicted of a criminal sex offense where the sole evidence was the alleged victim's complaint?

IV. Did Mr. Barrett have a reasonable expectation of Constitutional protection when he was convicted and punished for a second count of aggravated sexual battery that was identical in circumstances and facts to the first count of aggravated sexual battery?

V. Did Mr. Barrett have a reasonable expectation of Constitutional protection when the Trial Court imposed a sentence that the Legislature did not determine to be fair, proportionate, appropriate, and just?

LIST OF PARTIES

[X] All parties appear in the caption of this 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:

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IN THE

SUPREME COURT OF THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from state courts:

The opinion of the **Supreme Court of Virginia** who reviewed the merits appears at Appendix A to the petition and is unpublished.

The opinion of the **Circuit Court of Fairfax County** who reviewed the merits appears at Appendix B to the petition and is unpublished.

JURISDICTION

For cases from state courts:

The date on which the **Supreme Court of Virginia** refused to rehear my case was on June 28, 2018. A copy of that decision appears at Appendix C.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment of the United States Constitution

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, not be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment of the United States Constitution

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Eighth Amendment of the United States Constitution

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment of the United States Constitution

> **Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enfore 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 its laws.

Article I, Section 8 of the Constitution of Virginia

> **Criminal prosecutions.** That in criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, and to call for evidence in his favor, and he shall enjoy the right to speedy and public trial, by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty. He shall not be deprived of life or liberty, except by the law of the land or the judgment of his peers, nor be compelled in any criminal proceeding to give evidence against himself, nor be put twice in jeopardy for the same offense.

Article I, Section 9 of the Constitution of Virginia

> **Prohibition of excessive bail and fines, cruel and unusual punishment, suspension of habeas corpus, bills of attainder, and ex post facto laws.** That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; that the privilege of the writ of habeas corpus shall not suspend unless when, in cases of invasion or rebellion, the public safety may require; and that the General Assembly shall not pass any bill of attainder,

or any ex post facto law.

Article I, Section 11 of the Constitution of Virginia

Due process of law; obligation of contracts; taking or damaging of private property; prohibited discrimination; jury trial in civil cases. That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts; and that the right to be free from any government discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged; except that the mere separation of the sexess shall not be discrimination.

Code of Virginia §17.1-801 Purpose (Virginia Criminal Sentencing Commission)

The General Assembly, to ensure the imposition of appropriate and just criminal penalties, and to make the most efficient use of correctional resources, especially for the effective incapacitation of violent criminal offenders, has determined that it is in the best interest of the Commonwealth to develop, implement, and revise discretionary sentencing guidelines. The purposes of the Commission established under this chapter are to assist the judiciary in the imposition of sentences by establishing a system of discretionary guidelines and to establish a discretionary sentencing guidelines system which emphasizes accountability of the offender and of the criminal justice system to the citizens of the Commonwealth.

The Commission shall develop discrtionary sentencing guidelines to achieve the goals of certainty, consistency, and adequacy of punishment with due regard to the seriousness of the offense, the dangerousness of the offender, deterrence of individuals from committing criminal offenses and the use of alternative sanctions, where appropriate.

Code of Virginia §18.2-67.3. Aggravated sexual battery; penalty (See Appendix D)

Code of Virginia §18.2-67.10. General definitions (See Appendix D)

Code of Virginia §19.2-157 Duty of court when accused appears without counsel

Except as may otherwise be provided in §§ 16.1-266 through 16.1-268, whenever a person charged with a criminal offense the penalty for which may be death or confinement in the state correctional facility or jail, including charges for revocation of suspension of imposition or execution of sentence or probation, appears before any court without being represented by counsel, the court shall inform him of his right to counsel. The accused shall be allowed a reasonable opportunity to employ counsel or, if appropriate, the statement of indigence provided for in §19.2-159 may be executed.

Code of Virginia §19.2-268.2. Recent complaint hearsay exception (Subdivision (23) of Supreme Court Rule 2:803 derived from this section)

Notwithstanding any other provision of law, in any prosecution for criminal sexual assault under Article 7 (§18.2-61 et seq.) of Chapter 4 of Title 18.2, a violation of §§ 18.2-361, 18.2-366, 18.2-370 or §18.2-370.1, the fact that the person injured made a complaint of the offense recently after commission of the offense is admissible, not as independent evidence of the offense, but for the purpose of corroborating the testimony of the complaining witness.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (continued)

Code of Virginia §19.2-299. Investigations and reports by probation officers in certain cases (See Appendix D)

Code of Virginia §19.2-326. Payment of expenses of appeals of indigent defendants

> In any felony or misdemeanor case wherein the judge of the circuit court, from the affidavit of the defendant or any other evidence certifies that the defendant is financially unable to pay his attorney's fees, cost and expenses incident to an appeal, the court to which an appeal is taken shall order the payment of such attorney's fees in an amount not less than $300, cost or necessary expenses of such attorney in an amount deemed reasonable by the court, by the Commonwealth out of the appropriation for criminal charges. If the conviction is upheld on appeal, the attorney's fees, cost and necessary expenses of such attorney paid by the Commonwealth under the provision hereof shall be assessed against the defendant.

Code of Virginia §19.2-217. When information filed; prosecution for a felony to be by indictment or presentment; waiver; process to compel appearance of accused.

> An information may be filed by the attorney for the Commonwealth based upon a complaint in writing verified by the oath of a competent witness; but not person shall be put upon trial for any felony, unless an indictment or presentment shall have first been found or made by a grand jury in a court of competent jurisdiction or unless such person, by writing signed by such person before the court having jurisdiction to try such felony or before the judge of such court shall have waived such indictment or presentment, in which event he may be tried on a warrant or information. If the accused be in custody, or has be recognized or summoned to answer such information, presentment, or indictment, no other process shall be necessary; but the court may, in its discretion, issue process to compel the appearance of the accused.

STATEMENT OF THE CASE

This is a petition by the Petitioner, Rahmat Jevon Barrett, (hereafter "Mr. Barrett"), for the issuance of a writ of certiorari to the Supreme Court of Virginia who on June 28, 2018 refused Mr. Barrett's petition for Rehearing of his habeas corpus claims with respect to the abovementioned Questions.

On April 26, 2013, Mr. Barrett was convicted of two counts of aggravated sexual battery by a jury who then recommended a penalty of nine (9) years on each charge to be served consecutively totaling 18 years, with no restitution. The Honorable Judge White denied Mr. Barrett's Motions to Strike and Motions to Set Aside the verdict, affirmed the jury's verdict and on August 2, 2013 imposed the jury recommended sentence of 18 years of confinement with no time suspended, no restitution, and one year of post-release supervision.

According to the indictment, Mr. Barrett was charged with one count of rape, two counts of forcible sodomy, and two counts of aggravated sexual battery that were alleged to have been committed upon T.B., a nine (9) year old girl, on or between November 1, 2011 and December 27, 2011. The trial on these matters took place between April 22, 2013 and April 26, 2013.

Mr. Barrett is the biological father of five children. Tr. 4/24/13 at 31-32. In November 2011 and December 2011, he and his wife, Terri C. Barrett, (hereafter "Mrs. Barrett"), lived in McLean, VA in a small, 642 square foot one bedroom condo. Tr. 4/24/13 at 33. T.B., the youngest daughter and fourth child, shares a mother, Pamela R. Alston, (hereafter "Mrs. Alston"), with Mr. Barrett's two youngest sons. Mrs. Alston, her husband, Treymayne Alston,(hereafter "Mr. Alston"), T.B., and her two sons live in Waldorf,MD. Tr. 4/24/13 at 32-33. The final divorce decree between Mr. Barrett and Mrs. Alston entered in October 2003 ordered the joint custody of all three children with Mrs. Alston being awarded primary custodianship and Mr. Barrett being awarded visitation rights every other weekend. Tr. 4/24/13 at 33.

T.B. testified in trial that she did not remember visiting her father in November 2011 and December 2011 as the indictment indicated the alleged offenses were to have occurred. She also testified that she was nine (9) years old in fourth grade and she saw her father during that time. Tr. 4/22/13 at 135-136; 207-208. Mrs. Alston testified that she could not recall which weekends or how many visits the children had with Mr. Barrett but there were visits during the indictment period. Tr. 4/22/13 at 230. Mr. and Mrs. Barrett testified that the children visited on the weekends of November 11th-13th, November 25th-27th, and December 9th-11th of 2011. Tr. 4/23/13 at 265; Tr. 4/24/13 at 34.

On December 24, 2011, T.B. complained to her step-father, Mr. Alston, that Mr. Barrett had given her bad touches. Tr. 4/22/13 at 137. Mr. Alston informed Mrs. Alston of T.B.'s complaint at which time T.B. complained to Mrs. Alston. These disclosures led to the Fairfax County Police Department opening an investigation including a Sexual Assault Nurse Exam of T.B. and the execution of a search warrant on the Barrett's McLean, VA residence.

T.B. testified in trial that on every Saturday morning Mr. Barrett would awaken her in the living room, take her to the bathroom to shower with him, put on baby oil, then lead her naked to the bedroom. Tr. 4/22/13 at 138. Once in the bedroom, T.B. testified, Mr. Barrett would make her watch sex videos on a website called RedTube using his black Toshiba laptop. Tr. 4/22/13 at 174-175. T.B. testified that the bad touches would include: Mr. Barrett rubbing his private parts on her private parts until white gooshy stuff came out of Mr. Barrett. T.B. testified that Mr. Barrett placed his private parts in her private parts and her butt cheeks, with this causing her private parts to hurt. Tr. 4/22/13 at 143-148.

T.B. testified in trial that Mr. Barrett used a long, silver vibrator with a black dial on her privates until white gooshy stuff came out of her private parts. She also testified that when the long, silver vibrator broke he used a short pink vibrator in the same manner. Tr. 4/22/13 at 148-149, 169-171, 191-196. According to T.B.'s testimony Mr. Barrett would clean up the white gooshy stuff with variously colored washcloths when it got on both of them and on the sheets. Tr. 4/22/13 at 150, 168.

The Commonwealth called Mrs. Alston and several expert witnesses along with the investigating detectives to testify that T.B. complained. Fairfax County Police Department testified that no baby oil was found in Mr. Barrett's residence; RedTube was not found to have been accessed during the indictment period; neither a long silver vibrator nor short pink vibrator was found in Mr. Barrett's residence; nothing remarkable about the one brown towel and bedspread to report; and no naked pictures of T.B. were found on any of Mr. Barrett's cell phones.

A Sexual Assault Nurse Examiner testified that nothing found in her examination of T.B. led her to believe that a sexual assualt or any sexual activity had occurred. A DNA expert testified that a small, all silver vibrator that was seized from the Barrett's residence contained an unidentifiable bodily fluid that when tested was not vaginal fluid, not blood, not seminal fluid, contained DNA contribution most probably from an inidentified Caucasian male, and T.B. could not be ruled out as a contributor.

On April 23, 2013, after the Commonwealth rested her case, Mr. Barrett made a Motion sto Strike. The Trial Court denied Mr. Barret's motion. Tr. 4/23/13 at 257-258.

On April 24, 2013, Mr. Barrett testified in trial asserting that he did not commit one count of rape, two counts of forcible sodomy, and two counts of aggravated sexual battery upon T.B. Tr. 4/24/13 at 50-62. On cross-examination Mr. Barrett did express that when he searched for internet pornography he would use search tools such as Google, but had not directly visited RedTube. Tr. 4/24/13 at 66.

On April 24, 2013, at the close of all evidence, Mr. Barrett renewed his Motion to Strike and the Trial Court again denied the Motion. Tr. 4/24/13 at 77-78. On the same day, following closing arguments from counsel and jury instructions from the Honorable Judge White, the Trial Court recessed for jury deliberations.

On April 26, 2013, the jury returned verdicts of not guilty to the charge of rape and two charges of forcible sodomy. The jury returned guilty verdicts on the two charges of aggravated sexual battery. Tr. 4/26/13 at 3-4. The court then proceeded directly to the Sentencing Hearing. After a few hours of ascertaining a penalty, the jury recommended a sentence of nine (9) years on each charge with no restitution. Tr. 4/26/13 at 27. The court then issued an order for a probation officer to complete the presentencing investigation and report to determine a penalty using the Virginia Sentencing Guidelines. Then the court recessed until completion of the report. Tr. 4/26/13 at 30.

The Sentencing Hearing reconvened on August 2, 2013 where the probation officer delivered her thorough investigation and report which was entered into the record. along with the sentencing guidelines. The presentencing guidelines determined that the appropriate and just sentencing range was two years and one month to six years and eight months of incarceration. Tr. 8/2/13 at 16.

After hearing arguments from counsel, the Honorable Judge White imposed the jury recommended sentence of 18 years stating that the "guidelines in this case are completely inadequate". Tr. 8/2/13 at 34.

REASONS FOR GRANTING THE PETITION

I. To what extent does the Constitution prohibit conviction and punishment of an accused whereby trial counsel failed to raise exculpatory evidence during trial?

This claim concerns ineffective assistance of counsel as guaranteed by the Sixth Amendment and is obligatory to the State through the Fourteenth Amendment. In a collateral attack on a conviction, Mr. Barrett must satisfy both parts of a two-part test established in Strickland v. Washington, 104 S.Ct. 2052, (1984). Mr. Barrett must first prove that his counsel's "performance was deficient", meaning that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment". Id. Mr. Barrett must next show that "deficient performance prejudiced the defense," that is to say "counsel's errors were so serious as to deprive the defendant of a fair trial". Id. The Supreme Court of the United States "has allowed for the possibility that a single error may suffice 'if the error is sufficiently egregious and prejudicial'". Williams v. Lemmon, 557 F.3d 534, 538 (7th Cir. 2009)(quoting Murray v. Carrier, 106 S.Ct. 2639, (1986)).

The Supreme Court of Virginia in denying habeas relief relied on Abbott v. Peyton, 178 S.E.2d 521, (1971). Firstly, the merits of this case were not made subject to the Strickland test. Secondly, the issue in Abbott focused on two witnesses who the trial counsel did not call to testify who were character witnesses for the defendant who would have been detrimental to the defense and two other witnesses whose testimonies were too remote from the time of the incident to have any probative value. Essentially the Supreme Court of Virginia's decision in Mr. Barrett's case was contrary to clearly established federal law inasmuch as it relied on inapplicable principles expressed in Abbott rendering the decision an unreasonable application of clearly established federal law, according to Strickland, when it failed to evaluate the totality of, and accord appropriate weight to, mitigating evidence. See Williams v. Taylor, 120 S.Ct. 1495, (U.S. Va. 2000).

In Mr. Barrett's case, Mrs. Alston, T.B.'s biological mother and material witness, testified that she made no mention of a vibrator in her sworn Protective Order complaint. Tr. 4/22/13 at 250-251. Trial counsel failed to call to testify Mr. Alston, T.B.'s step-father and material witness, who denied the Alston's owned a vibrator during his sworn testimony in the Protective Order Hearing. Tr. 1/23/12 at 53. A day or so before the commencement of trial it was discovered that the Alston's did in fact own a vibrator that matched T.B.'s description. The probative value of this meritorious discovery is exceeding exculpatory in that neither of the two vibrators that T.B. described were found at the Barrett's residence. According to trial counsel's affidavit, he knew this to be true.

Further investigation by trial counsel would have revealed that Mr. Alston was very interactive with and consequently influential towards T.B. throughout this whole ordeal. It was testified to that it was Mr. Alston who first alleged the sex offenses to Mrs. Alston. Tr. 4/22/13 at 232. It is more than reasonably probable that the result of the trial would have been different if the jurors were to have learned that 1. one of the actual vibrators that T.B. described was the one under the clothes in her step-father and mother's room in the home where T.B. spent more than 95% of her time; 2. this fact was kept secret by the Alstons up to a day or so before trial; and 3. Mr. Alston perjured himself regarding the vibrator during the Protective Order Hearing.

For trial counsel to suggest that the Commonwealth would have objected to an examination of Mr. Alston's sworn Protective Order Hearing testimony and that the Judge would have sustained such an objection requires trial counsel's operation of both the Commonwealth and Judge's minds, which is not a fiduciary duty that denotes effective assistance of counsel. This error was so serious that it cannot be said that "counsel was functioning as the counsel guaranteed by the Sixth Amendment" because the alleged use of a long, silver vibrator was a central point of evidence for the Commonwealth. Strickland, 104 S.Ct. at 2064.

Trial counsel, to ensure a fair trial, should have called Mr. Alston to testify. Trial counsel could have also moved the court for a continuance to properly investigate the probative value of this newly discovered and mitigating evidence. Strickland, 104 S.Ct. at 2068-2069. Furthermore, Mr. Barrett could not have successfully investigate this very key piece of evidence on his own as the court ordered Mr. Barrett to not make contact with T.B. or her family. Tr. 1/23/12 at 254-257; Tr. 8/2/13 at 36. The record shows that the trial counsel knew these truths and deliberately did not act which is evidence of deficient performance. This prejudiced the defense in that the act deprived Mr. Barrett of his constitutional right to a fair trial when trial counsel did not put forth evidence in his favor.

The Supreme Court of Virginia in denying habeas relief, because there was no reversible errors, provided no reasonable probability that the result of the trial would have been the same even if trial counsel presented this evidence. As the Supreme Court of Virginia did not reach the question of the reasonable probabiilty of a different outcome of the trial, the Supreme Court of the United States may consider this claim de novo. See Blumfield v. Cain, 135 S.Ct. 2269 (U.S. 2015); Wiggins v. Smith, 123 S.Ct. 2527, (U.S. 2003), and Early v. Packer, 123 S.Ct. 362, (2002).

II. To what extent does the Constitution prohibit conviction and punishment of an accussed whereby the Trial Court appointed trial counsel to appear as appellate counsel, then subsequently bars accussed's pro se habeas claims because appellate counsel failed to raise claims on delayed appeal?

This claim concerns ineffective assistance of counsel as guaranteed by the Sixth Amendment and obligatory to the State through the Fourteenth Amendment. To prevail in this claim Mr. Barrett must satisfy both parts of the two-part test established in Strickland v. Washingtion, 466. U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674, (1984). Mr. Barrett must first prove that his appellate's "performance was deficient", meaning that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. Mr. Barrett must next show that "the deficient performance prejudiced the defense", that is to say "counsel's errors were so serious as to deprive the defendant of a fair trial". Id. Unless Mr. Barrett establishes both prongs of the two-part test, his claim of ineffective assistance of counsel will fail. Id.

A petitioner seeking relief on the ground of ineffective assistance of counsel has the burden of proving he has an entitlement to counsel because "[t]he right to effective assistance of counsel is dependant on the right to counsel itself". Howard v. Warden of Buckingham Correctional Center, 348 S.E.2d 211, 213 (1986)(quoting Evitts v. Lucey, 105 S.Ct. 830, (1985); Dodson v. Director, 355 S.E.2d 573,(1987) (citing Wainwright v. Torna, 102 S.Ct. 1300 (1982).

According to the Code of Virginia §§ 19.2-157 and 19.2-326, indigent defendants have a constitutional and statutory right to court-appointed counsel both on appeal to the Court of Appeals of Virginia and on discretionary appeal to the Supreme Court of Virginia. Counsel, whether retained or appointed, has a constitutional duty to protect a defendant's "one and only appeal...as of right". Douglas v. California, 83 S.Ct. 814, (1963); see also Murray v. Carrier, 106 S.Ct. 2639, (1986).

The Supreme Court of Virginia affirmed the judicial notice of the Circuit Court regarding the deficient performance on the part of the court appointed appellete counsel in the final order denying habeas relief dated June 28, 2018 which ruled that ten of Mr. Barrett's 13 constitutional claims should have been raised at trial or on appeal. As a result, Mr. Barrett was prejudiced because the Supreme Court of Virginia did not reach the merits of his constitutional claims. Strickland. The claims outlined in Questions III, IV, and V of this Petition were not reviewed based on the merits by the Supreme Court of Virginia allowing the Supreme Court of the United States to consider these claims de novo. Blumfield v. Cain, 135 S.Ct. 2269, (U.S. 2015); Wiggins v. Smith,123 S.Ct. 2527,(U.S. 2003); Early v. Packer, 123 S.Ct. 362, (U.S. 2002).

III. Did Mr. Barrett, Petitioner, have a reasonable expectation of Constitutional protection when he was convicted of a criminal sex offense where the sole evidence was the alleged victim's complaint?

This claim concerns Code of Virginia §19.2-268.2 which is obligatory to the State through the Fourteenth Amendment. It provides that "[n]otwithstanding any other provision, in any prosecution for criminal sexual assault Article 7 [§18.2-67.3]... the fact that the person injured made a complaint of the offense recently after commission of the offense is admissible, not as independent evidence of the offense, but for the purpose of corroborating the testimony of the complaining witness". The Commonwealth, relying on this statute to procure a conviction, presented only the complaining witness's testimony that a sex offense occured and witnesses to corroborate that a complaint was made. Tr. 4/22/13 at 234. Accordingly, in light of Jackson v. Virginia, 99 S.Ct. 2781, (1979), Mr. Barrett is unlawfully detained because due process requires a complaint to be coupled with independant evidence through the presentation of proven facts from which a reasonable inference can be drawn to the charged offense to find guilt beyond a reasonable doubt.

Supreme Court of Virginia Senior Justice Koontz, while presiding in the Court of Appeals of Virginia in Woodard v. Commonwealth, 19 Va.App. 24 at 27, (1994), with underpinnings from the Fourteenth Amendment and the controling principles in Jackson, outlines the function of the Recent Complaint Hearsay Exception:

> "We recently clarified the application of the recent complain rule: a[n] alleged rape victim's complaint corroborates more than his or her testimony; it also corroborates the occurrence of the rape itself. We hold that the rule is applicable to corroborate other independent evidence of the offense; however the complaint alone does not constitute sufficient evidence of the offense."

The Supreme Court of Virginia's denial of Mr. Barrett's habaes petition for relief from his convictions of two counts of aggravated sexual battery was objectively unreasonable because reliance was place on Willis & Bell v. Commonwealth, 238 S.E.2d 811, (1977), which states that a sex crime may depend upon the "uncorroborated testimony of a prosecutrix if her evidence is credible, and the guilt of the accused is believed by the [fact finder] beyond a reasonable doubt" and Garland v. Commonwealth, 379 S.E.2d 146, (1989), which states that "[b]ecause sexual offences are typically clindestine in nature, seldom involving witnesses to the offence except the perpetrator and the victim, a requirement of corroboration would result in most sex offenses going unpunished". This holding is not consistent with clearly established federal law; is not dictated by the statutory language; was neither intended by the United States Congress nor the General Assembly of Virginia; and is wholly illogical. A judgment of acquittal should be entered.

The Commonwealth presented no direct evidence but rather ambient observations packaged as circumstantial evidence purposed to prove the allegations complained of by T.B. However, the complaint failed to corroborate the Commonwealth's offerings according to law.

1) T.B.'s complaint of showering with Mr. Barrett and being led to the bathroom naked. Tr. 4/22/13 at 138: Mrs. Alston, Mr. Barrett, and Mrs. Barrett testified that visitation had taken place during the indictment period of November 1, 2011 and December 27, 2011. However, it was irrefutably testified to that Mr. Barrett, Mrs. Barrett, T.B. and her two brothers were in each others' presences for the entirety of each of the nine days of visitation and no witness was brought forth to provide independent evidence of any such occurrence. Tr. 4/23/13 at 282-284; 287; 290; 292; 294; 298.

2) T.B. 's complaint that baby oil was used in the commission of the alleged offense. Tr. 4/22/13 at 138: Fairfax County Police Department testified and provided pictures asserting that no baby oil was found in Mr. Barrett's residence. Tr. 4/23/13 at 68-69; Commonwealth's Exhibit #14 in Rec. No.FE2012-1331.

3) T.B.'s complaint of being made to watch sex videos on RedTube Tr. 4/22/13 at 174-175: The Virginia Court of Appeals stated that "evidence of access to the same website" was independent evidence from which an inference to accomplished aggravated sexual battery could be drawn. Barrett v. Commonwealth, Record No. 1659-13-4 at 4 (Va.App. 2014). Fairfax County Police Department testified and provided computer forensic analysis asserting that no pornographic websites, including RedTube, were accessed using any laptop on any weekend during the indictment period visit to the Barrett's residence. Tr. 4/23/13 at 202.

4) T.B.'s complaint of Mr. Barrett placing his private parts in her private parts and her butt cheeks. Tr. 4/22/13 at 143-148: The SANE Nurse testified and provided documentation of her exam results showing that nothing found during her examination of T.B. led her to believe that a sexual assault had occured. Tr. 4/23/13 at 27.

5) T.B.'s description of vibrators purported to have been used in the commission of the alleged offenses. Tr. 4/22/13 at 169: The Virginia Court of Appeals stated that "the police found 'a' vibrator in the appellant's home", conveying that this is independent evidence from which an inference to accomplished aggravated sexual battery could be drawn. Barrett v. Commonwealth, at 4.

However, neither a long silver vibrator with a black dial nor a pink vibrator was seized by Fairfax County Police Department from Mr. Barrett's residence. Tr. 4/23/13 at 98-99.

6) T.B.'s complaint that white gooshy stuff came out of her privates. Tr. 4/22/13 at 149: The Commonwealth offered no independent evidence that this complaint transpired.

7) T.B's complaint that white gooshy stuff from her and Mr. Barrett was cleaned up with variously colored washclothes after it got on both of them and the bed spread. Tr. 4/22/13 at 150: Fairfax County Police Department testified that the every day household items (one brown towel and one bedspread) that were seized from Mr. Barrett's residence did not prove or disprove the accomplishment of the alleged sex offense. Tr. 4/23/13 at 169.

8) T.B.'s complaint that naked photos were taken of her using Mr. Barret's cell phone. Tr. 4/23/13 at 102: Fairfax County Police Department computer forensics expert testified that no naked photos of T.B. were found on any cell phone seized from Mr. Barrett's residence. Tr. 4/23/13 at 195.

9) The Commonwealth's claim that a small all silver fully functional vibrator found at Mr. Barrett's residence was the device used in the commission of the alleged sex offenses upon T.B.: The Virginia Court of Appeals stated that "the jury could have concluded..." that the vibrator "...had T.B.'s DNA on it". Barrett, at 4. The Commonwealth's DNA forensics expert testified and provided documentation showing that the unidentifiable bodily fluid was not blood, vaginal fluid, ot seminal fluid but did contain a DNA contribution most probably from an unidentified Caucasian male and that T.B. could not be ruled out as a contributor. Mr. Barrett is not Caucasian. Tr. 4/23/13 at 239; 246-248.

To hold that T.B.'s complaint corroborated these offerings that Mr. Barrett intentionally touched T.B.'s intimate parts would require the trier of fact to draw a series of improbable inferences from uncorroborated evidence. "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia. "This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." Brown v. Commonwealth, 802 S.E.2d 190, (Va.App. 2017)(quoting

Jackson, 443 U.S. at 319).

It is painfully obvious that a complaint alone can result in a conviction. However, due process and the recent complaint hearsay rule situates T.B.'s self-corroborating complaint as a complaint needing independent evidence to become an ultimate fact of sufficient evidence for a conviction to be sustained. Since T.B.'s complaint, the record shows, did not prove or corroborate any of the Commonwealth's offerings of independent evidence, T.B.'s complaint cannot lawfully be construed into a finding of the essential elements that prove, beyond a reasonable doubt, that a sexual assault occurred. It flows through then that no reasonable inference can be drawn in this case from the complaint to uncorroborated independent evidence to the ultimate fact of two counts of accomplished aggravated sexual battery. It is impermissible to allow "the jury to grope in the realm of speculation for an inference or inferences not supported by the facts proved from evidence presented." Lugo v. Joy, 205 S.E.2d 658, (1974).

Therefore, The Supreme Court of Virginia's denial of Mr. Barrett's habeas claim regarding his convictions was an unreasonable determination of federal laws as clearly established in Jackson v. Virginia which is obligatory to the State through the Fourteenth Amendment due process of laws clause.

IV. Did Mr. Barrett have a reasonable expectation of Constitutional protection when he was convicted and punished for a second count of aggravated sexual battery that was identical in circumstances and facts to the first count of aggravated sexual battery?

This claim, notwithstanding the prevailing of the claim posed in Question III of this Petition, concerns Code of Virginia §§ 18.2-67.3 and 18.2-67.10 which are obligatory to the State through the Fifth, Sixth, and Fourteenth Amendments. The statutes provide multiple provisions with layering definitions for proper charging of the discrete unit of prosecution as intended by the General Assembly of Virginia. At the time when Mr. Barrett was twice charged with aggravated sexual battery, the Constitutions and these statutes were heavily litigated such that in order to convict and punish an accussed, the certainty, precision, distinctness, and seperation of multiple charges of the same statutory provision were deemed to be "constitutional protections of surpassing importance." See Apprendi v. New Jersey, 120 S.Ct. 2348, (U.S. N.J. 2000).

The Commonwealth did not charge, convict, and punish Mr. Barrett according to these laws. Accordingly, in light of Blockburger v. United States, 52 S.Ct. 180, (U.S. Ill. 1932), Mr. Barrett is unlawfully detained because he was twice subjected to

the identical common-law felony of aggravated sexual battery in violation of the Fifth Amendment as a result of a deprevation of his right to trial by jury afforded him by the Sixth Amendment and of his due process of laws entitlement fo the Fourteenth Amendment. The determination by the Supreme Court of Virginia is not consistent with clearly established Federal law; is not dictated by the statutory language; was neither intended by the United States Congress nor the General Assembly of Virginia; and is wholly illogical.

The Honorable Judge Alston presiding in the Côurt of Appeals of Virginia in Sandoval v. Commonwealth, 768 S.E.2d 709 at 717, (Va.App. 2015), relying on Blockburger, succinctly provided the proper application of the double jeopardy test to cases involving a sex offense when he stated, in part, "[t]wo offenses will be considered the same when (1) the two offenses are identical..." Where a State statute unambiguously allows for cumulative punishments to a felony, if committed under particular circumstances and facts, a charge for the offense, in order to bring the defendant within that measure of cumulative punishments, must expressly charge it to have been committed under those segregated circumstances and facts, and must state the circumstances and facts with certainty and precision.

In concert with the Supreme Court of the United States ruling in Apprendi, the Honorable Judge Kelsey presiding in the Court of Appeals of Virginia in De'Armond v. Commonwealth,654 S.E.2d 317, (2007), held that "[w]hen coupled with it definitional provision, Code of Virginia §18.2-67.3(A)(1) creates a unit of prosecution for every act of sexual abuse and, at a minimum, contemplates separate acts for each of the separate 'intimate parts' described in Code of Virginia §18.2-67.10(2). This interpretation paralells our understanding of the appropriate units of prosecution under other sex crime statutes...Tracking the indictments, the trial court separated the finding instructions and the jury verdict forms into three prosecutorial units: (i) De'Armond's placing the child's hand on De'Armond's penis, (ii) De'Armond's touching of the child's vagina, and (iii) De'Armond's touching of the child's prepubescent breast. This segregation of offenses properly recognized the separate acts of touching separate intimate parts." Thus, putting to the jury the precise acts that were charged and the essential elements that must be proved beyond a reasonable doubt.

Neither did Mr. Barrett nor the jury receive notice of the cause and nature of the accussations according to this proper segregation of acts. The indictment contrued together the crime statute provision (§18.2-67.3(A)(1)) and the general definitions statute item (§18.2-67.10(6)(a)). Under Virginia law, and in accordance with Blockburger, when a charging vehicle charges two counts of the same provision of aggravated sexual battery where §18.2-67.10(6)(a) is the corresponding circumstance, it must also specify the distinct essential element(s) of genitalia, anus, groin, breast, or buttocks as

described in §18.2-67.10(2) to be proved by the Commonwealth. It is important to note that the purpose of an indictment is to provide the accused with notice of the cause and nature of the accusations aggainst him. Under Virginia law, the requirement that felony prosecutions proceed by indictment is statutory, not constitutional, and the accused may waive the right to be tried by such. Code of Virginia §19.2-217. Whether the prosecution chooses to use an indictment, presentment, information, or warrant to make notice of the charge(s) is constitutionally negligible in comparison to the accused's constitutional right to demand the cause and nature of his accusation. See Constitution of Virginia, Article 1, §8 and United States Constitution, Sixth Amendment. Accordingly, there is no error of constitutional magnitude relative to the charging vehicle, but unquestionably there is reversable error as to the lack of certainty and precision of the notice of the cause and nature of the accusation in this case. See Commonwealth v. Bass, 786 S.E.2d 165, (Va. 2016) and Apprendi.

To exacerbate the uncertainty and the lack of preciseness of the charged offenses, during her closing arguments the Commonwealth misstated the law to the jury:

> "What the Commonwealth has to prove is that [aggravated sexual battery] happened twice to [T.B.]...she said that her father put his privates in her bottom, and she showed you a diagram where that was...and she said that meant it was in between her butt cheeks...she testified that her privates were on top of his privates...and he moves her back and forth...until white gushy stuff comes out of him...she tells you that her father...takes that vibrator, which is long and silver...and that her puts that down on her privates...the Commonwealth would submit that...all three scenarios that [T.B.] described...is evidence of sexual abuse." Tr. 4/24/13 at 90-92.

Clearly, putting privates 'in' privates and the use of an object (vibrator) do not fall within the lawful definition of sexual abuse. See Appendix D §18.2-67.10(6).

The Supreme Court of Virginia amplified this lack of clarity in holding the Court of Appeals of Virginia's determination of the complaint:

> "T.B. testified regarding the specific sexual acts the appellant committed upon her, including touching her private area with his own private and inserting his private in her private, as well as her mouth and buttocks." Barrett v. Commonwealth, Record No. 1659-13-4 at 1-2.

By not recognizing in the charging vehicle the lawfully precise acts to be charged as volative of two distinct and separate acts of aggravated sexual battery, 1) Count II and Count III of the indictment are identical both facially and with regard to corpus delicti; 2) the jury was left without the pertainent information to find guilt beyond a reasonable doubt with certainty; and 3) the Commonwealth fundamentally tampered with the judicial machinery which subverted the integrity of the State Courts themselves. This is evidenced by the written language of the charging vehicle; the Commonwealth's misstatement of the aggravated sexual battery law in closing argument; the absence of two precise jury instructions for aggravated sexual battery; the lack of distinction

in the jury forms for aggravated sexual battery; and the Supreme Court of Virginia's affirmation of the Court of Appeals of Virginia's citation of essential elements from other sex offenses, for which Mr. Barrett was found not guilty, to reason Mr. Barrett's accomplishment of aggravated sexual battery. Furthermore, the Commonwealth herself admitted to tampering with the judicial machinery when she conveyed to the Trial Court that she was unsure of how two counts of the same crime worked, after she had presented her case in chief. Tr. 4/24/13 at 76.

Therefore, when the guilty verdict was rendered on Count II for intentionally touching intimate parts, jeopardy barred using the identical evidence to convict and punish on Count III which also charged intentionally touching intimate parts under the identical circumstances and facts.

V. Did Mr. Barrett have a reasonable expectation of Constitutional protection when the Trial Court imposed a sentence that the Legislature did not determine to be fair, proportionate, appropriate, and just?

This claim, notwithstanding the prevailing of the claim posed in Question III of this Petition, concerns Code of Virginia §19.2-299 which obligatory to the State through the Eighth and Fourteenth Amendments. The claim, in light of Harmelin v. Michigan, 111 S.C.t 2680, (U.S.Mich. 1991), is that Mr. Barrett is unlawfully detained because the imposed punishment of 18 years of incarceration, 900% above sentences in adjudged similarly-situated cases, is disproportionate as-applied. This is evidenced by the statutorily vested empirical studies report entered into the record on August 2, 2013 as ordered by the Trial Court showing that two years and one month to six years and eight months is proportionate to the seriousness of the offense. Tr. 8/2/13 at 16-17. The holding of 18 years of incarceration by the Supreme Court of Virginia is not consistent with clearly established Federal law; is not dictated by the statutory language; was neither intended by the United States Congress nor the General Assembly of Virginia; is volitive of the Eighth Amendment excessive punishment clause and the due process of laws clause of the Fourteenth Amendment; and is wholly illogical. It should be dismissed.

The United States Court of Appeals, Fourth Circuit in United States v. Brown, 681 Fed.Appx. 268, (C.A.4 (Va.) 2017), relying in part on Harmelin v. Michigan stated that "the Eighth Amendment contains a narrow proportionality principle, that does not require strict proportionality between crime and sentence[,] but rather forbids only extreme sentences that are grossly disproportionate to the crime. Graham v. Florida, 130 S.Ct. 2011, (2010)(internal quotation marks omitted). When reviewing an as-applied challenge, we must first determine if the defendant showed there was an inference that his sentence was grossly disproportionate to his crime. United States v. Cobler,

748 F.3d 570, 579-80, (4th Cir. 2014)("given the shocking and vile conduct underlying these criminal convictions [for child pornography], we hold that Cobler has failed to substantiate the required threshold inference of gross disproportionality.")" See also United States v. Shelabarger, 770 F.3d 714, (C.A.8 (Iowa) 2014) and United States v. Johnson, 451 F.3d 1239 (C.A.11(Fla.) 2006).

The Fourth Circuit continued by stating "[i]n the 'rare case' that the defendant shows this inference, we must then compare the defendant's sentence (1) to sentences for other offenses in the same jurisdiction; and (2) to sentences for similar offenses in other jurisdictions." Cobler."If the court does not find a threshold inference, extended comparative analysis of a sentence is unnecessary to justify its constitutionality." Id. at 578. "We review Eighth Amendment challenges to a sentence de novo." Id. at 574.

The Fourth Circuit in United States v. Rhodes, 779 F.2d 1019, (C.A.4 (N.C.) 1985), quoted the Supreme Court of the United States in Hutto v. Davis, 102 S.Ct. 703, (U.S. Va. 1982) who noted that for felony crimes there is no clear way to make any constitutional distinction between one term of years and a shorter or longer term of years, [the] length of the sentence actually imposed is purely a matter of Legislative prerogative".

A sentencing court is given wide discretion in the imposition of sentences within the limits of the crime statute, and the sentence imposed. However, although a sentence falls within the limits of the crime statute, it may still be excessive; a sentence is considered constitutionally excessive if it is disproportionate to the seriousness of the offense or nothing more than a "purposeless and needless infliction of pain and suffering". See State v. Keeley, 814 So.2d 664 (La.Ct.App 4th Cir.2002); State v. Kujawa, 929 So.2d 99 (La.Ct. 1st Cir. 2006); State v. Small, 935 So.2d 285 (La.Ct.App. 2d Cir. 2006); State v. Ducote, 927 So.2d 503 (La.Ct.App. 5th Cir. 2006); and State v. Osborn, 127 So.3d 1087 (La.Ct.App. 3d Cir. 2013).

The General Assembly of Virginia statutorily establishes what denotes a punishment, for a person convicted of aggravated sexual battery, as fair, proportionate, appropriate, and just in comparison to the seriousness of the offense when the sentencing courts are provided with the probation officer's completed investigation and report, which informas the sentencing guidelines methodology and worksheets, and illuminates all the kinds of sentences available for each individual case. Cod of Virginia §19.2-299.

The discretion of the courts, having been provided with this adequate information, is perfected from the uncabined discretion of the broad range of the Virginia Crime Code punishment to the General Assembly of Virginia's statutorily determined fair, proportionate, appropriate and just punishment range within the guidelines which is the heartland of the Legislative prerogative "especially for the effective

incapacitation of violent criminal offenders". Code of Virginia §17.1-801.

This is claim is not a challenge to the Commonwealth's discretionary sentencing guidelines but rather the gross disproportionality between the offense and the imposed sentence. However, "sentencing guidelines are a convincing and objective indicator or proportionality". United States v. Cardenas-Alvarez, 987 F.2d 1129, (C.A. 5 (Tex.) 1993).

According to Mark L. Early, former Attorney General for the Commonwealth of Virginia, in a response to a question posed to him by the General Assembly of Virginia on April 24, 2001 about sentencing guidelines, "a risk assessment instrument developed for integration into the state's sentencing guidelines for sex offenses does not violate either the United States or Virginia Constitution". (2001 WL 546770) Essentially, the discretionary sentencing guidelines of the Commonwealth were not established as a 'check-the-box' judicial excercise but rather a concerted effort by the General Assembly of Virginia to corral sentence disparities, to more prescriptively and effectively impose appropriate punishment for the seriousness of the offense, to engender consistency of imposed sentences across the Commonwealth, and most importantly to avoid constitutional volations. Hence the enactment of Code of Virginia §19.2-299 so the court can order a probation officer to conduct extensive empirical studies of statewide adjudge similarly-situated cases; proportionality reviews; investigate the background of the accused; and investigate the criminal history of the accused.

The Virginia Criminal Sentencing Commission, Virginia Sentencing Guidelines Manual , 19th Edition page 41 states "[i]n accordance with Senate Joint Resolution (SJR) 33 of the 1999 General Assembly, the Commission embarked on an empirical study of recidivism among sexual offenders convicted in the Commonwealth. THe Commission's goal was to develop a reliable and valid predictive instrument, specific to the population of sexual offenders." The resule was a sexual offender risk assessment with factors proven to be statistically significant to be added to the exsiting guideline factors.

"..[T]he instrument...refelects characteristics and recidivism patterns...of felony sexual offenders convicted and sentenced in Virginia." The factors included in this extended sexual offender investigation are 1) number of primary offenses; 2) offender's age; 3) education level; 4) employment history; 5) offender relationship with the victim; 6) aggravated sexual battery; 7) location of the offense; 8) prior adult felonies/misdemeanors; 9) prior incarcerations/commitments; 10) prior treatment; 11) remaining count of offenses; 12) additional offenses; 13) victim's age; 14) victim's injury; 15) prior incarceration/adjudications; 16) prior felony sexual convictions/adjudications; 17) legally restrained at the time of offense; 18) weapons

used; 19) post-incarceration supervision at time of offense; and 20) risk assessment/ level.

In United States v. Allen, 491 F.3d 178, 186 (4th Cir. 2007), The Fourth Circuit held that "a sentence that falls within a properly calculated guidelines range is presumptively reasonable". See also United States v. Hughes, 401 F.3d 540, 547 (4th Cir. 2005); United States v. Johnson, 445 F.3d 339, 341 (4th Cir. 2006); and United States v. Castillo-Marin, 684 F.3d 914, 927 (9th Cir. 2012). From theses rulings it can be reasonably deduced that a sentence falling outside of a properly calculated guidelines range may be presumptively not reasonable, not substantively reasonable, or disproportionate; taking into account that there are no other mitigating or extenuating factors to be considered thus abdicating the conception that the guidelines are mandatory.

The sentencing guidelines methodology called for the Commonwealth's completed investigation and report to increase the initial mid-point of actual time-served for adjudged similarly-situated offenders by 13.4% and an additional 125% for Mr. Barrett, a first time convicted sex offender. The resulting range was two years and one month to six years and eight months. The required threshold inference of gross disproportionality, in comparison to other offenses, is evidence by Mr. Barrett's sentence reflecting a 900% upward variance from this fair, proportionate, appropriate, and just punishment as determined by the General Assembly of Virginia in comparison to the seriousness of the offense.

The record in United States v. Shelabarger, 770 F.3d 714, (C.A.8 (Iowa) 2014), shows that Shelabarger possessed 171 videos and 852 images containing child pornography, including files that depicted minors under the age of twelve that were of a violent, sadistic, or masochistic nature resulting in his conviction of receipt of visual depictions of minors engaging in sexually explicit conduct. Shelabarger's statutory mandatory minimum was 5 years. He received 17.5 years which is a 350% upward variance in comparision to the seriousness of the offense. The Eigth Circuit rule that as-applied, Shelabarger's sentence was not grossly disproportionate.

The record in United States v. Johnson, 451 F.3d 1239 (C.A. 11 (Fla.) 2006), shows that Johnson engaged in sex acts with three minors and took pictures of the acts. He also forced his victims to engage in sex acts with other men and too pictures of those acts. Johnson was convicted of producing and distributing child pornography. The Court opined that "Johnson's sentence is severe, but not more severe than the life-long pschological injury he inflicted upon his three young victims.: Johnson's statutory cumulative mandatory minimums were 65 years. He received 140 years which is almost a 225% upward variance in comparison to the seriousness of the offenses. The

Eleventh Circuit ruled that as-applied, Johnson's sentence was not grossly disproportionate.

The record in United States v. Cobler, 748 F.3d 570, (4th Cir. 2014), shows Cobler's shocking and vile conduct underlying his criminal convictions. The Honorable Judge Keenan opined "[W]e further observe that the usual severity of conduct of this nature is far exceeded by the particular circumstances of this case. Not only did Cobler possess large quantities of child pornography that he downloaded and shared on the internet, fueling the public consumption of materials harmful to children, but he also created depictions of his own sexual exploitation, molestation, and abuse of a four-year-old child. To make matters worse, Cobler was aware that his sexual contact with the child could have caused the child to contract Cobler's serious communicable disease. " Id. at 580. Cobler's statutory cumulative mandatory minimums were 60 years. He received 120 years which is a 200% upward variance in comparison to the seriousness of the offenses. The Fourth Circuit ruled that as-applied, Cobler's sentence was not grossly disproportionate.

The record in Mr. Barrett's case shows that he was convicted of twice touching the intimate parts of a nine-year-old child. The State Courts found no footing to characterize the underlying conduct, other than stating "the guidelines in this case are completely inadequate". Tr. 8/2/13 at 34 line 19. Mr. Barrett's statutory cumulative mandatory minimums were two (2) years. He received 18 years which is a 900% upward variance.

The separate offenses in Shelabarger, Johnson, and Cobler were more severe sex offenses than the sex offenses for which Mr. Barrett was convicted. This is denoted by the mandatory minimums. The conduct underlying the convictions in Shelabarger, Johnson, and Cobler, according to the Judiciary, were sadistic, disturbing, and exceeded the usual severity of a sex offense and hence the failing of the required threshold inference. The alleged underlying conduct for which Mr. Barrett was convicted cannot be construed to be a foundation to impose an equally severe punishment as the distinguishing underlying conduct was Judicially unremarkable. As such, the threshold inference is the Trial Court applied an exponentially more severe punishment in proportion to the seriousness of the offenses, whereby the upward variance in Mr. Barrett's case alone (900%) was greater than the combined upward variances in Shelabarger, Johnson, and Cobler (775%). Mr. Barrett's punishment is purposeless and needless.

Therefore the sentence imposed in Mr. Barrett's case, subsequent to the General Assembly of Virginia's lawful determination of a fair, proportionate, appropriate, and just punishment for Mr. Barrett, is disproportionate as-applied to the seriousness of the offense and thus constitutionally excessive.

CONCLUSION

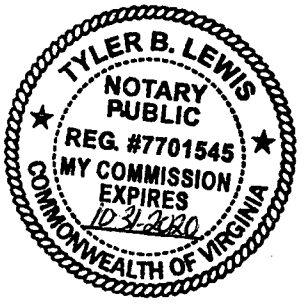
For the reasons stated above, this Petition for writ of certiorari should be granted to prevent a fundamental miscarriage of justice, (see Murray v. Carrier, 106 S.Ct. 2639, (U.S. Va. 1986) and Harris v. Reed, 109 S.Ct. 1038, U.S. Ill. 1989)), and should be reviewed considering the liberal standard in Haines v. Kerner, 92 S.Ct. 594, (1974), and in conjunction with Brecht v. Abrahamson, 113 S.Ct. 1710, (1993). The Petitioner requests of this Honorable Court to acquit him of his convictions of the two counts of aggravated sexual battery or to order any other relief it deems reasonable and appropriate.

Respectfully Submitted,

Rahmat Jevon Barrett
Green Rock Correctional Center
P.O. Box 1000
Chatham, VA 24531

State of Virginia, County of Pittsylvania, to wit: Subscribed and sworn to before me, a Notary Public, this 21st day of May, 2019.

Seal:



Notary Public

"I certify that the above notary is not a party of this action."