In The Matter:

Robert W. Dougherty,
                    (Petitioner)
)
v.   )
)
Iven T. Gilmore, Warden, Et al.,)
                    Respondents   )

<u>MOTION</u>

FOR LEAVE OF COURT TO REFILE
PETITION FOR A WRIT OF CERTIORARI
DEEMED TO BE 'NUNC PRO TUNC'

U.S. Ct. of App.; 4th Dist. No. 17-7503

Now Comes Robert W. Dougherty, petitioner in the above-referenced matter, with a Motion For Leave Of Court To Refile Petition For A Writ Of Certiorari, Deemed To Be 'Nunc Pro Tunc'.

In U.S. District Court ORDER of June 27, 2017, (Appendix 'B') Judge O'Grady. stated:

> "It appears, however, that petitioners claims are barred from federal review as a result of the Supreme Court of Virginia's finding of procedural default."

"A state court's finding of procedural default is entitled to a presumption of correctness, provided two foundational requirements are met.

First the state court must explicitly rely on the procedural ground for denying relief. Second, the state procedural rule furnished to default petitioner's claim must be an independent and adequate state ground for denying relief."

In The Supreme Court Of The United States
Dougherty v. Gilmore; Warden, Et Al.
Motion To Re-file; "Nunc Pro Tunc"
U.S. Ct of App., 4th Dist. No. 17-7503
November 14, 2018.
p. 2 of 3

"When these two requirements have been met
federal courts may not review the barred
claims absent a showing of cause and
prejudice or a fundamental miscarriage
of justice, such as actual innocence"

THIS PETITION, for which Motion To Proceed
Nunc Pro Tunc is proffered, is the SECOND
PETITION FOR CERTIORARI because the
Commonwealth of Virginia ignored its own
Rules (statutes)

Upon Virginia's issuance of Criminal Justice
Agency Offender Information Form, dated September 9, 2018,
and issued on September 10, the Commonwealth
has stated:

"Offender is not under the supervision
of the Department of Corrections Probation
& Parole"

THE THIRD TIME!
(Please! SEE copy enclosed)
Yet, the Courts have totally disregarded petitioner's
Petitions, and the statutes related, thereto.

THUS, the latest issuance of Form will necessitate
a third habeas corpus Petition, et al.

In The Supreme Court Of The United States
Dougherty v. Gilmore, Warden, Et Al.
Motion To Refile 'Nunc Pro Tunc'
U.S. Ct Of Apps., 4th Dist. No. 17-7503
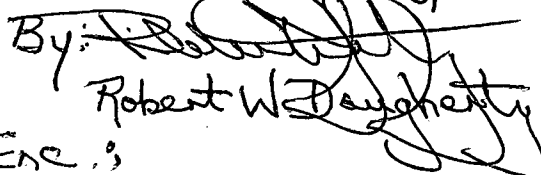November 14, 2018
P. 3 of 3

HOWEVER, the crux of the basis for petitioner being deemed to file 'Petition', out of time is predicated on the Department of Corrections; specifically Coffeewood Correctional Center, withholding the Court's advice, therefor.

In his letter to Patricia S. Connor, Clerk Of The Court; United States Court Of Appeals For The Fourth District, dated July 18, 2018, petitioner questioned his not having received advice of the Court.

Unfortunately, the Court disregarded petitioner, by virtue of response of Chief Deputy Clerk Mark J. Zarobelli; dated July 27, 2018.

PETITIONER/MOVANT prays that the Most Honorable Court will revisit the letters of July 18 and July 27, 2018, and grant his Motion For Leave Of Court To Refile 'Nunc Pro Tunc'.

Most respectfully submitted, on this fourteenth day of November, 2018;

By: _____
Robert W. Dougherty

Enc.:
cc.:

FILED: May 9, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

———————————

No. 17-7503
(1:16-cv-01392-LO-JFA)

———————————

ROBERT W. DOUGHERTY

Petitioner - Appellant

v.

IVAN T. GILMORE, Warden

Respondent - Appellee

———————————

O R D E R

———————————

The court strictly enforces the time limits for filing petitions for rehearing

and petitions for rehearing en banc in accordance with Local Rule 40(c). The

petition in this case is denied as untimely.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

FILED: April 3, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7503
(1:16-cv-01392-LO-JFA)

ROBERT W. DOUGHERTY

   Petitioner - Appellant

v.

IVAN T. GILMORE, Warden

   Respondent - Appellee

O R D E R

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Wilkinson, Judge Floyd, and

Judge Thacker.

For the Court

/s/ Patricia S. Connor, Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7503

ROBERT W. DOUGHERTY,

Petitioner - Appellant,

v.

IVAN T. GILMORE, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Liam O'Grady, District Judge. (1:16-cv-01392-LO-JFA)

Submitted: February 15, 2018   Decided: February 20, 2018

Before WILKINSON, FLOYD, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Robert W. Dougherty, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert W. Dougherty seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2012) petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Dougherty has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

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