

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BRIAN HAMPTON CLARK

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

On Petition For A Writ of Certiorari
From the Virginia Supreme Court

EMERGENCY APPLICATION SEEKING CONSTRUCTION
OF APPEAL BOND TO INCLUDE PETITION FOR CERTIORARI;
ALTERNATIVELY SEEKING ORDER TO STAY INCARCERATION
PENDING DECISION ON PETITION FOR CERTIORARI

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TABLE OF CONTENTS

| | Page |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| INDEX OF APPENDICES | iii |
| TABLE OF AUTHORITIES..... | iv |
| PRELIMINARY STATEMENT | 1 |
| STATEMENT OF APPLICATION | 2 |
| REASONS ASSERTED IN TRIAL COURT FOR RECUSAL OF TRIAL JUDGE | 3 |
| PROCEDURAL HISTORY REGARDING THE MERITS OF THIS APPLICATION | 5 |
| PROCEDURAL HISTORY REGARDING BOND | 6 |
| GROUND FOR RELIEF REQUESTED | 9 |
| 1. For Purposes of Construction of the Appeal Bond, There is No Reason to Construe an Appeal to the United States Supreme Court Differently Than An Appeal to the Court Of Appeals of Virginia and the Virginia Supreme Court | 10 |
| 2. Unless Incarceration is Stayed Pending The Outcome Of Petition for Writ of Certiorari, the Effect Would Be To Render Brian Clark's Appeal to this Court Almost Moot. | 11 |
| 3. The State Courts Decided the Issue of Brian Clark's Recusal Motion With Reference to State Law, but Not to the Cases By This Court Deciding Federal Law | 11 |
| 4. There is Nothing in the Record to Indicate that Brian Clark Is a Flight Risk or Poses Any Danger to the Public..... | 13 |
| 5. Brian Clark Has A Strong Case for Reversal of His Conviction On the Bases of a Substantial Question of Law With Grounds For Grant of a Writ of Certiorari | 13 |
| CONCLUSION | 15 |

INDEX OF APPENDICES

| | |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| APPENDIX A | Petition for Writ of Certiorari |
| APPENDIX B. | Recognizance and Appeal Bond Posted In the Circuit Court of Patrick County, Virginia |
| APPENDIX C | Corrected Motion Filed on March 30, 2020 In the Virginia Supreme Court Seeking Construction of Bond to Apply to Petition For Certiorari to the United States Supreme Court, Alternatively for Stay of Incarceration Pending the Outcome of Such Petition |
| APPENDIX D | Order by Virginia Supreme Court entered On April 15, 2020 denying the Corrected Motion set forth in Appendix C and denying As Moot a motion filed on April 14, 2020 Seeking Expedited Decision on Appendix C |

TABLE OF AUTHORITIES

| | Page(s) |
|------------------------------------------------------------------------------|---------|
| CONSTITUTION OF THE UNITED STATES OF AMERICA | |
| Fifth Amendment | 2 |
| Fourteenth Amendment | 2 |
| CASES | |
| <i>Caperton v. A. T. Massey Coal Co.</i> , 556 U.S. 868, 869 (2009) | 3, 12 |
| <i>Cooke v. United States</i> , 267 U.S. 517 (1925) | 12 |
| <i>Fisher v. Pace</i> , 336 U.S. 155 (1949) | 3 |
| <i>Julian v. United States</i> , 463 U.S.1308 (1983) | 10 |
| <i>Maryland v. King</i> , 133 S. Ct. 1, 2, (2012) | 9 |
| <i>Mayberry v. Pennsylvania</i> , 400 U.S. 455 (1971) | 12 |
| <i>Pounders v. Watson</i> , 521 U.S. 982 (1997) | 3 |
| <i>Taylor v. Hayes</i> , 418 U.S. 488 (1974) | 12 |
| <i>United Mine Workers of America v. Bagwell</i> , 512 U.S. 821 (1994) | 3 |
| <i>Warner v. United States</i> , No. 07A373 (Nov. 2007) | 10 |
| STATUTE | |
| 18 U.S.C. Section 3143 (b) | 10 |

TO THE HONORABLE JOHN G. ROBERTS, JR. CHIEF JUSTICE OF THE
UNITED STATES AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT

Preliminary Statement

On behalf of the applicant, Brian Hampton Clark (“Brian Clark”), attached to this application are the following appendices:

- (A) Appendix A, a copy of a petition for writ of certiorari, which was delivered by hand to the U.S. Supreme Court on April 15, 2020 towards filing of the same in the next few days¹.
- (B) Appendix B, which is a copy from the record of this case in the Virginia Supreme Court of a recognizance and appeal bond following the conviction of Brian Clark in this case by the Circuit Court of Patrick County, Virginia.
- (C) Appendix C, from the record of this case in the Virginia Supreme Court, is a copy of a motion, as corrected, filed by Brian Clark on March 30, 2020, seeking construction of Appendix B to apply to Brian Clark’s petition for a writ of certiorari to the United States Supreme Court to allow Brian Clark to remain free on bond pending this Court’s decision as to that petition; alternatively, for a stay of incarceration pending the outcome of such petition in this Court.

¹ Appendix A includes the petition for a writ of certiorari, which, in turn, includes the appendices to that petition. One of those appendixes is Appendix D thereof, which is the conviction order in the Circuit Court of Patrick County, Virginia. That order contained an error because it stated, (at P. A10) “The Court determined that the defendant knowingly waived trial by jury and proceeded to hear and determine the case without a jury...” At p. 24 of the transcript of a hearing on September 15, 2017, the chief judge denied a motion by Brian Clark’s counsel for a jury trial.

(D) Appendix D, an order by the Virginia Supreme Court entered on April 15, 2020 denying such motion, and denying as moot a motion filed by Brian Clark on April 14, 2020 seeking an expedited decision on his March 30, 2020 motion.

Statement of Application

Brian Clark moves for construction of a bond posted by him on his conviction in state court for contempt of court to include his being free on bond pending the outcome of a petition for a writ of certiorari to this Court, alternatively for a stay of incarceration pending such outcome. Absent relief, Brian Clark faces the requirement to report to jail by April 20, 2020 to serve a ten (10) day jail sentence.²

On March 20, 2018 he was sentenced to jail for 90 days for contempt of court with suspension on certain conditions of all but ten (10) days. (Appendix A, Exhibit D). He was taken to jail but released on a \$2,500 bond. (Appendix B) Before and during trial, and in appeals to the Court of Appeals of Virginia and the Virginia Supreme Court, Brian Clark submitted that his federal due process rights³ required the Chief Judge of the Circuit Court of Patrick County, Virginia (“the chief judge”), who tried him, to grant his motion that such judge recuse himself. (Appendix A, pp. 19-23) Citing cases by this Court, he submitted the issue was not whether the chief judge was biased against him, but whether an objective view would be that an

² Brian Clark’s counsel has conferred with the Commonwealth’s Attorney of Patrick County, Virginia, the Honorable Stephanie Brinegar Vipperman, who advised she would oppose an application to this Court seeking the stay requested in this application.

³ U.S Constitution, Fifth Amendment and Fourteenth Amendment, prohibiting loss of liberty without due process of law.

average judge in the chief judge's position would be likely to have an unconstitutional "potential for bias." *Id.*

Reasons Asserted in Trial Court for Recusal of Trial Judge

Citing cases from this Court, (including *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 869 (2009) Brian Clark set forth as grounds that his federal due process rights required recusal of the chief judge that an objective view would be that an average judge in the chief judge's position would have an unconstitutional "potential for bias"⁴ included the following undisputed facts:

- (A) That the trial judge had charged Brian Clark with contempt of court at the suggestion of another judge of that court who was respondent in a petition for a writ of prohibition filed by Brian Clark in the Virginia Supreme Court (limited to state law) seeking reversal of an order by the respondent judge restricting Brian Clark's access to the clerk's office to less than that allowed to the public at large, even though Brian Clark had never been convicted of any felony, any misdemeanor involving moral turpitude or anything involving violence or threat of violence and without prior notice to Brian Clark or any opportunity for a hearing.⁵

Noting that Brian Clark had raised an issue of being denied a hearing, the respondent judge wrote the chief judge attaching emails stated to be

⁴ Appendix A, pp. 15-17 While contempt cases have been held to be *sui generis* and not "criminal prosecutions" under the Sixth Amendment (see *United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994)), a defendant in a contempt case is entitled to due process of law. *Fisher v. Pace*, 336 U.S. 155 (1949); see also, *Pounders v. Watson*, 521 U.S. 982 (1997)

⁵ Appendix A, pp 3-3-5

from Brian Clark that were more than a year old, which were contemptuous of public officials, including judges.⁶ The respondent judge suggested that if the chief judge thought well of it, he could charge Brian Clark with contempt of court based on such emails and “give him “the due process he demands from the Virginia Supreme Court.”⁷

In response to such letter from the respondent judge, the chief judge charged Brian Clark with contempt of court. The respondent judge then included in his answer in the Virginia Supreme Court to Brian Clark’s petition for a writ of prohibition his letter to the chief judge the emails attached, and the contempt charge and asked the Virginia Supreme Court to stay decision on the petition for a writ of prohibition pending the outcome of the contempt charge.

Brian Clark moved that the chief judge recuse himself on grounds of Brian Clark’s federal due process rights, citing cases decided by this Court that the issue was whether a judge in the chief judge’s position would have an unconstitutional. “potential for bias.”⁸ Included in his grounds for such a potential for bias, Brian Clark cited that the outcome of the contempt charge would like affect his pending petition for a writ of prohibition in a higher court and a separate federal lawsuit he filed that sought – solely under

⁶ Appendix A, p. 4

⁷ Appendix A, p. 5

⁸ Appendix A, p. 6

federal law, a declaratory judgment that the respondent's order as to Brian Clark's access to the clerk's office was unenforceable.⁹

(B) At a hearing on the recusal motion, when Brian Clark's counsel argued that the contempt charge should be dismissed on public policy grounds because the charge would not have been brought if Brian Clark had not filed a case in a higher court, the chief judge stated,

"Well, the matter raised was your client didn't have a change to have a hearing, which is what your client wanted."¹⁰

(C) The chief judge had issued a written opinion in a matter involving child visitation in which the chief judge had stated that Brian Clark had "paranoid" views.¹¹

a. The chief judge (along with all the other judges of the Circuit Court of Patrick County) had recused himself from Brian Clark's divorce case.¹²

Procedural History Relative to the Merits of this Application

The chief judge denied Brian Clark's motion for recusal, stating that he could act impartially in trying him.¹³ The Court of Appeals of Virginia denied an appeal based on a *per curiam* holding, citing state law, that the issue was whether Brian Clark had proven that the trial judge was biased.¹⁴ That court did not address Brian Clark's contention under federal law regarding his federal due process rights that

⁹ *Id.*

¹⁰ Trans. September 15, 2017 hearing, p. 7; Appendix A, p. 7

¹¹ Appendix A, p.12.

¹² Appendix A, p. 13.

¹³ Appendix A, p.7, 21, Transcript of September 15, 2017 hearing, pp. 21-24

¹⁴ p A. 7, Appendix C to Appendix A.

the issue was whether an objective view would indicate that a judge in the trial judge's position would have unconstitutional "potential for bias" other than to note that was his contention.¹⁵ Brian Clark moved to rehear, citing that the *per curiam* opinion had addressed only state law and not his basis for recusal under federal law based on this Court's holdings.¹⁶ A three judge panel of the Court of Appeals of Virginia denied Brian Clark's appeal, citing as grounds the prior ruling of that court (that cited only state law on the issue of recusal).¹⁷ Brian Clark appealed to the Virginia Supreme Court, which refused an appeal stating that court found no reversible error.¹⁸ The Virginia Supreme Court denied a petition to rehear.¹⁹ The deadline to file a petition for a writ of certiorari is June 18, 2020. On April 15, 2020, Brian Clark, by counsel, sent by courier to the U.S. Supreme Court for filing a petition for a writ of certiorari.

Procedural History Regarding Bond

Appendix B, at Page 3, contained, *inter alia*, the following language prepared by the appropriate authority or authorities for Clark to sign in order for him to be released pending appeal:

I understand That I may ... leave the Commonwealth of Virginia until my case, and any appeals in my case, are finished."²⁰

¹⁵ P. A 6, Appendix C to Appendix A

¹⁶ "Appendix A, pp. 21, 22

¹⁷ Appendix B to Appendix A

¹⁸ Appendix A to Appendix A

¹⁹ Appendix E to Appendix A

²⁰ Appendix B, p.3

The reference to Brian Clark being able to leave the Commonwealth of Virginia was explained in Appendix B to be limited to leaving the state only for work purposes.

The only reference to appeal in Appendix B is to “appeals.”

Appendix C included a transcript (Exhibit 3 to Appendix C) of a hearing on February 18, 2020, before the Circuit Court of Patrick County, Virginia. The Virginia Supreme Court on January 28, 2020, had denied Brian Clark’s appeal. On February 11, 2020, Brian Clark had filed a petition to rehear, which was pending at the time of the hearing before the Circuit Court of Patrick County, Virginia on February 18, 2020. The transcript of that hearing shows that the chief judge of the circuit court ruled on how to construe the extent of the appeal bond as follows:

How about if I continue the bond until you ask for your rehearing with the Supreme Court? But after that, he’s got 30 days to turn in if they turn you down, which would give you enough time to ask the U.S. Supreme Court to tell me to do something different.²¹

On March 20, 2020, the Virginia Supreme Court denied Brian Clark’s petition to rehear. Pursuant to the chief judge’s ruling on February 18, 2020, on March 24, 2020, a deputy clerk of the Circuit Court of Patrick County, Virginia issued a commitment order (Exhibit 4 to “Appendix C”) which, at p. 2, stated that Brian Clark was to report to jail by April 20, 2020. On March 26, 2020, Brian Clark filed a motion in the Virginia Supreme Court asking the Virginia Supreme Court to

²¹ Appendix C, Exhibit 3, pp 3-4

construe the bond to allow Brian Clark to remain free on bond pending the outcome of a planned timely filing of a writ of certiorari to the U.S. Supreme “Court.”²²

By mistake, Brian Clark’s counsel did not, prior to filing the said motion on March 26, 2020; consult with the Commonwealth’s Attorney of Patrick County, Virginia to determine her position regarding such motion.²³ Realizing such mistake, Brian Clark’s counsel conferred with the Commonwealth’s Attorney, who advised she would oppose such motion but would not file a written opposition.²⁴ Brian Clark’s counsel then filed a corrected motion on March 30, 2020 seeking construction of the bond to include appeal to the U. S Supreme Court, which contained a statement that the Commonwealth’s Attorney opposed such motion but would not file a memorandum in opposition.²⁵

On April 14, 2020, Brian Clark’s counsel filed a motion seeking an expedited decision on the corrected motion filed on March 30, 2020.²⁶

On April 15, 2020, the Virginia Supreme Court denied Brian Clark’s corrected motion seeking construction of his appeal bond to allow him to remain free on bond pending petition for certiorari to be filed in this Court; alternatively to suspend incarceration pending a decision by this Court on petition for certiorari.²⁷

²² This is referenced in Appendix C

²³ Appendix C, p. 1

²⁴ Appendix C, p. 2

²⁵ Id.

²⁶ Referenced in Appendix d

²⁷ Appendix D

In that order, the Virginia Supreme Court denied as moot Brian Clark's April 14, 2020 motion seeking expedited decision on his March 30, 2020 corrected motion.²⁸

As a result of the foregoing, Brian Clark, by counsel, in this application seeks an emergency order by this Court to construe the bond posted by Brian Clark on March 20, 2018 to extend to the outcome of a petition for a writ of certiorari, currently in process to be completed in the next few days; alternatively that this Court order stay of incarceration pending the outcome of his petition for certiorari.

Absent relief by this Court of this application, Brian Clark, under the order entered by the clerk's office of the circuit court, based on the trial court's February 18, 2020 ruling has a requirement by the end of the business day on Monday, April 20, 2020 to report to the Patrick County, Virginia jail to complete service of a ten (10) jail sentence²⁹

Grounds for the Relief Requested

An individual Justice is authorized to issue a stay "for a reasonable time to enable the party aggrieved to obtain a writ of certiorari." 28 U.S. C. Section 2101 (f) Such action is proper if there is "(1) 'a reasonable probability' that the Court will grant certiorari, (2) 'a fair prospect' that the Court will then reverse the decision below, and (3) 'a likelihood that irreparable harm [will result from the denial of a

²⁸ Id.

²⁹ Exhibit 4 to Appendix C. Brian Clark, by counsel, has sent a separate motion to the Clerk's office of the Circuit Court of Patrick County, Virginia seeking delay of incarceration on the independent grounds of the COVID virus. The Commonwealth's Attorney of Patrick County, Virginia advised Brian Clark's counsel by email that she will oppose that motion on grounds she has consulted with law enforcement who have indicated they can appropriately incarcerate Brian Clark despite the virus.

stay].” *Maryland v. King*, 133 S. Ct. 1, 2, (2012) Roberts, C.J. in chambers). Similarly, any judicial officer – including a Circuit Justice – “shall order” release on bail pending disposition of a certiorari petition, so long as (1) the applicant is not likely to flee or pose any danger, and (ii) his appeal presents a “{substantial question of law” that, if decided in his favor, is “likely to result in ... reversal” or “a new trial.” 18 U.S.C. Section 3143 (b). Explicating that standard, Justices have looked to whether there exists “a reasonable probability that four Justices are likely to vote to grant certiorari.” *Julian v. United States*, 463 U.S.1308 (1983) (Rehnquist, C.J.) see also U.S. Mann I Opp. 12, *Warner v United States*, 463 U.S. 1308 (1983 (Rehnquist, C.J..) see also U.S. Mem. In Opp. `12, *Warner v. United States*, No. 07A373 (Nov. 2007) (objection to bail, as “there is no reasonable probability that this Court will grant certiorari”)³⁰.

In this case, Brian Clark is highly unlikely to flee and poses no danger, his appeal submits a substantial question of law that if decided in his favor would result in reversal of his conviction, and there is a reasonable probability that certiorari may be granted.

1. For Purposes of Construction of the Appeal Bond, There is No Reason to Construe An Appeal to the U.S. Supreme Court Differently Than An Appeal to the Court of Appeals of Virginia and the Virginia Supreme Court

As set forth herein above, the Circuit Court of Patrick County, Virginia has construed the appeal bond by Brian Clark (posted with security by a bail bondman)

³⁰ The language in this part of this application is taken from a successful application to this Court by Governor Robert McDonnell of Virginia who successfully appealed to this Court from a conviction and who successfully applied to this Court for a stay of incarceration pending his appeal.

to extend to Brian Clark's appeal to the Court of Appeals of Virginia, his petition to rehear denial of appeal by the Court of Appeals of Virginia, his appeal to the Virginia Supreme Court, his petition in the Virginia Supreme Court seeking reversal of that court's denial of his appeal, but held that such appeal would extend to an appeal to this Court only if this Court decided to extend such appeal to a petition for writ of certiorari. The Virginia Supreme Court on April 15, 2020 denied a pleading filed by Brian Clark on March 30, 2020 seeking to construe the appeal as applying to a petition for writ of certiorari filed in this Court.

Brian Clark, by counsel, submits there is no logical reason to apply a pending bond to all appeals in state court, excepting only an appeal to this Court. Because the bond papers contained no reference to anything other than "appeals," it should follow that "appeals" should include all appeals, including to this Court.

2. Unless Incarceration is Stayed Pending the Outcome of Petition for Writ of Certiorari, the Effect Would Be to Render Brian Clark's Appeal to this Court Almost Moot.

If the relief sought in this application is denied, and if Brian Clark, as a result, is required to report to jail by the end of the day on April 20, 2020, then he will have completed his ten (10) days of jail time by the time this Court will have made a decision on his petition for a writ of *certiorari*.

3. The State Courts Decided the Issue of Brian Clark's Recusal Motion With Reference to State Law, but Not to the Cases By This Court Deciding Federal Law

In the decisions regarding Brian Clark's recusal motion, the Chief Judge of the Circuit Court of Patrick County, Virginia stated that he would be impartial, but that did not address the decisions of this Court that the issue is not whether a judge

would be biased, but whether an objective view that a judge in the position of the judge asked to recuse himself would have an unconstitutional “potential for bias.”

In the *per curiam* opinion by the Court of Appeals of Virginia denying Clark’s appeal to that court (the only opinion with any detail by any of the appellate state courts), the Virginia Court of Appeals upheld the chief judge’s denial of Brian Clark’s recusal motion, citing only state law cases.

In *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 869 (2009), this Court cited *Mayberry v. Pennsylvania*, 400 U.S. 455 (1971), stating, in part, the following:

In reiterating that the rule that "a defendant in criminal contempt proceedings should be [tried] before a judge other than the one reviled by the contemnor," (citing *Mayberry, supra*....., **rests on the relationship between the judge and the defendant (citation)**), the Court noted that **the objective inquiry is not whether the judge is actually biased, but whether the average judge in his position is likely to be neutral or there is an unconstitutional "potential for bias."** (citation).

-- [Emphasis supplied]³¹

There has been no rationale set forth by the Virginia courts that have made decisions in this case that have stated in any detail why Brian Clark’s has been mistaken in his submission of fact, law, and argument in favor of his contention that that his **federal** due process rights required that the chief judge recuse himself in this case. Brian Clark, by counsel, submits that this constitutes

³¹ See also *Cooke v. United States*, 267 U.S. 517 (1925); *Taylor v. Hayes*, 418 U.S. 488 (1974);

grounds that incarceration should be stayed pending this Court's consideration of what he is in the process of filing as a petition for a writ of certiorari.

4. There is Nothing in the Record To Indicate That Brian Clark is A Flight Risk or Poses Any Danger to the Public

There has not been any suggestion that Brian Clark is a flight risk. There is adequate protection in a \$2,500 secured appeal bond. There is no reason to conclude that he would subject himself, at a minimum, to a full 90 day jail sentence and liability to a bail bondsman for \$2,500 to avoid a ten (10) day jail sentence. Prior to his conviction in this case, Brian Clark had a completely clean criminal record.³²

5. Brian Clark Has a Strong Case For Reversal of His Conviction on the Basis of a Substantial Question of Law With Grounds for Grant of a Writ of Certiorari

As set forth in Appendix A (which has been delivered for filing in this Court as a petition for a writ of certiorari), the facts of this case involve matters that are unprecedented in this country. In addition to the fact that the chief judge who tried Brian Clark had previously recused himself from Brian Clark's divorce case (along with the other judges of the Circuit Court of Patrick County, Virginia), and aside from the fact that the chief judge had previously written an opinion in a child visitation case that Brian Clark had "paranoid" views, the record was clear from unconverted facts that a material reason the chief judge filed the contempt charge against Brian Clark (based on email evidence over a year old that impugned judges including the chief judge) was in reaction to Brian Clark's having filed a legal proceeding in a higher court joining one of the judges of the Circuit Court of Patrick

³² Appendix A, p. 2

County, Virginia as respondent because that judge had restricted Brian Clark's access to the clerk's office to less than that available to the general public, without any prior notice, without any opportunity to be heard, and despite the fact that Brian Clark had never been convicted of any felony, misdemeanor involving moral turpitude, or anything involving violence or threat of violence. Further, as set forth in detail in Appendix A, one of the purposes of the contempt charge was to set forth a defense in the Virginia Supreme Court of a grounds to stay Brian Clark's petition for an order for that higher court to reverse the respondent judge's order restricting his access to the clerk's office to less than that accorded the general public. Further, the chief judge stated as to this issue that Brian Clark had complained of not having a hearing. Under these circumstances, there was a compelling record that an objective view would be that an average judge in the place of the chief judge would have an unconstitutional "potential for bias" so that Brian Clark's federal due process rights were breached by the chief judge's order denying Brian Clark's recusal motion.

Brian Clark asks this Court to consider Appendix A in its entirety as setting forth grounds to grant this application for emergency relief to allow him to remain free on bond pending this Court's decision on what he has delivered to be filed as a petition for certiorari.

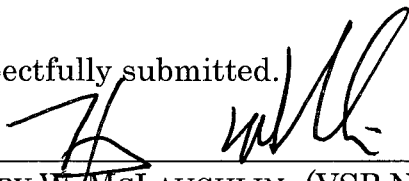
Conclusion

Wherefore, Brian Clark asks this Court to grant his application construction

of a bond posted by him on his conviction in state court for contempt of court to include his being free on bond pending the outcome of a petition for a writ of certiorari

April 16, 2020

Respectfully submitted.



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CERTIFICATE OF SERVICE

As required by Supreme Court Rule 29.5, the undersigned, Henry W. McLaughlin, a member of the bar of the U.S. Supreme Court, hereby certify that a one copy of the foregoing Application was served on April 16, 2020 via electronic mail and by Federal Express and by regular mail to the following:

The Honorable Stephanie Brinegar Vipperman,
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Henry W. McLaughlin

APPENDIX A

Petition for Writ of Certiorari

No. _____

In The
Supreme Court of the United States

BRIAN HAMPTON CLARK,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The petitioner, Brian Hampton Clark (“Brian Clark”) seeks reversal of a conviction of contempt of court entered by the Honorable David V. Williams, chief judge of the Circuit Court of Patrick County, Virginia (“Judge Williams”) on grounds Judge Williams erred in denying Brian Clark’s motion for recusal of Judge Williams in this case. Brian Clark contends that Judge Williams’ denial of such recusal motion denied Brian Clark his due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

The questions for consideration by this Court are as follows:

1. Whether the fact that the contempt charge in this case was openly brought in response to Brian Clark’s petition for a writ of prohibition in the Virginia Supreme Court joining as respondent one of the judges of the Circuit Court of Patrick County, Virginia (“the trial court”) required that the Honorable David V. Williams (“Judge Williams”), chief judge of the trial court, to comply with Brian Clark’s federal due process rights, to grant Brian Clark’s motion that Judge Williams recuse himself?
2. Whether the totality of the circumstances indicated that an average judge in the position of Judge Williams would have a “potential for bias” so as to require his recusal to comply with Brian Clark’s federal due process rights, where (a) Judge Williams had previously issued a written

opinion stating that Brian Clark had “paranoid” views; (b) along with other judges of the trial court, Judge Williams had recused himself from Brian Clark’s divorce case; (c) Judge Williams would not have issued the contempt charge except that Judge Clark suggested he do so in response to Brian Clark filing an action in a higher court joining Judge Clark as respondent; (d) the outcome of the contempt charge in this case pending when Brian Clark moved for recusal at that time carried a manifest potential to affect the petition for prohibition (solely on state law grounds) then pending in the Virginia Supreme Court, and a case Brian Clark filed in federal court also challenging (solely on federal law grounds) Judge Clark’s order, issued without notice or opportunity for hearing conditioning Brian Clark’s access to the clerk’s office of the trial court on conditions not imposed on the general public; and (f) Judge Williams, in discussing linkage between the case Brian Clark filed in the Virginia Supreme Court and the contempt charge stated, “Well, the matter raised was your client didn’t have a chance to have a hearing, which is what your client wanted.”?

TABLE OF CONTENTS

| | |
|-----------------------------------------------------------|---|
| QUESTIONS PRESENTED | i |
| TABLE OF AUTHORITIES | v |
| OPINIONS AND ORDERS BELOW | 1 |
| JURISDICTION | 2 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | 2 |
| STATEMENT OF THE CASE | 2 |
| REASONS FOR GRANTING THE PETITION | 9 |

I. THE PROSECUTION OF BRIAN CLARK WAS MANIFESTLY INTENDED TO PUNISH HIM FOR BRINGING AN ACTION IN A HIGHER COURT AND IN FEDERAL COURT CHALLENGING AN ORDER ENTERED WITHOUT ANY NOTICE TO HIM OR OPPORTUNITY TO BE HEARD BY THE TRIAL COURT ON THE PRETEXT THAT THE CONTEMPT CASE WOULD PROVIDE HIM THE NOTICE AND HEARING HE COMPLAINED TO A HIGHER COURT OF HAVING BEEN DENIED. 9

II. BECAUSE OF THE COMBINATION OF (A) WHAT IS SET FORTH IN (I) ABOVE; (B) PRIOR RECUSAL OF ALL OF THE JUDGES OF THE TRIAL COURT IN ANOTHER CASE ON LESSER GROUNDS; (C) JUDGE WILLIAMS' PRIOR JUDICIAL STATEMENT THAT BRIAN CLARK HELD "PARANOID" VIEWS; AND (D) THE LONG PASSAGE

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| OF TIME SINCE THE EMAILS AT ISSUE IN THIS CASE AND THE FILING OF THE CHARGE, JUDGE WILLIAMS WAS REQUIRED BY BRIAN CLARK’S FEDERAL DUE PROCESS RIGHTS TO GRANT HIS RECUSAL MOTION..... | 12 |
| III. BRIAN CLARK PROPERLY COMPLIED WITH APPLICABLE RULES TO PRESERVE HIS FEDERAL DUE PROCESS CONSTITUTIONAL RIGHTS AT EVERY STAGE OF THE PROCEEDINGS OF THIS CASE IN VIRGINIA COURTS. | 19 |
| CONCLUSION..... | 24 |
| APPENDIX: | |
| APPENDIX A: January 28, 2020 Order of the Virginia Supreme Court Refusing Appeal | A1 |
| APPENDIX B: July 2, 2019 Order of the Court of Appeals of Virginia Denying Appeal | A2 |
| APPENDIX C: February 25, 2019 Order of Court of Appeals of Virginia Denying Appeal | A3 |
| APPENDIX D: March 20, 2018 Conviction Order of Circuit Court of Patrick County, Virginia..... | A10 |
| APPENDIX E: March 21, 2020 Order of Virginia Supreme Court Denying Petition to Rehear | A12 |
| APPENDIX F: U.S. CONST. amend. V and U.S. CONST. amend. XIX..... | A13 |

TABLE OF AUTHORITIES

CASES

| | |
|------------------------------------------------------------------------------------------------------------------------------|------------|
| <i>United Mine Workers of America v. Bagwell</i> , 512 U.S. 821 (1994) | 15 |
| <i>Fisher v. Pace</i> , 336 U.S. 155 (1949) | 15 |
| <i>Pounders v. Watson</i> , 521 U.S. 982 (1997)..... | 15 |
| <i>Cooke v. United States</i> , 267 U.S. 517 (1925) | 15, 19, 22 |
| <i>Mayberry v. Pennsylvania</i> , 400 U.S. 455 (1971) | 16, 19, 22 |
| <i>Taylor v. Hayes</i> , 418 U.S. 488 (1974) | 16, 19, 22 |
| <i>Caperton v. A. T. Massey Coal Co.</i> , 556 U.S. 868 (2009) | 17, 19, 22 |
| <i>Clark v. Coleman, et al</i> ; U.S. District Court, Western District of Virginia; Case No. 4: 17-cv-00045-MFU-RSB | 4, 9, 18 |

CONSTITUTIONAL AND STATUTORY PROVISIONS

| | |
|-----------------------------------|-----------|
| U.S. CONST. amend. V..... | 2, 12, 19 |
| U.S. CONST. amend. XIV, § 1 | 2, 12, 19 |

PETITION FOR A WRIT OF CERTIORARI

Petitioner Brian Hampton Clark (“Brian Clark”) submits this petition for a writ of certiorari to review the order of the Virginia Supreme Court refusing his appeal from the refusal by the Court of Appeals of Virginia to grant him an appeal from his conviction for contempt of court – with a jail sentence – by the Circuit Court of Patrick County, Virginia; and the order by the Virginia Supreme Court denying his petition to rehear that court’s refusal of his appeal.

OPINIONS AND ORDERS BELOW

Included as exhibits to this petition are (a) the order for conviction of Brian Clark by the Circuit Court of Patrick County, Virginia; (b) an order by one of the judges of the Court of Appeals of Virginia denying Brian Clark’s appeal; (c) a further order by the Court of Appeals of Virginia denying Brian Clark’s petition to rehear denial of his appeal; (d) order by the Virginia Supreme Court denying Brian Clark’s appeal to that court; and (e) order by the Virginia Supreme Court denying Brian Clark’s petition to rehear denial of appeal. None of the foregoing specifically addressed Brian Clark’s contention that denial of his recusal motion violated his federal due process rights because those rights required recusal where an objection view would indicate that an average judge in Judge Williams’ position would likely have an unconstitutional “potential for bias.” Of the above, only Appendix C contained any opinion. Appendix C addressed Brian Clark’s recusal motion only as to Virginia State law, but did not address Brian Clark’s assertion of his

federal due process rights as grounds for recusal of Judge Williams.

JURISDICTION

The Virginia Supreme Court entered an order on January 28, 2020 denying Brian Clark's appeal and entered an order denying his petition to rehear on March 21, 2020. This Court's jurisdiction to consider this petition for certiorari rests on 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution and the Fourteenth Amendment to the United States Constitution. (Appendix F)

STATEMENT OF THE CASE

Undisputed facts in this case are unprecedented in this country.

Prior to Brian Clark's conviction of contempt of court in this case, he had never been convicted of any felony, any misdemeanor involving moral turpitude, or anything involving violence.¹ He had been

¹ A certified copy of the entire record of the case in which Brian Clark filed a petition for a writ of certiorari in the Virginia Supreme Court ("the prohibition case") was made a part of the record in the hearing on motions, including recusal motions, heard prior to evidence at the trial of this case in the trial court on March 20, 2018 at p. 7 of the transcript of the trial in the trial court. (The entire record of the petition for writ of prohibition case, as thus entered into the record of this case, is

acquitted by the Honorable Willard Greer (“Judge Greer”), a different judge of the Circuit Court of Patrick County, Virginia (“the trial court”), of an earlier charge of contempt of court.²

Although Brian Clark had a clean criminal record, he was considered in Patrick County, Virginia (“Patrick County”) to be a malcontent. In a domestic case involving child visitation, Judge Williams had referred to him as having “paranoid” beliefs.³ All of the judges of the 21st Judicial Circuit of Virginia had recused themselves from his divorce case.⁴ While riding as a passenger in a car driven by his sister, he had been stopped in Patrick County by a deputy sheriff. After Brian Clark filed a 42 U.S.C. Section 1983 lawsuit (“Brian Clark’s federal lawsuit”) that included challenge of that traffic stop, a jury rendered a verdict in favor of the deputy sheriff. The U.S. District Court of the Western District of Virginia granted a motion filed under Rule 58 of the Federal Rules of Civil Procedure; set

referred to herein after as “Rec., pet. for proh.”) As introduced into the record in this case, Brian Clark’s petition for a writ of certiorari at pp. 43-46 contained Brian Clark’s declaration under penalty of perjury that , except for the original of certain emails, those facts were true and correct to the best of his knowledge, information and belief. Therefore, he swore to the fact set forth at pp. 10-11 that he had never been convicted of any felony, misdemeanor involving moral turpitude, or anything involving violence or threat of physical violence. (For purposes of the record, the petition for a writ of prohibition filed by Brian Clark in the Virginia Supreme Court and made a part of the record in this case as stated herein, is referred to hereafter as “the pet. for proh”)

² Pet. for proh., p. 6 ¶ 10

³ Pet. for proh. Exh. J, p. 2 of letter opinion by Judge Williams.

⁴ P. 1, Brian Clark’s Recusal Motion, filed September 12, 2017

aside the jury verdict; and entered a judgment in favor of Brian Clark against the deputy sheriff for nominal damages and attorney's fees. (*Clark v. Coleman, et al*; U.S. District Court, Western District of Virginia; Case No. 4: 17-cv-00045-MFU-RSB, Order entered on March 24, 2020 Dkt No. 156)⁵

One of the judges of the Circuit Court of Patrick County, Virginia, the Honorable Martin F. Clark Jr. ("Judge Clark"), (no kin to Brian Clark) without any opportunity for Brian Clark to be heard, or any prior notice at all, had issued an oral order banning Brian Clark from the clerk's office ("the clerk's office") of the trial court⁶. After Brian Clark retained his present legal counsel, Judge Clark modified his order to allow Brian Clark access to the clerk's office if accompanied by his lawyer.⁷ In response to written objection by Brian Clark's legal counsel and after Brian Clark was acquitted of contempt of court by Judge Greer, Judge Clark modified his order a second time to allow Brian Clark to enter the clerk's office on 24 hour notice,⁸ but would not allow him access to the clerk's office on the same terms available to the general public. *Id.*

On grounds such modified order put him in a status of second class citizenship, Brian Clark filed a petition for a writ of prohibition in the Virginia Supreme Court, joining Judge Clark as respondent⁹, and filed his federal lawsuit, joining the Patrick

⁵ This case is herein after referred to as "Clark v. Coleman et al."

⁶ Pet. for proh., pp. 4-5, ¶, ¶ 1-2, 8

⁷ Pet. for proh. P 5, ¶ 3

⁸ Pet. for proh. pp 5, n. 3, 7, ¶ 11, Exh. J

⁹ Pet. for proh.

County sheriff as one of the defendants, seeking in one of the counts of that case a declaratory judgment that the sheriff could not enforce Judge Clark's order limiting Brian Clark's access to the clerk's office to less than that available to the general public – on grounds, *inter alia*, that such order violated Brian Clark's federal rights of free speech, due process, and equal treatment under the law.¹⁰

As respondent in the case brought by Brian Clark seeking a writ of prohibition, Judge Clark wrote Judge Williams, enclosing emails over a year old, which stated they were from Brian Clark and which spoke contemptuously about local public officials, including judges.¹¹ Judge Clark wrote Judge Williams suggesting that if Judge Williams thought well of it, he could charge Brian Clark with contempt of court on the basis of such emails and “give him [Brian Clark] the due process he demands from the Virginia Supreme Court.” *Id.* In response, Judge Williams issued a contempt of court charge in the trial court against Brian Clark based on the emails attached to Judge Clark's letter to him.¹²

Judge Clark, by counsel, then filed a responsive pleading in the Virginia Supreme Court attaching his letter to Judge Williams, the emails enclosed with that letter, and a request that the Virginia Supreme Court stay Brian Clark's case seeking a

¹⁰ Clark v. Coleman et als. (Dkt No. 1)

¹¹ Rec. of Proh. case, Letter from Judge Clark to Judge Williams, attached as Exh. to Judge Clark's answer to Pet. for proh.

¹² July 25, 2017 charge of contempt of court in the trial court in this case.

writ of prohibition pending the outcome of the contempt charge issued by Judge Williams against Brian Clark.¹³

While the petition for a writ of prohibition and Brian Clark's federal lawsuit were pending, Brian Clark filed defense motions in this case which included a motion seeking recusal of Judge Williams and all of the judges of the 21st Judicial Circuit.¹⁴ In that motion, Brian Clark argued that any objective observer would be likely to conclude that any acquittal of him as to the pending contempt charge could be construed in favor of his petition for a writ of prohibition in the Virginia Supreme Court and in favor of his federal lawsuit as to that count seeking a declaratory judgment that the sheriff could not enforce Judge Clark's order restricting Brian Clark's access to the clerk's office to less than that allowed the general public. *Id.* Brian Clark's motion for recusal cited case law by this Court to the effect that the issue was not whether a judge was in fact biased against a defendant, but whether the average judge in such judge's position would have an unconstitutional "potential for bias." *Id.* Brian Clark's motion for recusal also cited case law of this Court to the effect that there were increased grounds for recusal in contempt of court cases with the passage of time. *Id.*

On September 15, 2017, Judge Williams heard the recusal motion. (Tr. September 15, 2020 hearing in trial court) When Brian Clark's counsel pointed

¹³ Rec. of Proh. case, Answer by Judge Clark to pet. for proh.

¹⁴ Pp. 1-5, Motion 1 (Motion for Recusal) filed in trial court on September 12, 2017.

out that Judge Clark had suggested a charge of contempt of court in response to Brian Clark's petition in the state's highest court joining Judge Clark as respondent, Judge Williams stated,

“Well, the matter raised was your client didn't have a change to have a hearing, which is what your client wanted.”¹⁵

Counsel for Brian Clark contended that such statement at such hearing by Judge Williams was additional grounds for Judge Williams to recuse himself.¹⁶ Brian Clark's counsel argued that “the law says if an independent observer concluded that there is a potential for biased [sic] then there should be recusal.”¹⁷

Judge Williams stated that a judge must avoid impropriety or the appearance of impropriety¹⁸ and further stated he could be impartial¹⁹ and denied the motion for recusal.²⁰ Brian Clark renewed his recusal motion after being served with the contempt charge on March 20, 2019, with his renewed motion adding as grounds Judge Williams statement on September 15, 2017 that, “Well, the matter raised was your client didn't have a change to have a

¹⁵ Trans. September 15, 2017 hearing, p. 7

¹⁶ “Well, Your Honor, I submit that the state ... that that statement is added grounds for the motion for recusal. *Id.*

¹⁷ *Id.* p. 18.

¹⁸ *Id.* p. 21

¹⁹ *Id.* p. 23

²⁰ *Id.* p. 24

hearing, which is what your client wanted?²¹ Judge Williams denied the renewed recusal motion.²²

After a trial²³ Judge Williams found Brian Clark guilty of contempt of court and sentenced him to 90 days in jail, with all but 10 days suspended, based on conditions that included compliance with Judge Clark's aforesaid order, as modified, placing the aforesaid conditions on Brian Clark's access to the clerk's office.²⁴

The Court of Appeals of Virginia²⁵ and the Virginia Supreme Court²⁶ denied appeal, from which Brian Clark files this petition for certiorari.

Throughout this case, Brian Clark contended that the refusal of Judge Williams to recuse himself violated Brian Clark's federal due process rights, a position stated explicitly in the trial court, on appeal to the Court of Appeals of Virginia (which denied appeal) and to the Virginia Supreme Court (which refused an appeal and denied a petition to rehear).²⁷ This petition asks this Court to grant a writ of *certiorari* and reverse Brian Clark's conviction with

²¹ Brian Clark's renewed March 2018 motion, submitted after he was served with the contempt charge on the day of trial and before the trial commenced, pp. 5-6, 8-9 Trans. March 20, 2019 Trial in trial court.

²² Id. p. 9

²³ Trans. March 20, 2018 trial.

²⁴ Appendix D.

²⁵ Appendix B, Appendix C

²⁶ Appendix A, Appendix E

²⁷ This is set forth in detail in Section III of the argument that follows.

remand of this case for appointment of a new judge with a new trial.

Brian Clark's petition for a writ of prohibition was denied by the Virginia Supreme Court on grounds the issue on prohibition was not whether an order should have been issued, but whether the trial court had jurisdiction to do so²⁸. After the trial of this case, on August 16, 2018, that part of Brian Clark's federal lawsuit seeking a declaratory judgment finding Judge Clark's order unenforceable by the sheriff was dismissed on a motion for summary judgment on grounds that the *Rooker-Feldman* doctrine barred the U.S. District Court from overruling the decision by the Virginia Supreme Court in denying the petition for a writ of prohibition. (Clark v. Coleman et al., Dkt. No. 89)

REASONS FOR GRANTING THE PETITION

I. THE PROSECUTION OF BRIAN CLARK WAS MANIFESTLY INTENDED TO PUNISH HIM FOR BRINGING AN ACTION IN A HIGHER COURT AND IN FEDERAL COURT CHALLENGING AN ORDER ENTERED WITHOUT ANY NOTICE TO HIM OR OPPORTUNITY TO BE HEARD BY THE TRIAL COURT ON THE PRETEXT THAT THE CONTEMPT CASE WOULD PROVIDE HIM THE NOTICE AND HEARING HE COMPLAINED TO A HIGHER COURT OF HAVING BEEN DENIED.

While Brian Clark contends in this petition that the prosecution in this case was to punish him for joining a judge of the trial court as respondent in a

²⁸ Rec. of Prob. Case, order by Virginia Supreme Court

case he filed in a higher court, Brian Clark does not contend that such was done in any devious way. What Judge Clark and Judge Williams did, which Brian Clark contends was to punish him for going to a higher court, was done completely on the public record. After being served with Brian Clark's petition for a writ of prohibition, Judge Clark wrote the trial court's chief judge, Judge Williams, attaching emails more than a year old, and stated that if Judge Williams thought well of it, he could charge Brian Clark with contempt of court because of those emails and "give him the due process he demands from the Virginia Supreme Court."

In stating that Brian Clark was demanding due process from the Virginia Supreme Court, Judge Clark referred to Brian Clark's petition for a writ of prohibition, which had set forth facts not in dispute that Judge Clark had banned him from the clerk's office by means of an oral order with no prior notice to Brian Clark and with no opportunity to be heard, and despite the fact Brian Clark had a clean criminal record with no evidence that he had threatened violence. When Brian Clark's lawyer wrote Judge Clark to seek reversal of Judge Clark's order, Judge Clark confirmed such order, and, although modifying it to allow Brian Clark entry into the clerk's office with his lawyer or on 24 hour notice, Judge Clark did not allow Brian Clark him the same right of entry to the clerk's office permitted to the general public.

In responding to letters from Brian Clark's lawyer's request for reversal of his orders as to Brian Clark's entry into the clerk's office, Judge Clark did

not reference the emails he later sent to Judge Williams, so that, on the record, it does not appear that Brian Clark's counsel was put on notice that if he filed a petition for a writ of certiorari in the Virginia Supreme Court, he would thereby risk prosecution of Brian Clark based on emails that were not cited by Judge Clark as grounds for his order denying Brian Clark the same rights for entry into the clerk's office granted to members of the general public.

In reaction to Brian Clark's petition for a writ of prohibition, Judge Clark did not offer him a hearing for consideration of the emails as "the due process he demands" for a determination of whether he would be allowed the same access to the clerk's office as members of the general public. Rather, after being served as respondent in Brian Clark's petition for a writ of prohibition, Judge Clark raised the emails for the first time in a letter to Judge Williams stating that if Judge Williams thought well of it, he could charge Brian Clark with contempt of court based on the emails (more than a year old) and thereby give Brian Clark the due process he demanded from the Virginia Supreme Court. However, this contempt case could not have given Brian Clark due process he requested, because, as Judge Williams later acknowledged, Brian Clark never asked to be subjected with a charge carrying a jail sentence, rather asked for due process on whether he would have the same rights to entry of the clerk's office as available to the general public. Judge Williams' contempt charge served on Brian Clark, initiated at the suggestion of Judge Clark, was a classic case of "look what you made me do." This was reinforced by

Judge Williams's statement during a hearing in September 2017, in which Judge Williams characterized Judge Clark's letter to him as follows:

“Well, the matter raised was your client didn't have a change to have a hearing, which is what your client wanted.”

II. BECAUSE OF THE COMBINATION OF (A) WHAT IS SET FORTH IN (I) ABOVE; (B) PRIOR RECUSAL OF ALL OF THE JUDGES OF THE TRIAL COURT IN ANOTHER CASE ON LESSER GROUNDS; (C) JUDGE WILLIAMS' PRIOR JUDICIAL STATEMENT THAT BRIAN CLARK HELD “PARANOID” VIEWS; AND (D) THE LONG PASSAGE OF TIME SINCE THE EMAILS AT ISSUE IN THIS CASE AND THE FILING OF THE CHARGE, JUDGE WILLIAMS WAS REQUIRED BY BRIAN CLARK'S FEDERAL DUE PROCESS RIGHTS TO GRANT HIS RECUSAL MOTION

Leaving aside everything else in the record of this case, on the grounds alone that Judge Williams issued the contempt charge in this case to meet the suggestion of Judge Clark seeking, in effect, punishment of Brian Clark for going over Judge Clark to Virginia's highest court. Brian Clark's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution required Judge Williams to grant Brian Clark's recusal motion. However, there were additional grounds requiring recusal to guarantee such due process rights:

- Judge Williams had previously issued a written opinion stating that Brian Clark held “paranoid” views.

- Judge Williams, and all of the judges of the trial court, had previously recused themselves from the Brian Clark's divorce case.

- Even if the contempt charge were not construed as a form of punishment for Brian Clark filing his petition for a writ of prohibition in the Virginia Supreme Court, when Brian Clark filed his recusal motion, and when it was heard and first denied in September 2017, there were pending in the Virginia Supreme Court and in the U.S. District Court for the Western District of Virginia two cases brought by Brian Clark challenging Judge Clark's orders granting Brian Clark less access to the clerk's office than allowed to the general public. As set forth in Brian Clark's recusal motion, when he filed such motion, it appeared that if he were acquitted in the contempt case then pending, such could support his case challenging Judge Clark's order as to conditions for his entry into the clerk's office.

Further, Judge Clark had made the contempt case an issue in the case as to the petition seeking a writ of prohibition then pending in the Virginia Supreme Court. Because Judge Clark, by counsel, had made the contempt case an issue as to the outcome of a case in which Judge Clark was a party, Judge Williams should have, on that grounds alone, recused himself, because he had acted on Judge Clark's suggestion to issue the contempt charge against Brian Clark on the open proposal that such would be relevant to Brian Clark's petition to a higher court.

- For the reasons set forth above, an objective view of this case was that a average judge in Judge Williams' position would be likely to have an unconstitutional "potential for bias."

- The contempt charge in this case based on a letter from Judge Williams dated July 25, 2017, which referenced email stated to have been from Brian Clark, including an email dated February 14, 2016 which, in part, referenced local judges who had recused themselves (which included all of the judges of the 21st Judicial Circuit, of which Judge Williams was chief judge) and stated

"... I therefore request copies of each ones Oath of Office, and the surety bond information and BSB license numbers.

I WILL tie in their Motives with BB&T and others involving the theft of hundreds of thousands of Dollars"

Because the contempt charge against Brian Clark alleged he sent an email more than 17 months before the charge was brought that included language indicating that judges including Judge Williams had been corrupt, the passage of time alone required that Judge Williams grant Brian Clark's recusal motion.

Brian Clark, by counsel, submits the following case law in support of the five contentions set forth above.²⁹

In a case involving due process rights in contempt proceedings³⁰, *Cooke v. United States*, 267 U.S. 517 (1925) Chief Justice Taft of this Court stated the following:

“The power of contempt which a judge must have and exercise in protecting the due and orderly administration of justice and in maintaining the authority and dignity of the court is most important and indispensable. But its exercise is a delicate one and care is needed to avoid arbitrary or oppressive conclusions. The rule of caution is more mandatory where the contempt charged has in it the element of personal criticism or attack upon the judge. The judge must banish the slightest personal impulse to reprisal, but he should not bend backwards and injure the authority of the court by too great leniency. The substitution of another judge would avoid either tendency but it is not always possible. Of course, where acts of contempt are palpably aggravated by a

²⁹ The following argument tracks the argument on this issue in Brian Clark’s petition for appeal to the Virginia Supreme Court.

³⁰ While contempt cases have been held to be *sui generis* and not “criminal prosecutions” under the Sixth Amendment (see *United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994)), a defendant in a contempt case is entitled to due process of law. *Fisher v. Pace*, 336 U.S. 155 (1949); see also, *Pounders v. Watson*, 521 U.S. 982 (1997)

personal attack upon the judge in order to drive the judge out of the case for ulterior reasons, the scheme should not be permitted to succeed. But attempts of this kind are rare. All of such cases, however, present difficult questions for the judge. All we can say upon the whole matter is that where conditions do not make it impracticable, or where the delay may not injure public or private right, a judge called upon to act in a case of contempt by personal attack upon him, may, without flinching from his duty, properly ask that one of his fellow judges take his place. *Cornish v. United States*, 299 F. 283, 285; *Toledo Newspaper Co. v. United States*, 237 F. 986, 988. The case before us is one in which the issue between the judge and the parties had come to involve marked personal feeling that did not make for an impartial and calm judicial consideration and conclusion, as the statement of the proceedings abundantly shows."

In *Mayberry v. Pennsylvania*, 400 U.S. 455 (1971), a *pro se* defendant engaged in personal abuse of the trial judge. This Court appeared to leave open the option of the trial judge to act immediately and summarily to quell contempt by citing and convicting an offender, thus empowering the judge to keep the trial going, but indicated that if the judge waited until the conclusion of the trial he should defer to another judge.

In *Taylor v. Hayes*, 418 U.S. 488 (1974), Justice White's opinion for this Court stated that because "marked personal feelings were present on both

sides” and because “unseemly conduct [had] left personal stings” another judge should have been substituted for the trial judge for the purpose of finally disposing of contempt charges in that case.

In *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 869 (2009), this Court cited *Mayberry, supra*, stating, in part, the following:

In reiterating that the rule that “a defendant in criminal contempt proceedings should be [tried] before a judge other than the one reviled by the contemnor,” *Mayberry v. Pennsylvania*, rests on the relationship between the judge and the defendant (citation), the Court noted that the objective inquiry is not whether the judge is actually biased, but whether the average judge in his position is likely to be neutral or there is an unconstitutional “potential for bias.” (citation).

Brian Clark, by counsel, submits it is not necessary for a defendant charged with contempt to show -- in a motion seeking recusal -- that the judge assigned the trial of the contempt case is prejudiced against him. It should be sufficient to justify recusal if matters related to or surrounding the contempt case indicate an objective inquiry would demonstrate that the average judge in the position of the judge assigned the case would have an unconstitutional “potential for bias.” (See *Caperton, supra*.) That was the argument made on Clark’s behalf before Judge Williams, before the Court of Appeals of Virginia, and before the Virginia Supreme Court.

In this case, any objective observer would be likely to conclude that any acquittal of the contempt charges pending against Brian Clark in this case when he first filed a recusal motion in September 2017, could be construed in favor of his then pending petition in the Virginia Supreme Court seeking a writ of prohibition (in which he stated he was solely invoking his rights under state law)³¹ and in a complaint he had filed (solely invoking rights under federal law) in the case of *Clark v. Coleman, et al*; U.S. District Court, Western District of Virginia; Case No. 4: 17-cv-00045-MFU-RSB, in which Brian Clark, *inter alia*, challenged the 24 hour advance notice requirement imposed by Judge Clark for him to visit the clerk's office unattended by his counsel on federal grounds.³²

The foregoing, combined with (a) Judge Williams' previous holding that Brian Clark held "paranoid" views' (b) Judge Williams' prior recusal from Brian Clark's divorce case; (c) the record in this case indicating that the contempt case was filed

³¹ The Virginia Supreme Court denied Brian Clark's petition for a writ of prohibition on grounds the issue was not whether Judge Clark had erred or not erred, but whether he acted within his jurisdiction. By necessary inference, the Virginia Supreme Court indicated Judge Clark acted within his jurisdiction as to restriction on Brian Clark's entry into the clerk's office.

³² The U.S. District Court granted summary judgment as to that part of Brian Clark's federal claim. Brian Clark remains within the time allowed to appeal that decision to the Fourth Circuit Court of Appeals, because the final order in that case (reversing a jury verdict against Brian Clark and granting him nominal damages and attorney's fees because of a traffic stop by a deputy sheriff of Patrick County, Virginia) was entered on March 24, 2020 (Dkt No. 156)

against Brian Clark as punishment for his filing a petition for a writ of prohibition in the Virginia Supreme Court joining Judge Clark as respondent; and (d) Judge Williams' statement as to such subject that "Well, the matter raised was your client didn't have a change to have a hearing, which is what your client wanted" --taken together, established that an average judge in Judge Williams' position would be likely to have an unconstitutional "potential for bias."

Brian Clark submits that this motion should be held to meet the test recited above in due process case decisions by this Court to justify recusal as sought in this motion on federal due process grounds required to vindicate Brian Clark's due process rights under the Fifth and Fourteenth Amendment to the U.S. Constitution. This is particularly so because of the statement by Judge Williams during the oral argument on September 15, 2017 that "...the matter raised was your client didn't have a chance to have a hearing, which is what your client wanted."

III. BRIAN CLARK PROPERLY COMPLIED WITH APPLICABLE RULES TO PRESERVE HIS FEDERAL DUE PROCESS CONSTITUTIONAL RIGHTS AT EVERY STAGE OF THE PROCEEDINGS OF THIS CASE IN VIRGINIA COURTS

Brian Clark's recusal motion filed on September 12, 2017, specifically raised his federal due process rights as grounds to support his recusal motion and cited the *Cooke, supra.*, *Mayberry, supra.*, *Taylor, supra.* and *Caperton cases.*

Brian Clark's renewed recusal motion filed on March 20, 2020 after he was served repeated the grounds set forth in his September 2017 recusal motion and added as grounds for recusal Judge Williams statement during the hearing on September 15, 2017 that "Well, the matter raised was your client didn't have a change to have a hearing, which is what your client wanted."

In his petition for appeal to the Court of Appeals of Virginia, Brian Clark repeated the federal due process arguments above ³³

One of the judges of the Court of Appeals of Virginia, in denying Brian Clark's petition for appeal, on February 25, 2019 held, *inter alia*, that the petition for appeal had not complied with Rule 5A:12(c)(5) of the Rules of the Virginia Supreme Court as to other issues raised by Brian Clark on appeal, because that court held that, as to those other assignments of error, Brian Clark had not submitted sufficient principles of law and authorities on the record to develop Brian Clark's grounds for appeal as to those other issues.³⁴ However, that February 19, 2018 decision (issued *per curiam*) did not make any finding that Brian Clark had not sufficiently set forth principles of law and authorities on the record as to that part of his appeal contending that Judge Williams erred in denying Brian Clark's motion that he recuse himself³⁵ (which is the issue in this petition for certiorari).

³³ Petition for appeal to the Court of Appeals of Virginia, pp. 5-6, 21-24

³⁴ Appendix C

³⁵ Appendix C, pp. A6-7

The one judge *per curium* decision by the Court of Appeals of Virginia held against Brian Clark's recusal motion citing Virginia state law, holding that, in support of a motion for recusal, Brian Clark had the burden of proving actual bias by Judge Williams. (February 25, 2019 *per curium* opinion, pp. 3-4) Such *per curium* opinion made no reference to Brian Clark's grounds for recusal citing his federal due process rights under the decisions of this Court (recited herein above and in his motions in the trial court and in his petition for appeal to the Court of Appeals of Virginia) that a judge should recuse himself if an objective observer would find that an average judge in his position would have an unconstitutional "potential for bias." Rather, that *per curium* opinion held that it was sufficient to deny the motion for recusal that Judge Williams, in ruling on such motion, stated that he would be unbiased. (*Id.* p. 4).

Brian Clark filed a petition for rehearing that stated, in part, at p, 2, that the *per curium* decision (referenced at the "Denial Order" by the one judge acting for the Court of Appeals)³⁶ was in error because

"It held against Clark's contention of error by the Circuit Court of Patrick County, Virginia ("the trial court") refusing Clark's motion for judge recusal because (a) the Denial Order order appeared based solely on state law, yet Clark also sought judge recusal on federal due process grounds,

³⁶ Appendix C

mandating recusal for a “potential for bias” so that the trial court had no discretion to deny recusal....”

After oral argument, three judges of the Virginia Court of Appeals, on behalf of that court, on July 2, 2019, issued an order denying Brian Clark’s petition for appeal “for the reasons previously stated in the order entered by this Court on February 25, 2019,” (Appendix B) thereby reiterating the grounds solely on state law for upholding Judge Williams’ denial of Brian Clark’s motion that he recuse himself.

On August 2, 2019, Brian Clark filed a petition for appeal in the Virginia Supreme Court contending, in part, that Judge Williams’ refusal to recuse himself was unconstitutional under federal law.³⁷ That petition for appeal contained the arguments set forth herein above regarding Brian Clark’s contention that the refusal of Judge Williams to recuse himself deprived Brian Clark of his federal due process rights.

On January 28, 2020, the Virginia Supreme Court issued an order refusing Brian Clark’s appeal stating that “the Court is of the opinion there is no reversible error in the judged complained of.”³⁸

On February 11, 2020, Clark filed a petition to rehear in the Virginia Supreme Court which cited the decisions by this Court in *Cooke, supra.*, *Mayberry, supra.*, *Taylor, supra.*, and *Caperton, supra.* and contended that the refusal of Judge

³⁷ Petition for Appeal to Virginia Supreme Court, pp 7-8 26-30)

³⁸ Appendix A

Williams to recuse himself breached Brian Clark's federal due process rights.³⁹

On March 20, 2020, the Virginia Supreme Court entered an order stating, "On consideration of the petition of the appellant to set aside the judgment rendered herein on January 28, 2020 and grant a rehearing thereof, the prayer of the said petition is denied." ⁴⁰

As set forth above, at every state of this case in the applicable state courts, Brian Clark contended his federal due process rights required that Judge Williams recuse himself on grounds including that an objective observer would conclude that an average judge in Judge Williams position would have an unconstitutional "potential for bias." The contention was overruled by Judge Williams, the Court of Appeals of Virginia, and the Virginia Supreme Court, but none of those courts – except for the contention that Judge Williams was not, in fact, biased, addressed Brian Clark's contention that an objective view would be that an average judge in Judge Williams' position would have an unconstitutional "potential for bias."

For the reasons set forth herein above, Brian Clark submits he has preserved his claim of error for consideration by this Court on petition for certiorari.

³⁹ Petition to Rehear to Virginia Supreme Court, pp. 7-9

⁴⁰ Appendix D

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

Respectfully submitted.

HENRY W. McLAUGHLIN (VSB No. 07105)
LAW OFFICE OF HENRY McLAUGHLIN, P.C.
707 East Main Street, Suite 1050
Richmond, Virginia 23219
(804) 205-9020; fax (804) 205-9029
henry@mclaughlinvalaw.com

Counsel for Petitioner

April 15, 2020

No. _____

In The
Supreme Court of the United States

BRIAN HAMPTON CLARK,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Virginia

APPENDIX

HENRY W. McLAUGHLIN (VSB No. 07105)
THE LAW OFFICE OF HENRY McLAUGHLIN, P.C.
707 EAST MAIN STREET, SUITE 1050
RICHMOND, VIRGINIA 23219
Tel. (804) 205-9020
Facsimile (804) 205-9029
Email: henry@mclaughlinlaw.com

Counsel of Record for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

APPENDIX:

APPENDIX A: January 28, 2020 Order of the
Virginia Supreme Court Refusing Appeal A1

APPENDIX B: July 2, 2019 Order of the Court of
Appeals of Virginia Denying Appeal A2

APPENDIX C: February 25, 2019 Order of Court of
Appeals of Virginia Denying Appeal A3

APPENDIX D: March 20, 2018 Conviction Order of
Circuit Court of Patrick County, Virginia..... A10

APPENDIX E: March 21, 2020 Order of Virginia
Supreme Court Denying Petition to Rehear A12

APPENDIX F: U.S. CONST. amend. V and U.S.
CONST. amend. XIX..... A13

VIRGINIA:

In the Supreme Court of Virginia held at the
Supreme Court Building in the City of Richmond on
Tuesday the 28th day of January, 2020.

Record No. 191006
Court of Appeals No. 0637-18-3

Brian Hampton Clark, Appellant,
against
Commonwealth of Virginia, Appellee.

From the Court of Appeals of Virginia

Upon review of the record in this case and
consideration of the argument submitted in support
of and in opposition to the granting of an appeal, the
Court refuses the petition for appeal.

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

A Copy,

Teste: Douglas B. Robelen, Clerk

By: /s/ Deputy Clerk

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday the
2nd day of July, 2019.

Record No. 0637-18-3
Circuit Court No. CR17000709-00

Brian Hampton Clark, Appellant,
against
Commonwealth of Virginia, Appellee.

From the Circuit Court of Patrick County
Before Judges Chafin, Russell and Senior
Judge Clements

For the reasons previously stated in the order entered by this Court on February 25, 2019, the petition for appeal in this case hereby is denied.

This order shall be certified to the trial court.

A Copy,

Teste: Cynthia L. McCoy, Clerk

By: /s/ Deputy Clerk

VIRGINIA:

In the Court of Appeals of Virginia on Monday the
25th of day of February, 2019.

Record No. 0637-18-3
Circuit Court No. CR17000709-00

Brian Hampton Clark, Appellant,
against
Commonwealth of Virginia, Appellee.

From the Circuit Court of Patrick County

Per Curiam

This petition for appeal has been reviewed by a judge of this Court, to whom it was referred pursuant to Code § 17.1-407(C), and is denied for the following reasons:

Appellant was convicted of contempt of court in violation of Code § 18.2-456. He includes eight assignments of error in his petition for appeal.

I., IV., V., VI., and VIII. Appellant contends that the trial court erred by denying his motions “to dismiss the charges against him on public policy grounds,” denying his motions “seeking dismissal of the charges in this case on grounds of double jeopardy,” denying his motion “seeking recusal of the Commonwealth’s Attorney,” “excluding from evidence expert testimony by John Bryan Kasarda,” and finding the evidence sufficient to convict him of contempt.

Appellant did not comply with Rule 5A:12(c)(5); the petition for appeal does not contain sufficient

principles of law and authorities or the record to fully develop appellant's arguments pertaining to these assignments of error. "If the parties believed that the circuit court erred, it was their duty to present that error to us with legal authority to support their contention." Fadness v. Fadness, 52 Va. App. 833, 851 (2008). This Court "will not search the record for errors in order to interpret the appellant's contention and correct deficiencies in a [petition for appeal]." Yap v. Commonwealth, 49 Va. App. 622, 629 (2007) (quoting Buchanan v. Buchanan, 14 Va. App. 53, 56 (1992)). "Nor is it this Court's 'function to comb through the record ... in order to ferret-out for ourselves the validity of [appellant's] claims.'" Burke v. Catawba Hosp., 59 Va. App. 828, 838 (2012) (quoting Fitzgerald v. Bass, 6 Va. App. 38, 56 n.7 (1988) (*en banc*)).

"A court of review is entitled to have the issues clearly defined and to be cited pertinent authority. The appellate court is not a depository in which the appellant may dump the burden of argument and research." Mitchell v. Commonwealth, 60 Va. App. 349, 352 (2012) (quoting Jones v. Commonwealth, 51 Va. App. 730, 734-35 (2008)). "An appellant who asserts that a trial court's ruling was erroneous has an obligation to state clearly to the appellate court the grounds for that assertion. A cross-reference to arguments made at trial is insufficient." Jenkins v. Commonwealth, 244 Va. 445, 461 (1992) (quoting Spencer v. Commonwealth, 240 Va. 78, 99 (1990)). We find that these defects are significant. See Jay v. Commonwealth, 275 Va. 5 LO, 520 (2008) ("the Court of Appeals should ... consider whether any failure to strictly adhere to the requirements of [the Rules of Court] is insignificant ..."); cf. Rule 5A:1A(a)

(authorizing dismissal of appeal or “such other penalty” deemed appropriate). Because appellant failed to develop these arguments, we need not consider these assignments of error. Atkins v. Commonwealth, 57 Va. App. 2, 20 (2010).

II. Appellant contends that the trial court erred by denying his motions “to dismiss the charges against him as barred by a one-year statute of limitation in” Code§ 19.2-8.

“Judicial interpretation of a statute is a question of law that this Court reviews *de novo*.” Dunne v. Commonwealth, 66 Va. App. 24,29 (2016). “We view the facts in the light most favorable to the Commonwealth.” Sandidge v. Commonwealth, 67 Va. App. 150, 156 (2016).

After finding that appellant “over the course of many months, harassed, intimidated, threatened and harangued the staff” of the Patrick County Circuit Court Clerk’s Office, Judge Martin F. Clark, Jr. prohibited appellant from entering the courthouse without counsel. Judge Clark later allowed appellant to enter the courthouse alone, provided that he gave twenty-four hours’ notice before his arrival. Thereafter, appellant filed a writ of prohibition with the Supreme Court of Virginia “demanding a hearing on these matters.”¹ Judge Clark contacted Chief Judge David V. Williams and provided Judge Williams with e-mails the court had received from appellant. On July 25, 2017, after having reviewed the materials, the circuit court issued a rule to show cause why appellant should not be fined or imprisoned for contempt of court. The rule referenced three e-mails, dated February 14,

¹ The Supreme Court refused the writ on December 4, 2017.

2016, February 22, 2016, and February 25, 2016-the dates of the alleged offenses.

Appellant argues that the one-year statute of limitation in Code § 19.2-8 barred a prosecution for contempt because the e-mails were sent more than a year before the trial court issued the show cause order. Code § 19.2-8 provides, in pertinent part: “A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefor. . . .”

“As contempt proceedings are not ‘criminal prosecutions,’ statutes of limitation for crimes do not apply to bar them.” Porter v. Commonwealth, 65 Va. App. 467, 477 (2015). “[W]e recognize that ‘[w]hile contempt may be an offense against the law and subject to appropriate punishment, certain it is that since the foundation of our government proceedings to punish such offenses have been regarded as *sui generis* and not ‘criminal prosecutions’ within the Sixth Amendment or common understanding.” Id. (quoting Myers v. United States, 264 U.S. 95, 104-05 (1924)). Furthermore, “even if statutes of limitation for crimes applied to contempt proceedings,” a violation of Code § 18.2-456 “is not classified as a misdemeanor and thus, Code § 19.2-8 does not apply.” Id. Accordingly, the trial court did not err in ruling that the contempt charges against appellant pursuant to Code § 18.2-456 was not time-barred.

III. Appellant contends that the trial court erred by denying his “motion for recusal.” He asserts that the trial judge should have recused himself because of “potential for bias” considering that appellant had filed the writ of prohibition in the Supreme Court and had filed a complaint in federal court

challenging the trial court's restrictions on appellant's access to the clerk's office.

According to Canon 3(A) of the Canons of Judicial Conduct, "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned" Our Supreme Court has held that "in making the recusal decision, the judge must be guided not only by the true state of his impartiality, but also by the public perception of his fairness, in order that public confidence in the integrity of the judiciary may be maintained." Prieto v. Commonwealth, 283 Va. 149, 163 (2012) (quoting Wilson v. Commonwealth, 272 Va. 19, 28 (2006)). "Exactly when a judge's impartiality might reasonably be called into question is a determination to be made by that judge in the exercise of his or her sound discretion." Davis v. Commonwealth, 21 Va. App. 587, 591 (1996). The party moving for recusal "has the burden of proving the judge's bias or prejudice." Commonwealth v. Jackson, 267 Va. 226, 229 (2004). And, "[i]n the absence of proof of actual bias, recusal is properly within the discretion of the trial judge." Id. "We employ an abuse-of-discretion standard to review recusal decisions." Prieto, 283 Va. at 163.

Here, the trial judge specifically found that he could "be very fair and impartial" with appellant and "give him a fair and impartial trial on" the "only real" issues before the court, namely: "were these emails sent by [appellant] and if so, were they contemptuous." Appellant has not demonstrated any actual bias or prejudice. Nothing in the record suggests that the judge abused his discretion by not recusing himself.

VII. Appellant argues that the trial court “erred in admitting into evidence over defense objection an affidavit in response to a” subpoena *duces tecum*.

“[T]he determination of the admissibility of relevant evidence is within the sound discretion of the trial court subject to the test of abuse of that discretion.” Atkins v. Commonwealth, 68 Va. App. 1, 7 (2017) (quoting Adjei v. Commonwealth, 63 Va. App. 727, 737 (2014)). The Commonwealth introduced a ‘document prepared by JiffySnap IT Solution, LLC showing that appellant’s contact information was associated with the e-mail account from which the contemptuous e-mails were sent. The record also included an affidavit signed by Clifford C. Seals, Jr., the authorized custodian of JiffySnap records. The affidavit notes that the records “were kept in the course of regularly conducted business activity and were prepared, or received, as a regular practice and custom.” Appellant argues that Code § 8.01-390.3 and Virginia Rule of Evidence 2:902 “did not provide grounds for admission of an affidavit obtained by subpoena *duc[er]s tecum* because the affidavit did not state that the information was from business records.”

In any proceeding where a business record is material and otherwise admissible, authentication of the record and the foundation required by subdivision (6) of Rule 2:803 of the Rules of Supreme Court of Virginia may be laid by (i) witness testimony, (ii) a certification of the authenticity of and foundation for the record made by the custodian of such record or

other qualified witness either by affidavit or by declaration pursuant to § 8.01-4.3, or (iii) a combination of witness testimony and a certification.

Code§ 8.01-390.3. Rule 2:902 addresses the self-authentication of business records. Here, the affidavit expressly declared that the JiffySnap record was prepared in the ordinary course of business and the affidavit certified the authenticity of the document, as permitted by Code§ 8.01-390.3. Accordingly, we find no abuse of discretion with the trial court's admission of the evidence.

This order is final for purposes of appeal unless, within fourteen days from the date of this order, there are further proceedings pursuant to Code§ 17.1-407(D) and Rule 5A:15(a) or 5A:15A(a), as appropriate. If appellant files a demand for consideration by a three-judge panel, pursuant to those rules the demand shall include a statement identifying how this order is in error.

The Commonwealth shall recover of the appellant the costs in the trial court.

This Court's records reflect that Henry W. McLaughlin, Esquire, is counsel of record for appellant in this matter.

A Copy,

Teste: Cynthia L. McCoy, Clerk

By: /s/ Deputy Clerk

VIRGINIA: IN THE CIRCUIT COURT OF THE
COUNTY OF PATRICK

On the 20th day of March, 2018

PRESENT: The Honorable David V. Williams,
Judge.

COMMONWEALTH

Vs: #17000709-00
BRIAN HAMPTON CLARK

SS#: xxx-xx-xxxx

DATE OF BIRTH: 07-28-1970

HEARING DATE: 03-20-2018

HEARING TYPE: Trial by Court

ATTORNEY FOR THE COMMONWEALTH:

Stephanie Vipperman

ATTORNEY FOR THE DEFENDANT: Henry

McLaughlin (retained)

ORIGINAL CHARGE DESCRIPTION: Contempt of
Court (M)

STATUTE VIOLATION CHARGED: 18.2-456,
19.2-11

OFFENSE DESCRIPTION IF CONVICTED:

Contempt of Court (M)

ALLEGED OFFENSE DATE: 02-14-2016, 02-22-
2016, 02-25-2016

COMMENCING STATUS OF DEFENDANT:

Released on Bail

This day came the Attorney for the
Commonwealth and Brian Hampton Clark in person,
who stands charged with contempt of court, and
came also Henry McLaughlin, his attorney.

Thereupon the defendant was arraigned and after being advised by his counsel pleaded not guilty, which plea was tendered by the defendant in person. The Court determined that the defendant knowingly, voluntarily and intelligently waived trial by jury and proceeded to hear and determine the case without a jury, and having heard evidence and argument of counsel, finds the defendant guilty of contempt of court, as charged in the capias. The defendant shall be confined in a local correctional facility for ninety (90) days, the execution of all except ten (10) days of which sentence is suspended upon defendant's good behavior for two (2) years and defendant shall pay a fine of \$250.00 and the costs of this hearing. It is further ordered that the defendant shall comply with the courthouse safety plan as described in letter dated October 25, 2016, and also in letter dated May 5, 2017 from Judge Martin F. Clark, Jr. to Henry McLaughlin and filed as a part of the record herein.

Upon the verbal noting of an appeal in open court, the Court set an appeal bond in the amount of \$2,500.00.

The Court certifies that at all times during the trial of this case the defendant was personally present with his attorney.

And the defendant was remanded to jail.

The caption of the order is made a part of the order of the Court.

ENTER: 5/9/2018

/s/ Judge

VIRGINIA:

In the Supreme Court of Virginia held at the
Supreme Court Building in the City of Richmond on
Tuesday the 28th day of January, 2020.

Record No. 191006
Court of Appeals No. 0637-18-3

Brian Hampton Clark, Appellant,
against
Commonwealth of Virginia, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant
to set aside the judgment rendered herein on
January 28, 2020 and grant a rehearing thereof, the
prayer of the said petition is denied.

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

A Copy,

Teste: Douglas B. Robelen, Clerk

By: /s/ Deputy Clerk

U.S. Constitution Amendment V

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 offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution Amendment XIV, 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 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.

APPENDIX B.

**Recognizance and Appeal Bond Posted
In the Circuit Court of Patrick County, Virginia**

RECOGNIZANCE

Va. Code §§ 9.1-185, 9.1-185.8, 19.2-123, 19.2-143, 19.2-258

AUGUST 20, 2018 AT 4:00 PM

HEARING DATE AND TIME

PATRICK
COURT - CITY OR COUNTY

P.O. BOX 148, STUART, VA 24171
COURT - STREET ADDRESS

☒ Commonwealth of Virginia

v.

CLARK, BRIAN HAMPTON

DEPENDANT - NAME (LAST, FIRST, MIDDLE)

[]

1351 FAIRMONT DRIVE, BASSETT, VA 24055 (336) 465-3212

DEPENDANT - RESIDENTIAL ADDRESS AND TELEPHONE NUMBER

Mailing address: ☒ Same as above OR []

I certify that this document contains my current mailing address.

CHARGES(s):

| Offense Tracking Number | Virginia Crime Code (For Administrative Use Only) | Code Section | Case Number |
|-------------------------|------------------------------------------------------|-------------------|---------------|
| 141CR1700070900 | CON-3281-S9 | 18.2-456; 19.2-11 | CR17000709-00 |
| | Description: CONTEMPT OF COURT | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |

[] Addendum listing additional charges is attached and incorporated.

I, THE DEFENDANT, as a condition of my release from custody, by signing this form, promise to appear in court on the date and time noted above. If this date, time or place is changed for any reason by any court or judge, I also promise to appear as so directed. I understand that I ☒ may [] may not leave the Commonwealth of Virginia until my case, and any appeals in my case, are finished. I further agree to keep the peace and be of good behavior and agree to the conditions listed below.

DEFENDANT MAY LEAVE COMMONWEALTH FOR WORK PURPOSES ONLY APPEAL ORALLY NOTED IN
OPEN COURT UPON SENTENCING 03/20/17 SENTENCE APPEALED: 90 DAYS, ALL SUSPENDED
EXCEPT 10 DAYS UPON 2 YEARS GOOD BEHAVIOR; COMPLY WITH JUDGE CLARK'S ORDER CONCERNING
ACCESS TO COURTHOUSE; \$250.00 FINE; COSTS (EXECUTION OF SENTENCE POSTPONED BY JUDGE
WITH THE EXCEPTION OF COMPLIANCE WITH ACCESS TO COURTHOUSE)

I, THE DEFENDANT, UNDERSTAND THAT: (1) If I fail to obey the conditions, I may be ARRESTED and, bail may be revoked; (2) if I fail to appear, the court may try and convict me in my absence; (3) if I fail to appear in the Circuit Court on a misdemeanor charge, I give up my right to a jury trial; (4) failure to appear is a separate crime; (5) I must promptly notify the court of any change in my mailing address or where I live while this case is pending.


SIGNATURE OF DEFENDANT

3/20/18
DATE

[X] Commonwealth of Virginia

v.

CLARK, BRIAN HAMPT

DEFENDANT - NAME (LAST, FIRST, MIDDLE)

[]

BOND AS CONDITION OF RECOGNIZANCE: By signing this bond, the defendant and each person signing as surety agree that they and their heirs and assigns owe the sum of \$ 2,500.00 to the county or city in which the case is prosecuted.

This debt is: [] UNSECURED [X] SECURED BY [] Cash [] Surety Bail Bondsman [X] Property Bail Bondsman [] Other Solvent Surety(ies) whose ability to pay this debt is measured by the value of real or personal property which they own and who further swear or affirm that the value of such property (after subtracting debts that are liens against the property such as mortgages, unpaid judgments, and unpaid tax liens) equals or exceeds the amount of this bond. Each person who signs this bond agrees to the bond terms and any attached applicable terms are incorporated by reference.

The defendant and each person who signs the bond as a surety give up any homestead exemption as to the debt of this bond and understand that the court may force the sale of ANY property owned by the defendant or any surety to pay the debt if the defendant fails to obey all of the terms and conditions of the recognizance. Each person who signs this bond promises to keep the title and possession of all property used to measure the ability to pay the debt of this bond in his or her name and not use such property as collateral for any loan or debt to allow liens against such property which would prevent the payment of the debt of the bond. The terms and conditions of the recognizance are incorporated by reference, and each person who signs the form agrees to obey all of the terms and conditions on both sides of this form. If the defendant obeys all of the conditions listed in the recognizance, the debt of this bond is void. If the defendant fails to obey the condition of appearance of the recognizance, the people who signed the bond may be required to pay the amount of the bond.

BAIL BONDSMAN INFORMATION

DWIGHT HODGES

NAME OF BAIL BONDSMAN

99-218884

BAIL BONDSMAN DCIR LICENSE NO.

DWIGHT HODGES BAIL BONDS

NAME OF BONDING COMPANY

PO BOX 734/1060 RAKES ROAD ROCKY MOUNT, VA

ADDRESS OF BAIL BONDSMAN/BONDING COMPANY 24151

(540) 243-4433

TELEPHONE NO. OF BAIL BONDSMAN/BONDING COMPANY

OTHER SURETY(IES) INFORMATION

NAME OF SURETY

DWIGHT HODGES

(540) 243-4433

P.O. BOX 734

ROCKY MOUNT, VA 24151

ADDRESS

SIGNATURE OF SURETY

TELEPHONE NO.

SIGNATURE OF SURETY

TELEPHONE NO.

([X] check if applicable) The defendant is released into the custody of the person/organization named below upon completion of this part. By signing this part, the custodian named below agrees to take custody of the defendant and see that the defendant obeys the conditions listed above. If the defendant disappears or does not obey every condition, the custodian promises to notify the court at once.

DORIS WALKER

337 WALKER FARM LANE, PATRICK SPIRINGS, VA 24133

CUSTODIAN - NAME AND ADDRESS

SIGNATURE OF CUSTODIAN

RIGHT TO APPEAL:

You have the right to appeal the amount of this bond. You also have the right to appeal any condition of release. If you want to appeal, contact a lawyer or the court listed on the other side of this form.

ADMITTANCE TO BAIL: After I explained the conditions and warnings contained in this document, the defendant and each person signing as surety swore or affirmed to fulfill the recognizance and, if any, the bond. I order the defendant released on the conditions listed in this document.

[] CLERK [] MAGISTRATE [] JUDGE

JURISDICTION (IF DIFFERENT FROM COURT)

DATE AND TIME

3/20/2018 21:27 275

PATRICK CTY CIRCL

PAGE 01/02

B**RECOGNIZANCE**

Va. Code §§ 9.1-185, 9.1-185.8, 19.2-123, 19.2-143, 9.2-258

AUGUST 20, 2018 AT 4:00 PM

HEARING DATE AND TIME

PATRICK

P.O. BOX 148, STUART, VA 24171

COURT - CITY OR COUNTY

COURT - STREET ADDRESS

☒ Commonwealth of Virginia

v.

CLARK, BRIAN HAMPTON

DEPENDANT - NAME (LAST, FIRST, MIDDLE)

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DEPENDANT - RESIDENTIAL ADDRESS AND TELEPHONE NUMBER

Mailing address: ☒ Same as above OR ☐

I certify that this document contains my current mailing address.

CHARGE(S):

| Offense Tracking Number | Virginia Crime Code (For Administrative Use Only) | Code Section | Case Number |
|-------------------------|---------------------------------------------------|-------------------|---------------|
| 141CR1700070900 | CON-3281-S | 18.2-456; 19.2-11 | CR17000709-00 |
| | Description: CONTEMPT OF COURT | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |

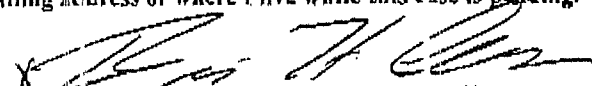
☐ Addendum listing additional charges is attached and incorporated.

I, THE DEFENDANT, as a condition of my release from custody, by signing this form, promise to appear in court on the date and time noted above. If this date, time or place is changed for any reason by any court or judge, I also promise to appear as so directed. I

understand that I ☒ may ☐ may not leave the Commonwealth of Virginia until my case, and any appeals in my case, are finished. I further agree to keep the peace and be of good behavior and agree to the conditions listed below.

DEFENDANT MAY LEAVE COMMONWEALTH FOR WORK PURPOSES ONLY. APPEAL ORALLY NOTED IN OPEN COURT UPON SENTENCING 03/20/17. SENTENCE APPEALED: 90 DAYS, ALL SUSPENDED EXCEPT 10 DAYS UPON 2 YEARS GOOD BEHAVIOR; COMPLY WITH JUDGE CLARK'S ORDER CONCERNING ACCESS TO COURTHOUSE, \$250.00 FINE; COSTS (EXECUTION OF SENTENCE POSTPONED BY JUDGE WITH THE EXCEPTION OF COMPLIANCE WITH ACCESS TO COURTHOUSE).

I, THE DEFENDANT, UNDERSTAND THAT: (1) If I fail to obey the conditions, I may be ARRESTED and, bail may be revoked; (2) if I fail to appear, the court may try and convict me in my absence; (3) if I fail to appear in the Circuit Court on a misdemeanor charge, I give up my right to a jury trial; (4) failure to appear is a separate crime; (5) I must promptly notify the court of any change in my mailing address or where I live while this case is pending.


SIGNATURE OF DEPENDANT

3/20/18

DATE

153

03/20/2018 21:27 275

[X] Commonwealth of Virginia

v.

CLARK, BRIAN HAMPTON

DEPENDANT - NAME (LAST, FIRST, MIDDLE)

BOND AS CONDITION OF RECOGNIZANCE: By signing this bond, the defendant and each person signing as surety agree that they and their heirs and assigns owe the sum of \$ 2,500.00 to the county or city in which the case is prosecuted. This debt is: [] UNSECURED [X] SECURED BY [] Cash [] Surety Bail Bondsman [X] Property Bail Bondsman [] Other Solvent Surety(ies) whose ability to pay this debt is measured by the value of real or personal property which they own and who further swear or affirm that the value of such property (after subtracting debts that are liens against the property such as mortgages, unpaid judgments, and unpaid tax liens) equals or exceeds the amount of this bond. Each person who signs this bond agrees to the bond terms and any attached applicable terms are incorporated by reference.

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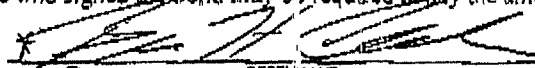
DWIGHT HODGES

540-243-4433


P.O. BOX 734

ROCKY MOUNT, VA 24151

ADDRESS

 (SEAL)

DEPENDANT

 (SEAL)

SIGNATURE OF BAIL BONDSMAN

NAME OF INSURANCE COMPANY

NAME OF REGISTERED AGENT

ADDRESS OF REGISTERED AGENT

TELEPHONE NO. OF REGISTERED AGENT

SIGNATURE OF SURETY

TELEPHONE NO.

SIGNATURE OF SURETY

TELEPHONE NO.

([X]) check if applicable) The defendant is released into the custody of the person/organization named below upon completion of this part. By signing this part, the custodian named below agrees to take custody of the defendant and see that the defendant obeys the conditions listed above. If the defendant disappears or does not obey every condition, the custodian promises to notify the court at once.

DORIS WALKER

337 WALKER FARM LANE, PATRICK SPRINGS, VA 24133

CUSTODIAN - NAME AND ADDRESS

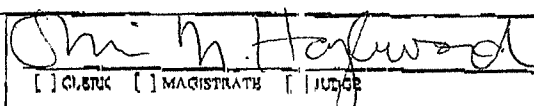


SIGNATURE OF CUSTODIAN

RIGHT TO APPEAL:

You have the right to appeal the amount of this bond. You also have the right to appeal any condition of release. If you want to appeal, contact a lawyer or the court listed on the other side of this form.

ADMITTANCE TO BAIL: After I explained the conditions and warnings contained in this document, the defendant and each person signing as surety swore or affirmed to fulfill the recognizance and, if any, the bond. I order the defendant released on the conditions listed in this document.



[] CLERK [] MAGISTRATE [] JUDGE

JURISDICTION (IF DIFFERENT FROM COURT)

3/20/18 @ 10:25 pm

DATE AND TIME

RECOGNIZANCE

Va. Code §§ 9.1-185, 9.1-185.8, 19.2-123, 19.2-143, 19.2-258

AUGUST 20, 2018 AT 4:00 PM

HEARING DATE AND TIME

PATRICK

P.O. BOX 148, STUART, VA 24171

COURT - CITY OR COUNTY

COURT - STREET ADDRESS

☒ Commonwealth of Virginia

v.

CLARK, BRIAN HAMPTON

DEFENDANT - NAME (LAST, FIRST, MIDDLE)

☐

1351 FAIRMONT DRIVE, BASSETT, VA 24055 (336) 465-3212

DEFENDANT - RESIDENTIAL ADDRESS AND TELEPHONE NUMBER

Mailing address: ☒ Same as above OR ☐

I certify that this document contains my current mailing address.

CHARGES(s):

| Offense Tracking Number | Virginia Crime Code (For Administrative Use Only) | Code Section | Case Number |
|-------------------------|------------------------------------------------------|-------------------|---------------|
| 141CR1700070900 | CON-3281-S9 | 18.2-456; 19.2-11 | CR17000709-00 |
| | Description: CONTEMPT OF COURT | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |

☐ Addendum listing additional charges is attached and incorporated.

I, **THE DEFENDANT**, as a condition of my release from custody, by signing this form, promise to appear in court on the date and time noted above. If this date, time or place is changed for any reason by any court or judge, I also promise to appear as so directed. I understand that I ☒ may ☐ may not leave the Commonwealth of Virginia until my case, and any appeals in my case, are finished. I further agree to keep the peace and be of good behavior and agree to the conditions listed below.

DEFENDANT MAY LEAVE COMMONWEALTH FOR WORK PURPOSES ONLY APPEAL ORALLY NOTED IN
OPEN COURT UPON SENTENCING 03/20/17 SENTENCE APPEALED: 90 DAYS, ALL SUSPENDED
EXCEPT 10 DAYS UPON 2 YEARS GOOD BEHAVIOR; COMPLY WITH JUDGE CLARK'S ORDER CONCERNING
ACCESS TO COURTHOUSE: \$250.00 FINE; COSTS (EXECUTION OF SENTENCE POSTPONED BY JUDGE
WITH THE EXCEPTION OF COMPLIANCE WITH ACCESS TO COURTHOUSE)

I, **THE DEFENDANT**, UNDERSTAND THAT: (1) If I fail to obey the conditions, I may be ARRESTED and, bail may be revoked; (2) if I fail to appear, the court may try and convict me in my absence; (3) if I fail to appear in the Circuit Court on a misdemeanor charge, I give up my right to a jury trial; (4) failure to appear is a separate crime; (5) I must promptly notify the court of any change in my mailing address or where I live while this case is pending.

SIGNATURE OF DEFENDANT

DATE

155

[]

BOND AS CONDITION OF RECOGNIZANCE: By signing this bond, the defendant and each person signing as surety agree that they and their heirs and assigns owe the sum of \$ 2,500.00 to the county or city in which the case is prosecuted. This debt is: [] UNSECURED [x] SECURED BY [] Cash [] Surety Bail Bondsman [x] Property Bail Bondsman [] Other Solvent Surety(ies) whose ability to pay this debt is measured by the value of real or personal property which they own and who further swear or affirm that the value of such property (after subtracting debts that are liens against the property such as mortgages, unpaid judgments, and unpaid tax liens) equals or exceeds the amount of this bond. Each person who signs this bond agrees to the bond terms and any attached applicable terms are incorporated by reference.

The defendant and each person who signs the bond as a surety give up any homestead exemption as to the debt of this bond and understand that the court may force the sale of ANY property owned by the defendant or any surety to pay the debt if the defendant fails to obey all of the terms and conditions of the recognizance. Each person who signs this bond promises to keep the title and possession of all property used to measure the ability to pay the debt of this bond in his or her name and not use such property as collateral for any loan or debt to allow liens against such property which would prevent the payment of the debt of the bond. The terms and conditions of the recognizance are incorporated by reference, and each person who signs the form agrees to obey all of the terms and conditions on both sides of this form. If the defendant obeys all of the conditions listed in the recognizance, the debt of this bond is void. If the defendant fails to obey the condition of appearance of the recognizance, the people who signed the bond may be required to pay the amount of the bond.

BAIL BONDSMAN INFORMATION

DWIGHT HODGES

NAME OF BAIL BONDSMAN

99-218884

BAIL BONDSMAN DCJS LICENSE NO.

DWIGHT HODGES BAIL BONDS

NAME OF BONDING COMPANY

PO BOX 734/1060 RAKES ROAD ROCKY MOUNT, VA

ADDRESS OF BAIL BONDSMAN/BONDING COMPANY

(540) 243-4433

TELEPHONE NO OF BAIL BONDSMAN/BONDING COMPANY

DEFENDANT

(SEAL)

SIGNATURE OF BAIL BONDSMAN

(SEAL)

NAME OF INSURANCE COMPANY

NAME OF REGISTERED AGENT

ADDRESS OF REGISTERED AGENT

TELEPHONE NO OF REGISTERED AGENT

OTHER SURETY(IES) INFORMATION

NAME OF SURETY

SIGNATURE OF SURETY

(SEAL)

ADDRESS

TELEPHONE NO.

NAME OF SURETY

SIGNATURE OF SURETY

(SEAL)

ADDRESS

TELEPHONE NO

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DORIS WALKER

337 WALKER FARM LANE, PATRICK SPIRINGS, VA 24133

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SIGNATURE OF CUSTODIAN

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[] CLERK [] MAGISTRATE [] JUDGE

JURISDICTION (IF DIFFERENT FROM COURT)

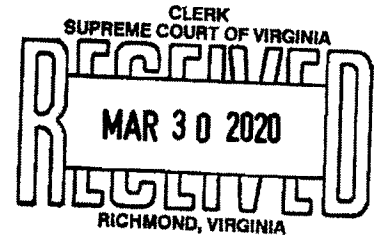
DATE AND TIME

APPENDIX C

**Corrected Motion Filed on March 30, 2020
In the Virginia Supreme Court Seeking
Construction of Bond to Apply to Petition
For Certiorari to the United States Supreme
Court, Alternatively for Stay of Incarceration**

by hand
BY HAND

**IN THE SUPREME COURT OF
VIRGINIA AT RICHMOND**



Record No. 191006
Court of Appeals No. 0637-18-3

BRIAN HAMPTON CLARK

Appellant

v.

COMMONWEALTH OF VIRGINIA

Appellee

On Appeal from the Court of
Appeals of Virginia

**CORRECTED MOTION TO STAY
EXECUTION OF CONVICTION
PENDING APPEAL TO UNITED
STATES SUPREME COURT, BY
CONSTRUCTION OF BOND AS
CONTINUING OR BY EXTENSION
OF BOND FOR APPEAL TO THE
UNITED STATES SUPREME COURT**

Henry W. McLaughlin (VSB No 07105)
Law Office of Henry McLaughlin, P.C.
707 East Main Street, Suite 1050
Richmond, Virginia 23219
877-575-0258 Fax 877-575-0245
henry@mclaughlinvalaw.com
Counsel for Appellant

PRELIMINARY STATEMENT

This motion is submitted to correct a motion Submitted to this Court on March 26, 2020, which mistakenly did not comply with the following part of Rule 5:4 of the Rules of this Court:

All motions shall contain a statement by the movant that the other parties to the appeal have been informed of the intended filing of the motion... .

....

...the statement by the movant shall also indicate whether the other parties consent to the granting of the motion, or intend to file responses in opposition.

Counsel for the appellant, Brian H. Clark ("Clark") mistakenly failed to inform the Commonwealth's Attorney of Patrick County, Virginia, The Honorable Stephanie Brinegar Vipperman, before causing a copy to be mailed to her on March 26, 2020 and causing an original and three copies to be delivered that day to the Office of the Clerk of this motion, seeking a stay of execution of conviction of the appellant pending appeal to the United States Supreme Court.

On March 30, 2020, Clark's counsel sent a copy of that document (that had been mailed) by email to Ms. Vipperman, and subsequently communicated with her through her staff and by personal telephone call with her. As a result of such, Clark's counsel states that the Commonwealth's Attorney of Patrick County, Virginia is aware of the intention to correct the mistaken submission on March 26, 2020 that did not comply with the above-cited language of Rule 5:4. Clark's counsel further certifies that the Commonwealth's Attorney of Patrick County, Virginia (Ms. Vipperman) has advised Clark's counsel that she does not consent to this motion but that she does not intend to file any response in opposition.

Substance of Motion

Clark moves the Court to stay execution of his conviction for contempt pending appeal to the United States Supreme Court, by construction of Clark's recognizance bond in this case to extend to appeal to the United States Supreme Court, alternatively, by

extension of such bond to such appeal. In support of this motion, Clark, by counsel, sets forth the following:

1. Clark was convicted by the Circuit Court of Patrick County, Virginia in this case on March 20, 2019 and sentenced to 90 days in jail, with all but 10 days suspended, under certain terms and conditions.
2. Clark appealed such conviction to the Court of Appeals of Virginia.
3. On July 2, 2019, the Court of Appeals denied his appeal.
4. Clark timely filed a Notice of Appeal and Petition for Appeal to this Court.
5. On January 28, 2020, this Court refused such petition for appeal.
6. On February 11, 2020, Clark, by counsel, timely filed a petition to rehear.
7. On March 20, 2020, this Court denied the petition to rehear.

8. Accompanying this motion as "Exhibit 1" is a copy of the recognizance and appeal bond in this case.
9. The first page of Exhibit 1 stated that the Circuit Court of Patrick County, Virginia on March 20, 2019 sentenced Clark to imprisonment for 90 days, with all but 10 days suspended on certain conditions and imposed a fine of \$250 with the following additional statement in the said recognizance:

"EXECUTION OF SENTENCE POSTPONED BY JUDGE WITH
THE EXCEPTION OF COMPLIANCE WITH ACCESS TO
COURTHOUSE."

10. Page 3 of Exhibit 1 contained, *inter alia*, the following language prepared by the appropriate authority or authorities for Clark to sign in order for him to be released pending appeal:

... I understand That I may... leave the
Commonwealth of Virginia until my case, and any
appeals in my case, are finished."

11. The reference to Clark being able to leave the Commonwealth was explained in Exhibit 1 to be

limited to leaving the Commonwealth only for work purposes.

12. Page 4 of Exhibit 1 set forth the undertaking of bail bondsmen for a secured bond of \$2,500, and included language incorporating by reference the recognizance.
13. The last page of Exhibit 1 was a release order signed by the Clerk of the Circuit Court of Patrick County, Virginia. Nowhere in Exhibit 1 was the recognizance entered into by Clark, incorporated into the bail bond, limited as to the extent of appeal by Clark of the conviction in this case. The only reference to appeal in Exhibit 1 was to "appeals" as set forth herein above.
14. For the reasons set forth above, Clark, by counsel, submits that Exhibit 1 should be construed as applying to any appeals by Clark from the conviction in this case, including appeal from this Court to the United States Supreme Court, which Clark, by counsel, submits should include a

petition for *certiorari* to the United States Supreme Court from the decision by this Court to deny Clark's petition for appeal and his petition to rehear.

15. One of the issues raised by Clark in the appeal of this case is a federal issue of due process as to the denial of his recusal motion in this case. Before the Circuit Court of Patrick County, Virginia, prior to trial, before the Court of Appeals of Virginia in his appeal to that Court, and before this Court, Clark explicitly set forth that he was raising a federal issue of due process as to that part of his appeal. Clark intends timely to file a petition for *certiorari* in the U.S. Supreme Court.

16. Because Clark intends timely to file a petition for *certiorari* in the U.S. Supreme Court, Clark, by counsel, submits that Exhibit 1 should be construed as applying to a timely petition for *certiorari* to the U.S. Supreme Court, so that he should be

allowed to remain free on his aforesaid
recognizance and the secured bond previously posted
(Exhibit A) because this case continues to be
pending on appeal.

17. In the alternative, Clark asks this Court to allow
a new appeal bond applicable to his petition for
certiorari to the United States Supreme Court,
taking into consideration that, unless such an
appeal bond were allowed, Clark would, *de facto*,
lose the full appeal process because a ten day jail
sentence would be fully served before the U .S.
Supreme Court would rule on a timely petition for
certiorari.
18. After this Court denied Clark's appeal, while
Clark's petition to rehear was pending, Clark filed
a motion in the Circuit Court of Patrick County,
Virginia seeking construction of Exhibit 1 to apply
to his petition to rehear, and, if such petition
were denied, to a petition for certiorari filed in

the U.S. Supreme Court. A copy of that motion is attached hereto marked "Exhibit 2."

19. The Circuit Court held a hearing on February 18, 2020 on Clark's said motion (Exhibit 2). A copy of the transcript of the court reporter taking down that he ring is attached hereto marked "Exhibit 3" As shown in Exhibit 3, in ruling on Clark's said motion, the Circuit Court of Patrick County stated the following:

How about if I continue the bond until you ask for your rehearing with the Supreme Court? But after that, he's got 30 days to turn in if they turn you down, which would give you enough time to ask the U.S. Supreme Court to tell me to do something different.

20. After this Court denied Clark's petition to rehear, Clark's counsel received a document by facsimile, a copy of which is attached hereto marked "Exhibit 4."
21. Exhibit 4 (consistent with the oral ruling by the Patrick County Circuit Court) gives Clark notice to report for incarceration on April 20, 2020.

22. While the ruling of the Circuit Court of Patrick County, Virginia contemplates that Clark's remedy at this point would be for Clark to seek a ruling by the United States supreme Court to construe Exhibit 1 as a continuing bond, or to allow a bond pending the filing of a timely petition for certiorari, Clark, by counsel, submits that Clark has an obligation, prior to filing any such motion in the U.S. Supreme Court, to file a motion before this Court seeking construction of the bond to continue pending a timely filing of a petition for certiorari to the U.S. Supreme Court, alternatively to ask this Court to allow Clark to remain on bond pending appeal to the United States Supreme Court.
23. In view of the language of Exhibit 1, Clark, by counsel, asks this Court to construe Exhibit 1 to continue to allow Clark to continue on bond pending appeal to the United States Supreme Court, or, in the alternative to allow the recognize bond he has entered into to continue pending his timely appeal

to the United States Supreme Court, including a timely filing of a petition for certiorari before that Court.

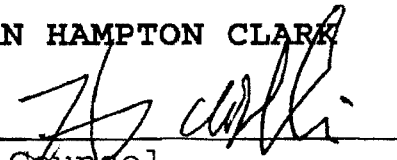
Conclusion

Wherefore, Clark prays that this Court construe Exhibit 1 to apply to timely appeal to the U.S. Supreme Court, including a timely filing of a petition for certiorari in that Court, alternatively to allow his recognizance bond to continue for such an appeal, and, on such basis, prays that this Court enter an Order with the effect of continuing Clark's recognizance bond to allow him to remain on bond pending his appeal to the U.S. Supreme Court.

Respectfully submitted,

BRIAN HAMPTON CLARK

By


Counsel

Henry W. McLaughlin (VSB No. 07105)
The Law Office of Henry McLaughlin, P.C.
Eighth and Main Building
707 East Main Street, Suite 1050
Richmond, VA 23219
804-205-9020; Fax 877-575-0245
henry@mclaughlinvalaw.com
Counsel for Brian Hampton. Clark

CERTIFICATE

I, Henry W. McLaughlin, counsel for Brian H.
Clark, certify that on March 30, 2020, I mailed a copy
of the foregoing to the following:

The Honorable Stephanie Brinegar Vipperman
Commonwealth's Attorney Patrick County, Virginia.
P.O. Box 268,
Stuart, Virginia 24272



Henry W. McLaughlin

Exhibit 1

B**RECOGNIZANCE**

Va. Code §§ 9.1-185, 9.1-185.8, 19.2-123, 19.2-143, 19.2-258

AUGUST 20, 2018 AT 4:00 PM

HEARING DATE AND TIME

PATRICK

P.O. BOX 148, STUART, VA 24171

COURT - CITY OR COUNTY

COURT - STREET ADDRESS

☒ Commonwealth of Virginia

v.

CLARK, BRIAN HAMPTON

DEFENDANT - NAME (LAST, FIRST, MIDDLE)

☐

1351 FAIRMONT DRIVE, BASSETT, VA 24055 (336) 465-3212

DEFENDANT - RESIDENTIAL ADDRESS AND TELEPHONE NUMBER

Mailing address: ☒ Same as above OR ☐

I certify that this document contains my current mailing address.

CHARGE(s):

| Offense Tracking Number | Virginia Crime Code (For Administrative Use Only) | Code Section | Case Number |
|-------------------------|---------------------------------------------------|-------------------|---------------|
| 141CR1700070900 | CON-3281-S9 | 18.2-456; 19.2-11 | CR17000709-00 |
| | Description: CONTEMPT OF COURT | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |

☐ Addendum listing additional charges is attached and incorporated.

I, THE DEFENDANT, as a condition of my release from custody, by signing this form, promise to appear in court on the date and time noted above. If this date, time or place is changed for any reason by any court or judge, I also promise to appear as so directed. I

understand that I ☒ may ☐ may not leave the Commonwealth of Virginia until my case, and any appeals in my case, are finished. I further agree to keep the peace and be of good behavior and agree to the conditions listed below.

DEFENDANT MAY LEAVE COMMONWEALTH FOR WORK PURPOSES ONLY APPEAL ORALLY NOTED IN
 OPEN COURT UPON SENTENCING 03/20/17 SENTENCE APPEALED: 90 DAYS, ALL SUSPENDED
 EXCEPT 10 DAYS UPON 2 YEARS GOOD BEHAVIOR; COMPLY WITH JUDGE CLARK'S ORDER CONCERNING
 ACCESS TO COURTHOUSE: \$250.00 FINE: COSTS (EXECUTION OF SENTENCE POSTPONED BY JUDGE
 WITH THE EXCEPTION OF COMPLIANCE WITH ACCESS TO COURTHOUSE)

I, THE DEFENDANT, UNDERSTAND THAT: (1) If I fail to obey the conditions, I may be ARRESTED and, bail may be revoked; (2) if I fail to appear, the court may try and convict me in my absence; (3) if I fail to appear in the Circuit Court on a misdemeanor charge, I give up my right to a jury trial; (4) failure to appear is a separate crime; (5) I must promptly notify the court of any change in my mailing address or where I live while this case is pending.

SIGNATURE OF DEFENDANT

DATE

155

B

RECOGNIZANCE

Va Code §§ 9.1-185, 9.1-185.8, 19.2-123, 19.2-143, 19.2-258

AUGUST 20, 2018 AT 4:00 PM

HEARING DATE AND TIME

PATRICK
COURT - CITY OR COUNTYP.O. BOX 148, STUART, VA 24171
COURT - STREET ADDRESS☒ Commonwealth of Virginia

V.

CLARK, BRIAN HAMPTON

DEPENDANT - NAME (LAST, FIRST, MIDDLE)

☐

1351 FAIRMONT DRIVE, BASSETT, VA 24055 (336) 465-3212

DEPENDANT - RESIDENTIAL ADDRESS AND TELEPHONE NUMBER

Mailing address: ☒ Same as above OR ☐

I certify that this document contains my current mailing address.

CHARGES(s):

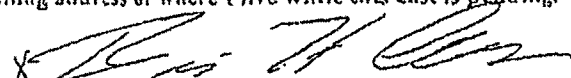
| Offense Tracking Number | Virginia Crime Code (For Administrative Use Only) | Code Section | Case Number |
|-------------------------|---------------------------------------------------|-------------------|---------------|
| 141CR1700070900 | CON-3281-S9 | 18.2-466; 19.2-11 | CR17000709-00 |
| | Description: CONTEMPT OF COURT | | |
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SIGNATURE OF DEFENDANT

3/20/18
DATE

03/20/2018 10:14 FAX

001/002

PAGE 01/02

PATRICK CTY CIRCL

03/20/2018 21:27 276

B

RECOGNIZANCE

Va. Code §§ 9.1-185, 9.1-185.8, 19.2-123, 19.2-143, 9.2-258

AUGUST 20, 2018 AT 4:00 PM

HEARING DATE AND TIME

PATRICK
COUNTY - CITY OR COUNTYP.O. BOX 148, STUART, VA 24171
COUNT - STREET ADDRESS☒ Commonwealth of Virginia

V.

CLARK BRIAN HAMPTON

DEFENDANT - NAME (LAST, FIRST, MIDDLE)

☐

1361 FAIR WONT DRIVE, BASSETT, VA 24055 (336) 485-3212

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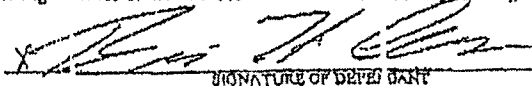
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 ACCESS TO COURTHOUSE; \$250.00 FINE; COSTS (EXECUTION OF SENTENCE POSTPONED BY JUDGE
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 (2) If I fail to appear, the court may try and convict me in my absence; (3) If I fail to appear in the Circuit Court on a misdemeanor charge,
 I give up my right to a jury trial; (4) failure to appear is a separate crime; (5) I must promptly notify the court of any change in my
 mailing address or where I live while this case is pending.


 SIGNATURE OF DEFENDANT

3/20/18
 DATE

☒ Commonwealth of Virginia

v.

CLARK, BRIAN HAMPT
DEFENDANT - NAME (LAST, FIRST, MIDDLE)

BOND AS CONDITION OF RECOGNIZANCE: By signing this bond, the defendant and each person signing as surety agree that they and their heirs and assigns owe the sum of \$ 2,500.00 to the county or city in which the case is prosecuted. This debt is: ☐ UNSECURED ☒ SECURED BY ☐ Cash ☐ Surety Bail Bondsman ☒ Property Bail Bondsman ☐ Other Solvent Surety(ies) whose ability to pay this debt is measured by the value of real or personal property which they own and who further swear or affirm that the value of such property (after subtracting debts that are liens against the property such as mortgages, unpaid judgments, and unpaid tax liens) equals or exceeds the amount of this bond. Each person who signs this bond agrees to the bond terms and any attached applicable terms are incorporated by reference.

The defendant and each person who signs the bond as a surety give up any homestead exemption as to the debt of this bond and understand that the court may force the sale of ANY property owned by the defendant or any surety to pay the debt if the defendant fails to obey all of the terms and conditions of the recognizance. Each person who signs this bond promises to keep the title and possession of all property used to measure the ability to pay the debt of this bond in his or her name and not use such property as collateral for any loan or debt to allow liens against such property which would prevent the payment of the debt of the bond. The terms and conditions of the recognizance are incorporated by reference, and each person who signs the form agrees to obey all of the terms and conditions on both sides of this form. If the defendant obeys all of the conditions listed in the recognizance, the debt of this bond is void. If the defendant fails to obey the condition of appearance of the recognizance, the people who signed the bond may be required to pay the amount of the bond.

BAIL BONDSMAN INFORMATION

DWIGHT HODGES

NAME OF BAIL BONDSMAN

99-218884

BAIL BONDSMAN DCJS LICENSE NO.

DWIGHT HODGES BAIL BONDS

NAME OF BONDING COMPANY

PO BOX 734/1060 RAKES ROAD ROCKY MOUNT, VA

ADDRESS OF BAIL BONDSMAN/BONDING COMPANY 24151

(540) 243-4433

TELEPHONE NO. OF BAIL BONDSMAN/BONDING COMPANY

DEFENDANT (SEAL)

SIGNATURE OF BAIL BONDSMAN (SEAL)

NAME OF INSURANCE COMPANY

NAME OF REGISTERED AGENT

ADDRESS OF REGISTERED AGENT

TELEPHONE NO. OF REGISTERED AGENT

OTHER SURETY(IES) INFORMATION

NAME OF SURETY

SIGNATURE OF SURETY (SEAL)

ADDRESS

TELEPHONE NO.

NAME OF SURETY

SIGNATURE OF SURETY (SEAL)

ADDRESS

TELEPHONE NO.

(☒) check if applicable) The defendant is released into the custody of the person/organization named below upon completion of this part. By signing this part, the custodian named below agrees to take custody of the defendant and see that the defendant obeys the conditions listed above. If the defendant disappears or does not obey every condition, the custodian promises to notify the court at once.

DORIS WALKER

337 WALKER FARM LANE, PATRICK SPRINGS, VA 24133

CUSTODIAN - NAME AND ADDRESS

SIGNATURE OF CUSTODIAN

RIGHT TO APPEAL:

You have the right to appeal the amount of this bond. You also have the right to appeal any condition of release. If you want to appeal, contact a lawyer or the court listed on the other side of this form.

ADMITTANCE TO BAIL: After I explained the conditions and warnings contained in this document, the defendant and each person signing as surety swore or affirmed to fulfill the recognizance and, if any, the bond. I order the defendant released on the conditions listed in this document.

☐ CLERK ☐ MAGISTRATE ☐ JUDGE

JURISDICTION (IF DIFFERENT FROM COURT)

DATE AND TIME

RELEASE ORDER

R

ACCUSED: CLARK, BRIAN HAMPTON
NAME (LAST, FIRST, MIDDLE)

ADDRESS: 1351 FAIRMONT DRIVE
BASSETT, VA 24055

SSN: 226-11-3409 DOB: 07/28/1970

Jurisdiction: PATRICK

- ☐ GENERAL DISTRICT (TRAFFIC)
☐ GENERAL DISTRICT (CRIMINAL)
☐ GENERAL DISTRICT (CIVIL)
☐ J&DR DISTRICT COURT
☒ CIRCUIT COURT

CHARGE(S):

| Offense Tracking Number | Virginia Crime Code (For Administrative Use Only) | Code Section | Case Number |
|-------------------------|---------------------------------------------------|-------------------|---------------|
| 141CR1700070900 | CON-3281-S9 | 18.2-456; 19.2-11 | CR17000709-00 |
| | Description: CONTEMPT OF COURT | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |

☐ Addendum listing additional charges is attached and incorporated.

TO THE SHERIFF, JAIL OFFICER OR CORRECTIONAL OFFICER:
You are ordered to RELEASE the accused on the above charge(s).

03/20/2018 10:25PM
DATE AND TIME

Sherri M. Hazlewood *SMH*
[] MAGISTRATE [x] CLERK [] JUDGE

Released _____ AM/PM By _____
DATE AND TIME

RELEASE ORDER

157

Exhibit 2

VIRGINIA:

IN THE CIRCUIT COURT OF PATRICK COUNTY

101 Blue Ridge Street
Stuart, Virginia 24171-0148

COMMONWEALTH OF VIRGINIA

v.

Case No. CR17000709-00

BRIAN HAMPTON CLARK

**MOTION TO CONTRUE BOND AS CONTINUING; IN THE ALTERNATIVE,
TO EXTEND BOND FOR DECISION ON PETITION TO REHEAR AS TO APPEAL
TO THE VIRGINIA SUPREME COURT AND, IF THAT PETITION IS DENIED, FOR
APPEAL TO THE UNITED STATES SUPREME COURT**

Brian H. Clark ("Clark"), defendant, by counsel, moves the Court to construe the recognizance bond in this case to extend to a decision by the Virginia Supreme Court as to a petition to rehear timely filed by Clark after that Court refused his petition for appeal; or, if that petition to rehear is denied, to extend such bond for appeal to the United States Supreme Court. In support of this motion, Clark, by counsel, sets forth the following:

1. Clark was convicted by this Court in this case on March 20, 2019 and sentenced to 90 days in jail, with all but 10 days suspended, under certain terms and conditions.
 2. Clark appealed such conviction to the Court of Appeals of Virginia.
 3. On July 2, 2019, the Court of Appeals denied such appeal.
 4. Clark timely filed a Notice of Appeal and Petition for Appeal to the Virginia Supreme Court.
 5. On January d28, 2020, the Virginia Supreme Court refused such petition for appeal.
 6. On February 11, 2020, Clark, by counsel, timely filed a Petition to Rehear. A copy of such Petition to Rehear accompanies this motion as "Exhibit A." \
-

7. Accompanying this motion as "Exhibit B" is a copy of the recognizance and appeal bond in this case.
 8. The first page of Exhibit B stated that this Court on March 20, 2019 sentenced Clark to imprisonment for 90 days, with all but 10 days suspended on certain conditions and imposed a fine of \$250 with the following additional statement in the said recognizance: "EXECUTION OF SENTENCE POSTPONED BY JUDGE WITH THE EXCEPTION OF COMPLIANCE WITH ACCESS TO COURTHOUSE."
 9. Page 3 of Exhibit B contained, *inter alia*, the following language prepared by the appropriate authority or authorities for Clark to sign in order for him to be released pending appeal:

... I understand That I may... leave the Commonwealth of Virginia until my case, and any appeals in my case, are finished."
 10. The reference to Clark being able to leave the Commonwealth was explained in Exhibit B to be limited to leaving the Commonwealth only for work purposes.
 11. Page 4 of Exhibit B set forth the undertaking of bail bondsmen for a secured bond of \$2,500, and included language incorporating by reference the recognizance.
 12. The last page of Exhibit B was a release order signed by the Clerk of this Court.
 13. Nowhere in Exhibit B was the recognizance entered into by Clark, incorporated into the bail bond, limited as to the extent of appeal by Clark of the conviction in this case. The only reference to appeal in Exhibit A was to "appeals" as set forth herein above.
 14. For the reasons set forth above, Clark, by counsel, submits that Exhibit B should be construed as applying to any appeals by Clark from the conviction in this case, including appeal from the Court of Appeals of Virginia to the Virginia Supreme
-

Court, which Clark, by counsel, submits includes Exhibit A, the aforesaid Petition to Rehear, and any appeal from the Virginia Supreme Court to the U.S. Supreme Court.

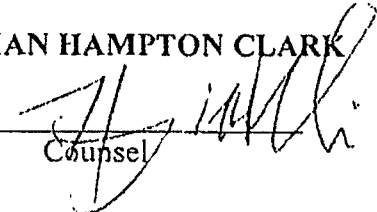
15. One of the issues raised by Clark in the appeal of this case is a federal issue of due process as to the denial of his recusal motion in this case. Before this Court, prior to trial, before the Court of Appeals of Virginia in his appeal to that Court, and before the Virginia Supreme Court, in his appeal to that Court, Clark explicitly set forth that he was raising a federal issue of due process as to that part of his appeal. If the Virginia Supreme Court denies Clark's petition to rehear, he intends timely to file a petition for certiorari in the U.S. Supreme Court. .
 16. Because Clark has timely filed a petition to rehear, and because, if that petition to rehear is denied, he intends timely to file a petition for certiorari in the U.S. Supreme Court, Clark, by counsel, submits that Exhibit B should be construed as applying to Clark's petition to rehear, and, if that is denied, to a timely petition for certiorari to the U.S. Supreme Court, so that he should be allowed to remain free on his aforesaid recognizance and the secured bond previously posted (Exhibit B) because this case continues to be pending on appeal. .
 17. In the alternative, Clark asks this Court to allow a new appeal bond applicable to his petition to rehear pending before the Virginia Supreme Court, and, if that is denied, for appeal to the U.S. Supreme Court. taking into consideration that, unless such an appeal bond were allowed, Clark would, de facto, lose the full appeal process because a ten day jail sentence would be fully served before the Virginia Supreme Court would rule on Clark's petition to rehear, or, if that petition is denied, before the U.S. Supreme Court would rule on a timely petition for certiorari.
-

Conclusion

WHEREFORE, Clark prays that the Court (a) construe Exhibit B as applying to Clark's petition to rehear pending before the Virginia Supreme Court, alternatively (b) enter an order allowing Clark to post a new appeal bond applicable to his pending petition to rehear, and, if that is denied for a timely petition for certiorari to the U.S. Supreme Court.

Respectfully submitted,

BRIAN HAMPTON CLARK

By 
Counsel

Henry W. McLaughlin (VSB No. 07105)
The Law Office of Henry McLaughlin,
P.C. Eighth and Main Building
707 East Main Street, Suite 1050
Richmond, VA 23219
(804) 205-9020; fax (877) 575-0245
henry@mclaughlinvalaw.com
Counsel for Brian H. Clark

CERTIFICATE

I, Henry W. McLaughlin, counsel for Brian H. Clark, certify that on February 11, 2020, after 5 p.m. and before midnight, I mailed a copy of the foregoing to the following:

The Honorable Stephanie Brinegar Vipperman,
Commonwealth's Attorney
Patrick County, Virginia.
P. O. Box 268,
Stuart, Virginia 24272


Henry W. McLaughlin

Exhibit A

The Law Office of
Henry McLaughlin, P.C.

Henry McLaughlin III <henry@mclaughlinlaw.com>

SCV PFR Confirmation

1 message

SCV PFR <scvpfr@vacourts.gov>

Tue, Feb 11, 2020 at 5:39 PM

To: Henry McLaughlin III <henry@mclaughlinlaw.com>

This will acknowledge receipt of your e-mail. If there are any deficiencies in your filing, you will be contacted by the Clerk's Office via a separate e-mail describing the problem(s) and the deadline for correcting your filing. When the Court has made a decision, it will be forwarded to you via e-mail.

Scanned with CamScanner

IN THE SUPREME COURT OF VIRGINIA

AT RICHMOND

Record No. 191006
Court of Appeals No. 0637-18-3

BRIAN HAMPTON CLARK

Appellant

v.

COMMONWEALTH OF VIRGINIA

Appellee

On Appeal from the Court of Appeals of Virginia

PETITION TO REHEAR BY BRIAN HAMPTON CLARK

Henry W. McLaughlin (VSB No. 07105)
The Law Office of Henry McLaughlin, P.C.
707 East Main Street, Suite 1050
Richmond, Virginia 23219
(877) 575-0258; fax (877) 575-0245
henry@mclaughlinvalaw.com
Counsel for Brian Hampton Clark

**STATEMENT OF GROUNDS TO REHEAR BY
BRIAN HAMPTON CLARK**

The appellant, Brian Hampton Clark ("Clark") appeals from an affirmation by the Court of Appeals of Virginia ("the Court of Appeals") which refused Clark's appeal from a conviction of Clark and jail sentence by the Circuit Court of Patrick County, Virginia ("the circuit court") on a charge of contempt of court. That conviction would not have occurred had Clark not filed in this Court a petition for a writ of prohibition in which the respondent was a judge ("the respondent judge") of the circuit court. Clark's petition for a writ of prohibition sought reversal of an oral order by the respondent judge, later confirmed in writing, which placed restrictions on Clark as to his access to the clerk's office of the circuit court. Such limitation by the respondent judge, which had been imposed without opportunity to Clark for any hearing, and despite that he had never been convicted of any felony, any misdemeanor involving moral turpitude, or any charge involving violence or any threat of violence and even though Clark had been found not guilty of a prior charge of contempt of court.

This Court denied Clark's petition for a writ of prohibition on grounds that the issue to be determined as to such petition was not whether the order of the respondent judge was correct, but whether the respondent judge had jurisdiction to enter such an order. (Clark, by counsel, had argued that the respondent judge had exceeded his jurisdiction). Prior to this Court's decision

in that case, the respondent judge, through the office of the Attorney General of Virginia, filed responsive pleading which included, *inter alia*, a letter from the respondent judge to the chief judge ("the chief judge") of the circuit court which enclosed emails more than a year old that, on their face, indicated that they were from Clark, which included angry statements levelled at officials in Patrick County, Virginia, including judges of the circuit court. In that letter, the respondent judge wrote to the chief judge that if the chief judge thought well of it, the chief judge could charge Clark with contempt of court on the basis of the emails and "give him the due process he demands from the Virginia Supreme Court."

The chief judge caused Clark to be charged with contempt of court as to the said emails. Clark filed motions to dismiss on grounds including the following: (a) the prosecution was in punishment of Clark from filing a petition for a writ of prohibition and was therefore against public policy; (b) the emails were more than a year old and, therefore, the contempt of court charge was time-barred.

Clark also filed motions for (a) recusal of the chief judge, who had previously recused himself from a case involving Clark; and (b) recusal of the Commonwealth's Attorney who had recused herself from the prior contempt charge against Clark (as to which he was found not guilty).

During a hearing on Clark's motions, during a discussion of the letter from the respondent judge to the chief judge stating that a contempt charge against Clark would provide him with the due process Clark "demands from the Virginia Supreme Court" the chief judge stated the following:

Well, the matter raised was your client didn't have a chance to have a hearing, which is what your client wanted.
(p. 7, Tr. September 15, 2017 hearing)

Defense counsel then stated, in part, "I submit that That that statement is added grounds for the motion for recusal. (*Id.*)

Subsequently, during that hearing, the trial court stated,

So, I'll tell you the reason, why I went ahead and issued the show cause for contempt ... was because I was unaware of the language contained in ... allegedly in the emails...the emails allegedly sent by your client. If I had been aware that those emails, alleged sent by your client, had been received before that time I would ... *sua sponte* issued, a contempt citation. *Id.* p. 14.

The trial court later stated, "I don't know if there is any question, it came about because Judge Clark sent the letter with the information attached.¹ *Id.* p. 16.

1. The Prosecution of Clark In This Case Was Against Public Policy

During oral argument on Clark's petition for appeal, one of the Justices

¹ Later the trial court stated, "I'm not saying that the filing of the writ of prohibition was a request to be charged. I'm just saying one of the complaints was that he didn't get a hearing and now he's getting a hearing but I'm not saying that by filing a writ of prohibition he's saying, "Yeah, please charge me." (*Id.* pp. 27-28)

of this Court asked a question as to whether the reason Clark was prosecuted in this case was because of the emails. As to that, it is certainly so that he would not have been prosecuted absent the emails. However, it is also true, and not in question in this case, that he would not have been prosecuted if he had not filed in this Court a petition seeking a writ of prohibition. That an essential cause of the prosecution in this case was Clark's petition for a writ of prohibition was made clear --

(A) When the chief judge stated,

Well, the matter raised was your client didn't have a chance to have a hearing, which is what your client wanted.

(B) When the respondent judge wrote the chief judge stating that a prosecution would give Clark what he had demanded from this Court in his petition for a writ of prohibition.

This is a case of first impression. It appears there has never been a case in this country in which a judge initiated a prosecution which would not have occurred had the defendant not appealed to a higher court. Clark's appeal to the Court of Appeals did not cite any case on this issue on grounds there has never been a prior case in which this has occurred.

In fairness to the respondent judge and the chief judge, it does not appear that the facts of the cause of the prosecution in this case were undertaken in any way other than out in the open. The result has been that

the issue as to this part of Clark's appeal are clear cut. He was punished for exercising his right to file a good faith petition in this Court on a matter in which this Court had original jurisdiction. On grounds of public policy, Clark submits his conviction should be set aside.

2. The Prosecution in This Case Was Time-Barred

Va. Code Ann. Section 19.2-8 in effect at the time of the prosecution of this case, provided, in pertinent part, the following:

A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefor....

The Court of Appeals of Virginia in dictum in *Porter v.*

Commonwealth, 65 Va. App. 467, 778 S.E. 2d 549, (2015) indicated contempt cases are sui generis and thus not subject to the limitations for criminal prosecutions..

Even if the prohibition against charging a misdemeanor violation after one year in Va. Code Ann. Section 19.2-8 (with exceptions not relevant here) is held not applicable in this case because of the language in *Porter, supra*. Clark, by counsel, submits that Va. Code Ann. Section 19.2-8 barred prosecution in this case because that statute barred prosecution after one year for a "penalty" [except for certain prosecutions with longer periods of

limitations in that statute that are not relevant to this case].²

3. The Chief Judge Should Have Granted Clark's Recusal Motion

Because of the public policy issue raised in this appeal, alternatively on grounds the prosecution in this case was time-barred, Clark has asked this Court to reverse his conviction and dismiss the contempt charge against him. In the alternative, Clark seeks reversal of his conviction and a new trial on grounds of his due process rights under the U.S. Constitution, a federal right³ Clark submits that on grounds of his federal due process rights, he was entitled to have his recusal motion granted.

In a case involving due process rights in contempt proceedings⁴,

² The Commonwealth's Attorney contended that a contempt charge is not a criminal charge. However, The respondent judge, by counsel, in Exhibit 3 (the response to the petition for a writ of prohibition) (see the exhibit of the complete record of that case introduced into evidence as part of the defense in this case in the circuit court) referred to this case as a "criminal contempt" case. Also see *In re Marriage of Weddigan*, 2015 IL App. (4th) 150044, in which an Illinois Court made the point that a prosecution for online comments posted on the Internet was not civil contempt but criminal contempt. Certainly, this is a case in which a penalty was imposed. .

³ Brian Clark also contends that the denial of his recusal motion, and his renewal of the same violated his due process rights under the Virginia Constitution.

⁴ While contempt cases have been held to be *sui generis* and not "criminal prosecutions" under the Sixth Amendment (see *United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994)), a defendant in a contempt case is entitled to due process of law. *Fisher v. Pace*, 336 U.S. 155 (1949); see also, *Pounders v. Watson*, 521 U.S. 982 (1997)

Cooke v. United States, 267 U.S. 517 (1925) Chief Justice Taft of the U.S.

Supreme Court stated the following:

"The power of contempt which a judge must have and exercise in protecting the due and orderly administration of justice and in maintaining the authority and dignity of the court is most important and indispensable. But its exercise is a delicate one and care is needed to avoid arbitrary or oppressive conclusions. The rule of caution is more mandatory where the contempt charged has in it the element of personal criticism or attack upon the judge. The judge must banish the slightest personal impulse to reprisal, but he should not bend backwards and injure the authority of the court by too great leniency. The substitution of another judge would avoid either tendency but it is not always possible. Of course, where acts of contempt are palpably aggravated by a personal attack upon the judge in order to drive the judge out of the case for ulterior reasons, the scheme should not be permitted to succeed. But attempts of this kind are rare. All of such cases, however, present difficult questions for the judge. All we can say upon the whole matter is that where conditions do not make it impracticable, or where the delay may not injure public or private right, a judge called upon to act in a case of contempt by personal attack upon him, may, without flinching from his duty, properly ask that one of his fellow judges take his place. *Cornish v. United States*, 299 F. 283, 285; *Toledo Newspaper Co. v. United States*, 237 F. 986, 988. The case before us is one in which the issue between the judge and the parties had come to involve marked personal feeling that did not make for an impartial and calm judicial consideration and conclusion, as the statement of the proceedings abundantly shows."

In *Mayberry v. Pennsylvania*, 400 U.S. 455 (1971), a *pro se* defendant engaged in personal abuse of the trial judge. The U.S. Supreme Court appeared to leave open the trial court's option to act immediately and summarily to quell contempt by citing and convicting an offender, thus empowering the judge to continue the trial, but indicated if the judge waited

until the trial's conclusion he should defer to another judge.

In *Taylor v. Hayes*, 418 U.S. 488 (1974), Justice White's opinion for the U.S. Supreme Court stated that because "marked personal feelings were present on both sides" and because "unseemly conduct [had] left personal stings" another judge should have been substituted for the trial judge for the purpose of finally disposing of contempt charges in that case.

In *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868,869 (2009), the U.S. Supreme Court cited *Mayberry, supra.* stating, in part, the following:

In reiterating that the rule that "a defendant in criminal contempt proceedings should be [tried] before a judge other than the one reviled by the contemnor," *Mayberry v. Pennsylvania*, rests on the relationship between the judge and the defendant (citation), the Court noted that the objective inquiry is not whether the judge is actually biased, but whether the average judge in his position is likely to be neutral or there is an unconstitutional "potential for bias." (citation).

Clark submits it is not necessary for a defendant charged with contempt to show -- in a motion seeking recusal -- that the judge assigned to try the contempt case is prejudiced against him. It should be held sufficient to justify recusal if matters related to or surrounding the contempt case indicate an objective inquiry would demonstrated that the average judge in the position of the judge assigned the case would have an unconstitutional "potential for bias." (See *Caperton, supra.*) That was the argument made on Clark's behalf before the chief judge. In this case, any

objective observer would be likely to conclude that any acquittal of the pending contempt charges against Brian Clark in this case could be construed in favor of his then pending petition in the Virginia Supreme Court seeking a writ of prohibition. Acquittal might also be construed as favorable to Clark in a complaint he had filed (solely invoking rights under federal law) in the case of *Clark v. Coleman, et al*; U.S. District Court, Western District of Virginia; Case No. 4: 17-cv-00045-JLK, in which he, *inter alia*, on federal grounds, challenged the 24 hour advance notice requirement imposed by the respondent judge for him to visit the clerk's office unattended by his counsel.⁵

Clark submits his recusal motion should be held to have met the test recited above in due process case decisions in federal courts to justify recusal as sought by him on federal due process grounds. This is particularly so because of the statement by Judge Williams during the oral argument on September 15, 2017 that "...the matter raised was your client didn't have a chance to have a hearing, which is what your client wanted."⁶

⁵ The U.S. District Court granted summary judgment as to that part of Clark's federal claim, and a jury returned a defense verdict. Clark filed a motion (which is pending) to set aside the jury verdict. In addition, Clark's counsel contends he remains within the time allowed to the Fourth Circuit Court of Appeals from the federal summary judgment ruling against him.

⁶ Brian Clark, by counsel, asks leave to incorporate into this petition for appeal the additional grounds for recusal set forth in his motion in the trial

4. Clark's Other Grounds for Reversal of Conviction also were Meritorious

The conviction also should be reversed on other grounds set forth in Clark's petition for appeal; because (a) the chief judge should have granted

Clark's motion for recusal of the Commonwealth's Attorney (who had recused herself in an earlier contempt case in which Clark was acquitted); (b) the chief judge erred in overruling Clark's objection to an affidavit which should have been held inadmissible as hearsay; (c) in refusing to allow testimony by Clark's expert witness that the author of the subject emails was in doubt. Clark asks this Court to rule in his favor on these grounds for the reasons set forth in his petition for appeal.

Conclusion

WHEREFORE, Clark prays that this Court (a) reverse the decision by this Court on January 28, 2020 to deny an appeal in this case; (b) grant an appeal in this case, and (c) reverse the trial court's final order in this case and remand this case for dismissal, alternatively for trial before a different judge.

Respectfully submitted,

BRIAN HAMPTON CLARK

By 

Counsel

court related to statements made by Judge Williams as a result of a domestic law case in which Brian Clark was a party.

Henry W. McLaughlin (VSB No. 07105)
The Law Office of Henry McLaughlin, P.C.
Eighth and Main Building, Suite 1050
707 East Main Street, Richmond, Virginia 23219
(877) 575-0258; fax (877) 575-0245
henry@mclaughlinvalaw.com
Counsel for Brian Hampton Clark

CERTIFICATE

Henry W. McLaughlin, counsel for appellant, certifies that:

1. The appellant is Brian Hampton Clark. His counsel is Henry W. McLaughlin, VSB No. 07105, Law Office of Henry McLaughlin, P.C., Eighth and Main Building, 707 East Main Street, Richmond, VA 23219; Suite 1050, Telephone: (877) 575-0258; Facsimile: (877) 575-0245; Email: henry@mclaughlinvalaw.com.
2. The appellee is the Commonwealth of Virginia, whose counsel is the Honorable Stephanie Brinegar Vipperman, Commonwealth's Attorney, Patrick County, Virginia, 124 Slusher Street, P.O.; Box 268, Stuart, Virginia 24171. Telephone (276) 694-3945. Facsimile: (276) 694-3787; Email. svipperman@co.patrick.va.us
3. The body of this petition to rehear does not exceed ten (10) pages. .
4. I hereby certify that on the 11th day of February, 2020, after 5 p.m. and before midnight, I mailed a copy of the foregoing Petition to

Rehear to the Honorable Stephanië Brinegar Vipperman,
Commonwealth's Attorney, Patrick County, Virginia. .

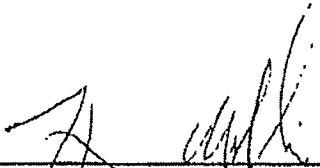

Henry W. McLaughlin

Exhibit B

RECOGNIZANCE

Va. Code §§ 9.1-185, 9.1-185.8, 19.2-123, 19.2-143, 19.2-258

AUGUST 20, 2018 AT 4:00 PM

HEARING DATE AND TIME

PATRICK

COURT - CITY OR COUNTY

P.O. BOX 148, STUART, VA 24171

COURT - STREET ADDRESS

☒ Commonwealth of Virginia

v.

CLARK, BRIAN HAMPTON

DEFENDANT - NAME (LAST, FIRST, MIDDLE)

[]

1351 FAIRMONT DRIVE, BASSETT, VA 24055 (336) 465-3212

DEFENDANT - RESIDENTIAL ADDRESS AND TELEPHONE NUMBER

Mailing address: ☒ Same as above OR []

I certify that this document contains my current mailing address.

CHARGES(s):

| Offense Tracking Number | Virginia Crime Code (For Administrative Use Only) | Code Section | Case Number |
|-------------------------|---------------------------------------------------|-------------------|---------------|
| 141CR1700070900 | CON-3281-S9 | 18.2-456; 19.2-11 | CR17000709-00 |
| | Description: CONTEMPT OF COURT | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |

[] Addendum listing additional charges is attached and incorporated.

I, THE DEFENDANT, as a condition of my release from custody, by signing this form, promise to appear in court on the date and time noted above. If this date, time or place is changed for any reason by any court or judge, I also promise to appear as so directed. I

understand that I ☒ may [] may not leave the Commonwealth of Virginia until my case, and any appeals in my case, are finished. I further agree to keep the peace and be of good behavior and agree to the conditions listed below.

DEFENDANT MAY LEAVE COMMONWEALTH FOR WORK PURPOSES ONLY APPEAL ORALLY NOTED IN
OPEN COURT UPON SENTENCING 03/20/17 SENTENCE APPEALED: 90 DAYS, ALL SUSPENDED
EXCEPT 10 DAYS UPON 2 YEARS GOOD BEHAVIOR; COMPLY WITH JUDGE CLARK'S ORDER CONCERNING
ACCESS TO COURTHOUSE: \$250.00 FINE; COSTS (EXECUTION OF SENTENCE POSTPONED BY JUDGE
WITH THE EXCEPTION OF COMPLIANCE WITH ACCESS TO COURTHOUSE)

I, THE DEFENDANT, UNDERSTAND THAT: (1) If I fail to obey the conditions, I may be ARRESTED and, bail may be revoked; (2) if I fail to appear, the court may try and convict me in my absence; (3) if I fail to appear in the Circuit Court on a misdemeanor charge, I give up my right to a jury trial; (4) failure to appear is a separate crime; (5) I must promptly notify the court of any change in my mailing address or where I live while this case is pending.

SIGNATURE OF DEFENDANT

DATE

155

B**RECOGNIZANCE**

Va. Code §§ 9.1-185, 9.1-185.8, 19.2-123, 19.2-143, 19.2-258

AUGUST 20, 2018 AT 4:00 PM

HEARING DATE AND TIME

PATRICK
COURT - CITY OR COUNTYP.O. BOX 148, STUART, VA 24171
COURT - STREET ADDRESS☒ Commonwealth of Virginia

v.

CLARK, BRIAN HAMPTON

DEPENDANT - NAME (LAST, FIRST, MIDDLE)

☐

1351 FAIRMONT DRIVE, BASSETT, VA 24055 (336) 465-3212

DEFENDANT - RESIDENTIAL ADDRESS AND TELEPHONE NUMBER

Mailing address: ☒ Same as above OR ☐

I certify that this document contains my current mailing address.

CHARGES(s):

| Offense Tracking Number | Virginia Crime Code (For Administrative Use Only) | Code Section | Case Number |
|-------------------------|---------------------------------------------------|-------------------|---------------|
| 141CR1700070900 | CON-3281-S9 | 18.2-456; 19.2-11 | CR17000709-00 |
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☐ Addendum listing additional charges is attached and incorporated.

I, THE DEFENDANT, as a condition of my release from custody, by signing this form, promise to appear in court on the date and time noted above. If this date, time or place is changed for any reason by any court or judge, I also promise to appear as so directed. I

understand that I ☒ may ☐ may not leave the Commonwealth of Virginia until my case, and any appeals in my case, are finished. I further agree to keep the peace and be of good behavior and agree to the conditions listed below.

DEFENDANT MAY LEAVE COMMONWEALTH FOR WORK PURPOSES ONLY. APPEAL ORALLY NOTED IN
 OPEN COURT UPON SENTENCING 03/20/17. SENTENCE APPEALED: 90 DAYS, ALL SUSPENDED
 EXCEPT 10 DAYS UPON 2 YEARS GOOD BEHAVIOR; COMPLY WITH JUDGE CLARK'S ORDER CONCERNING
 ACCESS TO COURTHOUSE; \$250.00 FINE; COSTS (EXECUTION OF SENTENCE POSTPONED BY JUDGE
 WITH THE EXCEPTION OF COMPLIANCE WITH ACCESS TO COURTHOUSE).

I, THE DEFENDANT, UNDERSTAND THAT: (1) If I fail to obey the conditions, I may be ARRESTED and, bail may be revoked;
 (2) If I fail to appear, the court may try and convict me in my absence; (3) If I fail to appear in the Circuit Court on a misdemeanor charge,
 I give up my right to a jury trial; (4) failure to appear is a separate crime; (5) I must promptly notify the court of any change in my
 mailing address or where I live while this case is pending.



SIGNATURE OF DEFENDANT

3/20/18

DATE

151

03/21/2018 21:27 275

B

RECOGNIZANCE

Va. Code (§§ 9.1-185, 9.1-185.1, 19.2-123, 19.2-143, 19.2-258)

AUGUST 20, 2018 AT 4:00 PM

HEARING DATE AND TIME

PATRICK

P.O. BOX 148, STUART, VA 24171

COURT - CITY OR COUNTY

COURT - STREET ADDRESS

☒ Commonwealth of Virginia

v.

CLARK, BRIAN HAMPTON

DEFENDANT - NAME (LAST, FIRST, MIDDLE)

[]

1351 FAIRMONT DRIVE, BASSETT, VA 24055 (336) 485-3212

DEFENDANT - RESIDENTIAL ADDRESS AND TELEPHONE NUMBER

Mailing address: ☒ Same as above OR []

I certify that this document contains my current mailing address.

CHARGE(S)

| Offense Tracking Number | Virginia Crime Code (For Administrative Use Only) | Code Section | Case Number |
|-------------------------|---------------------------------------------------|-------------------|---------------|
| 141CR1700070900 | CON-3281-SF | 18.2-456; 19.2-11 | CR17000709-00 |
| | Description: CONTEMPT OF COURT | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |

[] Addendum listing additional charges is attached and incorporated.

I, THE DEFENDANT, as a condition of my release from custody, by signing this form, promise to appear in court on the date and time noted above. If this date, time or place is changed for any reason by any court or judge, I also promise to appear as so directed. I

understand that I ☒ may [] may not leave the Commonwealth of Virginia until my case, and any appeals in my case, are finished. I further agree to keep the peace and be of good behavior and agree to the conditions listed below.

DEFENDANT MAY LEAVE COMMONWEALTH FOR WORK PURPOSES ONLY. APPEAL ORALLY NOTED IN
OPEN COURT UPON SENTENCING 8/20/17. SENTENCE APPEALED: 90 DAYS, ALL SUSPENDED
EXCEPT 10 DAYS UPON 2 YEARS GOOD BEHAVIOR; COMPLY WITH JUDGE CLARK'S ORDER CONCERNING
ACCESS TO COURTHOUSE; \$250.00 FINE; COSTS (EXECUTION OF SENTENCE POSTPONED BY JUDGE
WITH THE EXCEPTION OF COMPLIANCE WITH ACCESS TO COURTHOUSE)

I, THE DEFENDANT, UNDERSTAND THAT: (1) If I fail to obey the conditions, I may be ARRESTED and, bail may be revoked; (2) if I fail to appear, the court may try and convict me in my absence; (3) If I fail to appear in the Circuit Court on a misdemeanor charge, I give up my right to a jury trial; (4) failure to appear is a separate crime; (5) I must promptly notify the court of any change in my mailing address or where I live while this case is pending.

[Signature]
SIGNATURE OF DEFENDANT

3/20/18
DATE

[X] Commonwealth of Virginia

v.

CLARK, BRIAN HAMPT
DEFENDANT - NAME (LAST, FIRST, MIDDLE)

BOND AS CONDITION OF RECOGNIZANCE: By signing this bond, the defendant and each person signing as surety agree that they and their heirs and assigns owe the sum of \$ 2,500.00 to the county or city in which the case is prosecuted. This debt is: [] UNSECURED [X] SECURED BY [] Cash [] Surety Bail Bondsman [X] Property Bail Bondsman [] Other Solvent Surety(ies) whose ability to pay this debt is measured by the value of real or personal property which they own and who further swear or affirm that the value of such property (after subtracting debts that are liens against the property such as mortgages, unpaid judgments, and unpaid tax liens) equals or exceeds the amount of this bond. Each person who signs this bond agrees to the bond terms and any attached applicable terms are incorporated by reference.

The defendant and each person who signs the bond as a surety give up any homestead exemption as to the debt of this bond and understand that the court may force the sale of ANY property owned by the defendant or any surety to pay the debt if the defendant fails to obey all of the terms and conditions of the recognizance. Each person who signs this bond promises to keep the title and possession of all property used to measure the ability to pay the debt of this bond in his or her name and not use such property as collateral for any loan or debt to allow liens against such property which would prevent the payment of the debt of the bond. The terms and conditions of the recognizance are incorporated by reference, and each person who signs the form agrees to obey all of the terms and conditions on both sides of this form. If the defendant obeys all of the conditions listed in the recognizance, the debt of this bond is void. If the defendant fails to obey the condition of appearance of the recognizance, the people who signed the bond may be required to pay the amount of the bond.

BAIL BONDSMAN INFORMATION

DWIGHT HODGES

NAME OF BAIL BONDSMAN

99-218884

BAIL BONDSMAN DCIS LICENSE NO.

DWIGHT HODGES BAIL BONDS

NAME OF BONDING COMPANY

PO BOX 734/1060 RAKES ROAD ROCKY MOUNT, VA

ADDRESS OF BAIL BONDSMAN/BONDING COMPANY

(540) 243-4433

TELEPHONE NO. OF BAIL BONDSMAN/BONDING COMPANY

OTHER SURETY(IES) INFORMATION

NAME OF SURETY

ADDRESS

NAME OF SURETY

ADDRESS

DEFENDANT

(SEAL)

SIGNATURE OF BAIL BONDSMAN

(SEAL)

NAME OF INSURANCE COMPANY

NAME OF REGISTERED AGENT

ADDRESS OF REGISTERED AGENT

TELEPHONE NO. OF REGISTERED AGENT

SIGNATURE OF SURETY

(SEAL)

TELEPHONE NO.

SIGNATURE OF SURETY

(SEAL)

TELEPHONE NO.

([X] check if applicable) The defendant is released into the custody of the person/organization named below upon completion of this part. By signing this part, the custodian named below agrees to take custody of the defendant and see that the defendant obeys the conditions listed above. If the defendant disappears or does not obey every condition, the custodian promises to notify the court at once.

DORIS WALKER

337 WALKER FARM LANE, PATRICK SPIRINGS, VA 24133

CUSTODIAN - NAME AND ADDRESS

SIGNATURE OF CUSTODIAN

RIGHT TO APPEAL:

You have the right to appeal the amount of this bond. You also have the right to appeal any condition of release. If you want to appeal, contact a lawyer or the court listed on the other side of this form.

ADMITTANCE TO BAIL: After I explained the conditions and warnings contained in this document, the defendant and each person signing as surety swore or affirmed to fulfill the recognizance and, if any, the bond. I order the defendant released on the conditions listed in this document.

[] CLERK [] MAGISTRATE [] JUDGE

JURISDICTION (IF DIFFERENT FROM COURT)

DATE AND TIME

RELEASE ORDER

R

ACCUSED: CLARK, BRIAN HAMPTON
NAME (LAST, FIRST, MIDDLE)

ADDRESS: 1351 FAIRMONT DRIVE
BASSETT, VA 24055

SSN: 226-11-3409 DOB: 07/28/1970

Jurisdiction: PATRICK

- ☐ GENERAL DISTRICT (TRAFFIC)
☐ GENERAL DISTRICT (CRIMINAL)
☐ GENERAL DISTRICT (CIVIL)
☐ J&DR DISTRICT COURT
☒ CIRCUIT COURT

CHARGE(S):

| Offense Tracking Number | Virginia Crime Code (For Administrative Use Only) | Code Section | Case Number |
|-------------------------|---------------------------------------------------|-------------------|---------------|
| 141CR1700070900 | CON-3281-S9 | 18.2-456; 19.2-11 | CR17000709-00 |
| | Description: CONTEMPT OF COURT | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |
| | Description: | | |

☐ Addendum listing additional charges is attached and incorporated.

TO THE SHERIFF, JAIL OFFICER OR CORRECTIONAL OFFICER:
You are ordered to RELEASE the accused on the above charge(s).

03/20/2018 10:25PM
DATE AND TIME

Shenri M. Hazlewood *SHM*
[] MAGISTRATE [X] CLERK [] JUDGE

Released _____ AMPM By _____
DATE AND TIME

RELEASE ORDER

Exhibit 3

V I R G I N I A
IN THE CIRCUIT COURT FOR THE PATRICK COUNTY

| | | |
|---------------------------|---|----------------------|
| COMMONWEALTH OF VIRGINIA, |) | |
| |) | |
| v. |) | Case No. 17000709-00 |
| |) | |
| BRIAN CLARK, |) | |
| |) | |
| Defendant. |) | |

February 18, 2020
4:03 p.m.

HEARD BEFORE:
THE HONORABLE DAVID V. WILLIAMS

RAY REPORTING
P.O. BOX 12133
ROANOKE, VIRGINIA 24023
Raycourtreporting@gmail.com
Reported by: Kelly D. Hopkins

1 APPEARANCES:

2
3 ON BEHALF OF THE COMMONWEALTH:

4 STEPHANIE VIPPERMAN, ESQ.

5 COMMONWEALTH ATTORNEY'S OFFICE

6 P.O. Box 268

7 Stuart, Virginia 24171

8 276-694-3945

9
10 ON BEHALF OF DEFENDANT:

11 HENRY W. McLAUGHLIN, ESQ.

12 THE LAW OFFICE OF HENRY McLAUGHLIN, PC

13 707 E. Main Street, Suite 1050

14 Richmond, Virginia 23219

15 804-205-9020

16

17

18

19

20

21

22

23

24

1 The following cause came on to be heard on
2 the 18th of February 2020, before the Honorable David
3 V. Williams, Judge of the Circuit Court for Patrick
4 County, Virginia, sitting at Stuart, Virginia. The
5 Court Reporter, Kelly D. Hopkins, was duly sworn to
6 Court Report the proceedings, and the following took
7 place:

8
9 (4:03 p.m.)

10
11 THE COURT: Good afternoon, Henry.

12 MR. McLAUGHLIN: Good afternoon, Your
13 Honor. I'm a little remorseful. I called
14 the Clerk's Office number instead of this
15 number. Somebody there is on their way to
16 you. I apologize. I finally figured out I
17 called the wrong number.

18 THE COURT: No problem. Ms. Vipperman
19 is here with me. I've read your motion,
20 Henry, and everything. How about half a
21 loaf's better than no loaf at all?

22 MR. McLAUGHLIN: Yes, sir.

23 THE COURT: All right. How about if I
24 continue the bond until you ask for your

1 rehearing with the Supreme Court? But after
2 that, he's got 30 days to turn in if they
3 turn you down, which would give you enough
4 time to ask the U.S. Supreme Court to tell me
5 to do something different.

6 MR. McLAUGHLIN: I understand, Your
7 Honor. Thank you very much.

8 THE COURT: Okay. Send me a copy when
9 you -- have you already filed your petition?

10 MR. McLAUGHLIN: Yes, sir. It is
11 attached to my motion.

12 THE COURT: Okay. I got it then. Let
13 me know how it turns out.

14 MR. McLAUGHLIN: Yes, sir. Thank you,
15 sir.

16 THE COURT: Okay.

17
18 (Off te record at 4:04 p.m.)
19
20
21
22
23
24

C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA

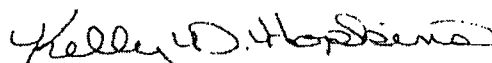
COUNTY OF ROANOKE

I, Kelly D. Hopkins, Notary Public in
and for the Commonwealth of Virginia, at Large, do
hereby certify that the proceedings were by me reduced
to machine shorthand in the presence of the parties,
afterwards transcribed by me by means of computer, and
that to the best of my ability the foregoing is a true
and correct transcript of the proceedings.

I further certify that these proceedings were
taken at the time and place specified in the foregoing
caption.

I further certify that I am not a relative,
counsel, or attorney for either party, or otherwise
interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my
hand at Roanoke, Virginia, on the 24th day of March,
2020.



Kelly D. Hopkins
Notary Public

My Commission expires November 30, 2020.
Notary Registration No.: 291250

| 1 | A | [5] 1:3, 2:3, 2:5, 5:2, 5:5 computer - 5:8 continue - 3:24 correct - 5:10 counsel - 5:15 County [3] 1:1, 3:4, 5:3 Court [12] 1:1, 3:3, 3:5, 3:6, 3:11, 3:18, 3:23, 4:1, 4:4, 4:8, 4:12, 4:16 | H |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1050 - 2:13 12133 - 1:19 17000709-00 - 1:4 18 - 1:7 18th - 3:2 | ability - 5:9 action - 5:16 afternoon [2] 3:11, 3:12 afterwards - 5:8 already - 4:9 apologize - 3:16 APPEARANCES - 2:1 attached - 4:11 attorney - 5:15 ATTORNEY'S - 2:5 | | half - 3:20 he's - 4:2 heard [2] 1:12, 3:1 Henry [4] 2:11, 2:12, 3:11, 3:20 hereby - 5:6 hereunto - 5:17 Honor [2] 3:13, 4:7 Honorable [2] 1:13, 3:2 Hopkins [4] 1:21, 3:5, 5:4, 5:21 |
| 2 | B | D | I |
| 2020 [4] 1:7, 3:2, 5:19, 5:23 23219 - 2:14 24023 - 1:20 24171 - 2:7 24th - 5:18 268 - 2:6 276-694-3945 - 2:8 291250 - 5:23 | BEHALF [2] 2:3, 2:10 best - 5:9 better - 3:21 bond - 3:24 Box [2] 1:19, 2:6 BRIAN - 1:5 | David [2] 1:13, 3:2 Defendant [2] 1:6, 2:10 duly - 3:5 | Instead - 3:14 interested - 5:16 |
| 3 | C | E | J |
| 30 [2] 4:2, 5:23 | caption - 5:13 Case - 1:4 cause - 3:1 certify [3] 5:6, 5:11, 5:14 Circuit [2] 1:1, 3:3 CLARK - 1:5 Clerk's - 3:14 Commission - 5:23 Commonwealth | either - 5:15 ESQ [2] 2:4, 2:11 everything - 3:20 expires - 5:23 | Judge - 3:3 |
| 4 | F | February [2] 1:7, 3:2 figured - 3:16 filed - 4:9 finally - 3:16 foregoing [2] 5:9, 5:12 | K |
| 4:03 [2] 1:8, 3:9 4:04 - 4:18 | | | Kelly [4] 1:21, 3:5, 5:4, 5:21 |
| 7 | | | L |
| 707 - 2:13 | | | LAW - 2:12 loaf - 3:21 loaf's - 3:21 |
| 8 | | | M |
| 804-205-9020 - 2:15 | | | machine - 5:7 |

| | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Main - 2:13 March - 5:18 McLAUGHLIN [7] 2:11, 2:12, 3:12, 3:22, 4:6, 4:10, 4:14 means - 5:8 motion [2] 3:19, 4:11 <hr/> N <hr/> Notary [3] 5:4, 5:22, 5:23 November - 5:23 <hr/> O <hr/> Office [3] 2:5, 2:12, 3:14 otherwise - 5:15 outcome - 5:16 <hr/> P <hr/> p.m [3] 1:8, 3:9, 4:18 P.O [2] 1:19, 2:6 parties - 5:7 party - 5:15 Patrick [2] 1:1, 3:3 PC - 2:12 petition - 4:9 presence - 5:7 problem - 3:18 proceedings [4] 3:6, 5:6, 5:10, 5:11 Public [2] 5:4, 5:22 | <hr/> R <hr/> RAY - 1:19 Raycourtreportin - 1:20 record - 4:18 reduced - 5:6 Registration - 5:23 rehearing - 4:1 relative - 5:14 remorseful - 3:13 Report - 3:6 Reported - 1:21 Reporter - 3:5 REPORTING - 1:19 Richmond - 2:14 Roanoke [3] 1:20, 5:3, 5:18 <hr/> S <hr/> Send - 4:8 shorthand - 5:7 sitting - 3:4 Somebody - 3:15 specified - 5:12 STEPHANIE - 2:4 Street - 2:13 Stuart [2] 2:7, 3:4 Suite - 2:13 Supreme [2] 4:1, 4:4 sworn - 3:5 | <hr/> T <hr/> taken - 5:12 te - 4:18 Thank [2] 4:7, 4:14 transcribed - 5:8 transcript - 5:10 true - 5:9 turn [2] 4:2, 4:3 turns - 4:13 <hr/> U <hr/> U.S - 4:4 understand - 4:6 <hr/> V <hr/> Vipperman [2] 2:4, 3:18 Virginia [9] 1:3, 1:20, 2:7, 2:14, 3:4, 3:4, 5:2, 5:5, 5:18 <hr/> W <hr/> WHEREOF - 5:17 Williams [2] 1:13, 3:3 WITNESS - 5:17 wrong - 3:17 | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

Exhibit 4

COMMITMENT ORDER

Commonwealth of Virginia

ACCUSED: CLARK, BRIAN HAMPTON

NAME (LAST, FIRST, MIDDLE)

Jurisdiction: PATRICK

ADDRESS: 1351 FAIRMONT DRIVE

BASSETT, VA 24066

SSN: 228-11-3409 DOB: 07/28/1970

☐ General District Court (Traffic)☐ General District Court (Criminal)☐ General District Court (Civil)☐ Juvenile & Domestic Relations District Court☒ Circuit Court

SEX:

STATUS:

CHARGED UNDER:

☒ Male ☐ Female ☐ Adult ☐ Juvenile ☒ State ☐ Local Ordinance**CHARGE(S):**

| Offense Tracking Number | Offense Date | Virginia Crime Code (For Administrative Use Only) | Code Section | Case Number |
|-------------------------|--------------|------------------------------------------------------|--------------|---------------|
| 141CR1700070900 | 02/14/2016 | CON-3281-59 | 18.2-456 | CR17000709-00 |
| | | Description: CONTEMPT OF COURT | | |
| | | Description: | | |
| | | Description: | | |
| | | Description: | | |
| | | Description: | | |
| | | Description: | | |

☐ Addendum listing additional charges is attached and incorporated.

BAIL: \$ ☐ Secured ☐ Unsecured ☐ Recognizance
☐ Held without bail ☐ No additional bail required
☐ Release by Judicial Officer to custody of responsible person or when accused is no longer intoxicated

Accused ☐ may ☐ may not depart the Commonwealth of Virginia. ☒ Other conditions of bail on page two.

If NOT released on bail,

Court appearance location, date and time:

☐ GENERAL DISTRICT ☐ J&DR ☒ CIRCUIT

If released on bail,

Hearing date and time:

PATRICK COUNTY

☐ Since accused is unable or unwilling to participate in a bail hearing, I order accused to be returned to Judicial Officer for bail determination.☐ Currently serving sentence☐ Charges pending in Court

Place held in custody (if other than facility serving this jurisdiction):

NAME OF FACILITY

TO THE SHERIFF, JAIL OFFICER OR CORRECTIONAL OFFICER: You are ordered to take custody of and convey the accused to the Court, unless otherwise released.

03/24/2020 11:45AM

DATE AND TIME

Peggy Smith, Deputy Clerk

☐ MAGISTRATE ☒ CLERK ☐ JUDGE

Received:

DATE AND TIME

By:

Case No(s) CR17000709-00

Offense Tracking Number(s): 141CR1700070900

Additional Conditions of Bail:

The Accused must

- ☐ Submit to Drug/Alcohol Screening
- ☐ Submit to Drug/Alcohol Testing
- ☐ Comply with a Curfew of
- ☐ Avoid All Contact with
- ☐ Refrain from Possessing Firearm, Destructive Device, Dangerous Weapon
- ☐ Refrain from Excessive Use of Alcohol
- ☐ Refrain from Use of Illegal Drugs/Controlled Substances not Prescribed by a Health Care Provider
- ☐ Maintain or Seek Employment
- ☐ Maintain or Commence Education
- ☐ The Accused is assigned to home-electronic incarceration
- ☐ The Accused is to be monitored by a GPS/other tracking device
- ☐ The Accused is to accompany the arresting officer to the jurisdiction's fingerprinting facility and submit to having his photograph and fingerprints taken prior to release.
- ☒ Other:

PURSUANT TO THE DENIAL OF APPEAL, BRIAN CLARK SHALL REPORT TO THE PATRICK COUNTY
JAIL TO SERVE HIS ACTIVE TEN SENTENCE BY APRIL 20, 2020.

APPENDIX D

**Order by Virginia Supreme Court entered
On April 15, 2020 denying the Corrected
Motion set forth in Appendix C and denying
As Moot a motion filed on April 14, 2020
Seeking Expedited Decision on Appendix C**

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 15th day of April, 2020.

Brian Hampton Clark, Appellant,

against Record No. 191006
 Court of Appeals No. 0637-18-3

Commonwealth of Virginia, Appellee.

From the Court of Appeals of Virginia

On March 30, 2020, came the appellant, by counsel, and filed a corrected "Motion to Stay Execution of Conviction Pending Appeal to United States Supreme Court," etc., in this case.

Upon consideration whereof, the Court denies the motion.

Upon consideration whereof, the Court denies as moot appellant's motion to expedite consideration of the motion to stay.

Justice Chafin took no part in the resolution of the aforementioned motions.

A Copy,

Teste:

A handwritten signature in dark ink, appearing to read "D. B. R. H.", followed by a horizontal line.

Clerk