

RECORD NUMBER:

United States Supreme Court

DWAYNE LAMAR WILLIAMS, SR.,

Petitioner,

- V. -

COMMONWEALTH OF VIRGINIA,

Respondent

PETITION FOR CERTIORARI FROM JUDGMENT
OF THE VIRGINIA SUPREME COURT

PETITION FOR CERTIORARI

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PETITION FOR CERTIORARI

Questions Presented for Review

- A. Does the right to a grand jury indictment conferred by the Fifth Amendment to the United States Constitution apply to state indictments via the Fourteenth Amendment?
- B. Does a defective grand jury indictment in a state court criminal case deprive the state court of jurisdiction in such a case?

List of All Parties to the Proceeding

All parties are as listed in the caption hereof.

Dwayne Lamar Williams, Sr. is an individual for which no corporate disclosure statement is required by Rule 29.6.

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I. Citations of the Official and Unofficial Reports of the Opinions and Orders Entered in this Case by Courts

On April 30, 2018, the Circuit Court for the County of Rockbridge entered its Order denying a Motion to Vacate (the “Motion”) filed by Dwayne Lamar Williams, Sr. (“Williams”). The Order was not entered into an official report. Williams timely appealed the denial of the Motion to the Virginia Court of Appeals, which subsequently transferred the case to the Virginia Supreme Court.

The Virginia Supreme Court entered its Order finally dismissing the Petition for Appeal on March 22, 2019. The Order was not entered into an official report.

II. Statement of the Basis of Appellate Jurisdiction

The Virginia Supreme Court entered its Judgment on March 22, 2019.

This Court has appellate jurisdiction in this appeal pursuant to 28 U.S.C. § 1257.

III. Constitutional Provisions and Statutes Involved in the Case

The Fifth Amendment and the Fourteenth Amendments to the United States Constitution are involved in this case.

Williams' indictments were defective pursuant to Va. Code §§ 17.1-123(A) and 17.1-124 and 17.1-240, which are involved in this case, which implicate the Fifth Amendment and the Fourteenth Amendments to the United States Constitution.

Williams was convicted pursuant to Va. Code § 18.2-31(2), Va. Code § 18.2-25, which are involved in this case.

IV. Statement of the Case

A. Procedural Posture

Unconfirmed records allege that a grand jury indicted Williams in the Rockbridge County Circuit Court (the “Circuit Court”) on two counts of possession with intent to distribute a controlled substance, one count of possession with intent to distribute marijuana, and one count of selling drugs on or near certain properties. No court order signed by any Circuit Court judge was ever entered confirming that a grand jury had been convened or acted. Accordingly, Williams was never indicted by a grand jury such that the Circuit Court had jurisdiction over Williams.

Williams appeared in the Circuit Court and entered guilty pleas to the charges. On April 28, 2014, Williams was sentenced to a total of thirty

years for these convictions with twenty-two years suspended.

Williams did not appeal his convictions.

The Virginia Supreme Court denied Williams' Petition for Writ of Habeas Corpus on October 17, 2016 on procedural grounds.

The U.S. District Court for the Western District of Virginia denied Williams' Petition for Writ of Habeas Corpus on January 5, 2017, also on procedural grounds.

On or about April 18, 2018, Williams moved to vacate the judgments against him because he was never indicted, which deprived the Circuit Court of jurisdiction. App. A, B.

On or about April 30, 2018, the Circuit Court denied Williams' motion to vacate. App. C.

The Virginia Supreme Court denied Williams' appeal of the Circuit Court decision on March 22,

2019. App. I.

This Petition for Writ of Certiorari is filed seeking reversal of the decisions of the Circuit Court and the Virginia Supreme Court.

B. Statement of Facts

Unconfirmed records in the files of the Circuit Court allege that a grand jury indicted Williams on two counts of possession with intent to distribute a controlled substance, one count of possession with intent to distribute marijuana, and one count of selling drugs on or near certain properties. No court order signed by the Circuit Court judge was ever entered regarding the grand jury that indicates that any such proceeding ever took place or that Williams was ever indicted.

V. Argument

A. Discussion of Questions Presented

1. Does the right to a grand jury indictment conferred by the Fifth Amendment to the United States Constitution apply to state indictments via the Fourteenth Amendment?

The Fifth Amendment to the United States Constitution provides in pertinent part:

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;

The right to a grand jury indictment conferred by the Fifth Amendment to the United States Constitution should apply to state indictments via the Fourteenth Amendment. Given changes in constitutional law that have occurred since *Hurtado v. California*, 110 U.S. 516, 519 (1884) was decided over 130 years ago, it is time to either clarify or

overrule that opinion.

It should not be the case that state courts, such as those of Virginia in this case, are allowed to ignore the grand jury rights of defendants conferred by the Fifth Amendment and then claim that defendants effectively have no recourse. It is certainly possible to hold that states can have indictment methods that have equivalent protections to the federal grand jury system, the grand jury system of Virginia, and the grand jury systems of other states. What should not be allowed is for a fundamental constitutional right, such as the Fifth Amendment right to a grand jury indictment be violated with impunity, and state courts then to be able to claim that right to be “merely procedural” and subject to waiver.

The Circuit Court and the Virginia Supreme Court each implicitly denied Williams’ motion to

vacate based upon a case decided over 70 years ago by the Virginia Supreme Court. In that case, the Virginia Supreme Court made an erroneous determination that any defective grand jury indictment was a waivable procedural matter and was not jurisdictional. *Hanson v. Smyth*, 183 Va. 384, 390-91 (1944).

In *Hanson*, the Virginia Supreme Court opined (emphasis added):

While the Fifth Amendment to the Federal Constitution requires a presentment or indictment in prosecutions under Federal statutes “for a capital, or otherwise infamous crime,” the Virginia Constitution contains no such requirement. *Farewell v. Commonwealth*, 167 Va. 475, 484, 189 S.E. 321, 325; *Pine v. Commonwealth*, 121 Va. 812, 835, 93 S.E. 652; *Guynn v. Commonwealth*, 163 Va. 1042, 1046, 177 S.E. 227. In this State the requirement is merely statutory ... Since the statutory requirement for an indictment in the present case is not jurisdictional, the failure of the record to show affirmatively that the indictment was returned into court by

the grand jury is not such a defect as will render null and void the judgment of conviction based thereon.

Hanson, 183 Va. at 390-91.

The *Hanson* opinion relied upon a false premise that the Fifth Amendment to the Federal Constitution did not apply to Virginia under the equal protection clause of the Fourteenth Amendment. However, since *Hanson* was decided, this Honorable Court has significantly expanded the application of the Bill of Rights of the Constitution to state law matters under the equal protection portion of the Fourteenth Amendment. For example; in *Griffin v. California*, 380 U.S. 609, 615 (1965); this Honorable Court specifically held that the self-incrimination provision of the Fifth Amendment applied to the States by reason of the Fourteenth Amendment.

The right to indictment by grand jury was and

is a longstanding right established by the law of England. See, e.g., *Ex parte Wilson*, 114 U.S. 417, 423-24, 5 S. Ct. 935, 938 (1885). Without the intervention of a grand jury, trials were not allowed for capital crimes, nor for any felony. *Id.* The right to a grand jury indictment was so fundamental to the criminal justice rights of defendants that rights therefor were placed in the Fifth Amendment of the Bill of Rights. *Id.*; Fifth Amendment of the U.S. Constitution.

As this Court has held (emphasis added):

In England, the grand jury served for centuries both as a body of accusers sworn to discover and present for trial persons suspected of criminal wrongdoing and as a protector of citizens against arbitrary and oppressive governmental action. **In this country the Founders thought the grand jury so essential to basic liberties that they provided in the Fifth Amendment that federal prosecution for serious crimes can only be instituted by “a presentment or indictment of a Grand Jury.” Cf. *Costello v. United States*, 350**

U.S. 359, 361-362 (1956). The grand jury's historic functions survive to this day. Its responsibilities continue to include both the determination whether there is probable cause to believe a crime has been committed and the protection of citizens against unfounded criminal prosecutions. *Branzburg v. Hayes*, 408 U.S. 665, 686-687 (1972).

United States v. Calandra, 414 U.S. 338, 342-43, 94 S. Ct. 613, 617 (1974).

In 2010, this Honorable Court explained in some detail the history of application of the Bill of Rights to the States via the Fourteenth Amendment. *McDonald v. City of Chi.*, 561 U.S. 742, 761-65, 130 S. Ct. 3020, 3032-35 (2010). In *McDonald*, this Court set forth in pertinent part (emphasis added):

An alternative theory regarding the relationship between the Bill of Rights and § 1 of the Fourteenth Amendment was championed by Justice Black. This theory held that § 1 of the Fourteenth Amendment totally incorporated all of the provisions of the Bill of Rights. See, e.g., *Adamson, supra*, at 71-72, 67 S. Ct. 1672, 91 L. Ed. 1903 (Black, J., dissenting); *Duncan, supra*, at 166, 88

S. Ct. 1444, 20 L. Ed. 2d 491 (Black, J., concurring). As Justice Black noted, the chief congressional proponents of the Fourteenth Amendment espoused the view that the Amendment made the Bill of Rights applicable to the States and, in so doing, overruled this Court's decision in *Barron*. *Adamson, supra*, at 72, 67 S. Ct. 1672, 91 L. Ed. 1903 (dissenting opinion). Nonetheless, the Court never has embraced Justice Black's "total incorporation" theory. While Justice Black's theory was never adopted, the Court eventually moved in that direction by initiating what has been called a process of "selective incorporation," i.e., the Court began to hold that the Due Process Clause fully incorporates particular rights contained in the first eight Amendments. See, e.g., *Gideon v. Wainright*, 372 U.S. 335, 341, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963); *Malloy v. Hogan*, 378 U.S. 1, 5-6, 84 S. Ct. 1489, 12 L. Ed. 2d 653 (1964); *Pointer v. Texas*, 380 U.S. 400, 403-404, 85 S. Ct. 1065, 13 L. Ed. 2d 923 (1965); *Washington v. Texas*, 388 U.S. 14, 18, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967); *Duncan*, 391 U.S., at 147-148, 88 S. Ct. 1444, 20 L. Ed. 2d 491; *Benton v. Maryland*, 395 U.S. 784, 794, 89 S. Ct. 2056, 23 L. Ed. 2d 707 (1969). The decisions during this time abandoned three of the previously noted characteristics of the earlier period. The Court made it clear that the governing

standard is not whether *any* “civilized system [can] be imagined that would not accord the particular protection.” *Duncan*, 391 U.S., at 149, n. 14, 88 S. Ct. 1444, 20 L. Ed. 2d 491. Instead, the Court inquired whether a particular Bill of Rights guarantee is fundamental to our scheme of ordered liberty and system of justice. *Id.*, at 149, and n. 14, 88 S. Ct. 1444, 20 L. Ed. 2d 491; see also *id.*, at 148, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (referring to those “fundamental principles of liberty and justice which lie at the base of all *our* civil and political institutions” (emphasis added; internal quotation marks omitted)). The Court also shed any reluctance to hold that rights guaranteed by the Bill of Rights met the requirements for protection under the Due Process Clause. The Court eventually incorporated almost all of the provisions of the Bill of Rights. Only a handful of the Bill of Rights protections remain unincorporated.

Id.

Williams avers that Justice Black’s theory is substantively correct and the Bill of Rights is not an *ala carte* menu for courts to pick and choose from. No court, including this Honorable Court, should purport to have authority to pick and choose which

rights of the Bill of Rights to enforce and which not to enforce. Such authority is solely within the province of the people through their states to amend the Constitution if they believe that such is warranted. Williams respectfully avers that Bill of Rights applies to the states through the Fourteenth Amendment in its entirety. Accordingly, any remaining provisions of the Bill of Rights not explicitly applied to states via the Fourteenth Amendment heretofore by this Court should be incorporated as jurisprudence moves forward in accordance with Justice Black's views.

Williams acknowledges that *McDonald* referenced the *Hurtado* case from over 130 years ago concerning grand jury indictments standing for the premise that jurisprudence to date had not incorporated the Fifth Amendment's grand jury indictment requirement. *Id.*, 561 U.S. at 765 n.13.

However, although the case of *Hurtado*, 110 U.S. at 519 stopped short of applying the grand jury provision of the Fifth Amendment to the States via the Fourteenth Amendment, it affirmatively held that the due process requirements had to be met as to indictments. *Id.*, 110 U.S. at 538. The *Hurtado* Court specifically held that:

we are unable to say that the substitution for a presentment or indictment by a grand jury of the proceeding by information, after examination and commitment by a magistrate, certifying to the probable guilt of the defendant, with the right on his part to the aid of counsel, and to the cross-examination of the witnesses produced for the prosecution, is not due process of law.

Id. The *Hurtado* Court did not hold that California could ignore any and all indictment procedures established under California law as Virginia courts did pursuant to Virginia law in Williams' case. The due process requirement needed to be met under

Hurtado and to the extent that this Court does not wish to revisit *Hurtado*, this Court should still hold that the right to a grand jury indictment or its equivalent is jurisdictional rather than procedural. Virginia still must meet the due process requirement. That requirement has simply not been met in Williams' case.

If this Honorable Court wishes to continue to follow "selective incorporation", Williams avers that the Bill of Rights guarantee of a grand jury indictment is fundamental to our scheme of ordered liberty and system of justice under the selective incorporation doctrine. *McDonald*, 561 U.S. at 761-65.

In order to understand why the right to a grand indictment is fundamental, it is instructive to review the history of grand juries and their equivalents further. The history of grand juries goes

back to early Grecian use of “Dicasteries”, which were tribunals picked from lists of citizens whose duty it was to accuse, try, and convict those alleged to have committed crimes. Bonner, Lawyers and Litigants in Ancient Athens 36 (1927). Roman law utilized “Judices”, which functioned similarly. Patterson, The Administration of Justice in Great Britain 200 (1936). Grand juries were subsequently adopted as a part of the English system of law, which then formed a basis for the legal system of most of the United States. See, e.g., Whyte, Is the Grand Jury Necessary?, 45 Wm. and Mary L. Rev. 462-71 (1959). The grand jury system was then brought to Virginia early in the seventeenth century and has been a part of Virginia’s legal system since that time. *Id.* As summarized in the Handbook for Virginia Grand Jurors (the “Handbook”) that is currently used by Virginia Courts (emphasis added):

The Grand Jury **had its origin more than seven centuries ago in England from which, in large part, this country inherited its legal system.** Many legal historians trace its origin to events in the reign of Henry II and to one of the articles of the Constitution of Clarendon in 1164. It was recognized in Magna Carta granted by King John at the demand of the people in 1215. One of its earliest functions was to protect citizens from despotic abuse of power by the king; its other function was to report those suspected of having committed criminal offenses.

These two functions are carried forward today in the work of the Grand Jury, and its importance in controlling the start of prosecutions for serious crimes is recognized in both the Constitution of the United States and the Constitution of Virginia.

Exhibit H at § 5. Thus, the Virginia Supreme Court, which is responsible for the Handbook recognize the fundamental importance of grand juries in controlling the start of prosecutions. The Virginia Supreme Court affirmed this fundamental importance using the Constitution of the United

States and the Constitution of Virginia as primary authorities.

Federal and state judges have repeatedly acknowledged the fundamental importance of grand juries and the right thereto. For example, in an opinion from the District Court of the Northern District of California provided a discourse on the importance of the grand jury right (internal footnote references omitted, emphasis added):

The institution of the grand jury is a development which comes to us out of the mists of early English history. It has undergone changes, but has been remarkable stable because **the institution has been molded into an instrument of democratic government, extraordinarily efficient for reflecting not the desires or whims of any official or of any class or party, but the deep feeling of the people.** As such, with its essential elements of plenary power to investigate and secrecy of its deliberations, it was preserved by the Constitution of the United States not only to protect the defendant but to permit public spirited citizens, chosen by democratic procedures, to attach

corrupt conditions. *A criticism of the action of the grand jury is a criticism of democracy itself.*

The inception of the ‘grand inquest’ is shrouded in the early reaches of English history. It was a device whereby originally, when first authoritatively noticed c. 1166, the Norman kings of England required answers from representatives of local units of government concerning royal property and franchise and also enforced communal responsibility for the acts of criminals. By gradations, the grand juries gave voice to the *fama publica* of the locale as to crimes, and were later recognized in the character of witnesses. Through hundreds of years, these characteristics remain inherent. In an early stage of evolution, the body made presentment or presented indictments at the behest of private individuals or the Prosecutor for the King. Vestiges of all these factors still subsist.

The institution was thus evolved as an instrument for efficient prosecution of crime, and as such it has remained until this day. The principle of secrecy was developed to protect the King’s Counsel and to permit the Prosecutors to have influence with the grand jury, and in modern times it is still useful for the same purpose. By degrees the secrecy of proceedings permitted two outstanding extensions in that grand jurors at times refused to indict notwithstanding

pressure from the Crown and the Judges. This prerogative stood the people will in hand during the tyranny of the Stuarts, and, as it was eulogized by Coke and Blackstone, *the institution was encysted with all its characteristics in the Fifth Amendment.* But the grand jurors, by use of secrecy of their proceedings, stubbornly retained the power of instituting an investigation of their own knowledge or taking a rumor or suspicion and expanding it through witnesses. As we shall see, this comprehensive power also remains at this hour. The Constitution of the United States preserved the grand jury with all its powers and inherent character ... *the grand jury is an essential element in the structure of the federal government now. No other instrument can cope with organized crime which cuts across state lines, conspiracies to overthrow the government of the United States, or alleged deviations from rectitude by those who have been entrusted by the government with public trust ...* The grand jury breathes the spirit of a community into the enforcement of law. *Its effect as an institution for investigation of all, no matter how highly placed, creates the elan of democracy.* Here the people speak through their chosen representatives.

United States v. Smyth, 104 F. Supp. 283, 288-91

(N.D. Cal. 1952). The opinion in *Smyth* provides solid reasoning showing why the Bill of Rights guarantee of a grand jury indictment is fundamental to our scheme of ordered liberty and system of justice.

Likewise, in Virginia in particular, the Handbook emphasizes the fundamental importance of grand juries and the right thereto by quoting Harlan Fiske Stone, late Chief Justice of this Honorable Court (emphasis added):

In time of peace a citizen can perform no higher public duty than that of Grand Jury service. No body of citizens exercises public functions more vital to the administration of law and order. The Grand Jury is both a sword and a shield of justice-a sword, because it is a terror of criminals; a shield, because it is a protection of the innocent against unjust prosecution. No one can be prosecuted for a felony except on an indictment by a Grand Jury. With its extensive powers, a Grand Jury must be motivated by the highest sense of justice, for otherwise it might find indictments not supported by the

evidence and thus become a source of oppression to our citizens, or on the other hand, it might dismiss charges against those who should be prosecuted.

App. J.

For all of the stated reasons stated herein, the grand jury indictment is fundamental to our scheme of ordered liberty and system of justice under the selective incorporation doctrine because of its functions of protecting citizens against despotic abuses of power by sovereigns and to report those suspected of having committed criminal offenses.

Thus, the Fifth Amendment right to a grand jury indictment or its functional equivalent should apply to the states including, without limitation, the Commonwealth of Virginia.

2. Does a defective grand jury indictment in a state court criminal case deprive the state court of jurisdiction in such a case?

Williams avers that the lack of an order of the Circuit Court indicting him, the Circuit Court had no jurisdiction over his case.

A void judgment, is a judgment not subject to time limitation and can be challenged at any time. See, e.g., *Galpin v. Page*, 85 U.S. (18 Wall.) 350, 366 (1873); *Slaughter v. Commonwealth*, 222 Va. 787, 793 (1981). A judgment entered by a court without jurisdiction is void. *Id.* A void judgment may be attacked collaterally or directly in any court at any time. *Id.*

The Virginia legislature has placed statutory requirements on grand jury procedures in addition to the long-standing common law and constitutional requirements. Among other provisions, it is required that grand jury indictments list the name of the witness relied upon by the grand jury. Va. Code § 19.2-202.

It has also generally been long-standing law in Virginia, until *Hanson* was incorrectly decided in 1948, that a failure to record a proper grand jury indictment in a court's order book deprived a court trying a case of jurisdiction. *Commonwealth v. Cawood*, 4 Va. 527, 541 (1826). In *Cawood*, the Virginia Supreme Court held:

It is undoubtedly true, that before any person can have judgment rendered against him for a felony, they must be regularly accused by the Grand Jury of his country, and his guilt must be established by the verdict of a jury. The accusation in due and solemn form, is as indispensable as the conviction. What, then, is the solemnity required by Law in making the accusation? The Bill Indictment is sent or delivered to the Grand Jury, who, after hearing all the evidence adduced by the Commonwealth, decide whether it be true Bill, or not. If they find it so, the foreman of the Grand Jury endorses on it, 'a true Bill,' and signs his name as foreman, and then the Bill is brought into Court by the Whole Grand Jury, and in open Court it is publicly delivered to the Clerk, who records the fact. It is necessary that it should be

presented publicly by the Grand Jury; that is the evidence required by Law to prove that it is sanctioned by the accusing body, and until it is so presented by the Grand Jury, with the endorsement aforesaid, the party charged by it is not indicted, nor is he required, or bound, to answer to any charge against him, which is not so presented.

Id., 4 Va. at 541-542.

Thus, in order for a judgment based upon an indictment to be valid, an indictment must be proper, and must be “delivered in court by the grand jury, and its finding recorded.” *Simmons v. Commonwealth*, 89 Va. 156, 157 (1892). Failure to deliver the indictment in court and record the finding is a “fatal defect”. *Id.*

These long-standing principles have been embodied in both Virginia statutory law and the Virginia Supreme Court Rules. For example, Virginia Supreme Court Rule 3A:5(c) requires that a Grand Jury return and presents their indictment

findings in open court and that the indictment be endorsed ‘A True Bill’ or ‘Not a True Bill’ and signed by the foreman. Virginia statutes require the Clerk of the Court to record the Grand Jury indictment findings in the Order Book in compliance with Va. Code §§ 17.1-123(A) and 17.1-124 and 17.1-240.

A court speaks only through its orders. In those cases where the jurisdiction of the court depends upon compliance with certain mandatory provisions of law, the court’s order, spread upon its order book, must show such compliance or jurisdiction is not obtained. See, e.g., *Simmons*, 89 Va. at 159; *Cawood*, 4 Va. at 542.

The *Simmons* case is particularly pertinent authority. In *Simmons*, the defendant was convicted of first degree murder. *Simmons*, 89 Va. at 157. Like Williams in this case, the defendant in *Simmons* was convicted based upon a grand jury

document, just as in Williams' case, that had allegedly been signed by a grand jury foreman, but had not been recorded in any order book of the circuit court. *Id.* The Lee County Virginia Circuit Court had found the defendant in *Simmons* guilty and did not grant him relief based upon a lack of any recording of grand jury indictment. *Id.* However, the Virginia Supreme Court reversed the conviction and found that the failure to record the grand jury indictment in an order book of the circuit court was a fatal defect. *Id.*

Under Virginia law, although a prisoner has in fact been arraigned on, and has pleaded to, an indictment not appearing by the record to have been found by the Grand Jury, and if a third actual term has passed without such record of the findings, he is entitled under Va. Code § 19.2-242 to be discharged from the crime. *Cawood*, 4 Va. at 546; *Adcock v.*

Commonwealth, 49 Va. (Gratt.) 661, 671 (1851).

In this case Williams should be forever discharged of the crimes charged because three (3) or more terms of the Circuit Court have passed without a trial on valid indictments that were presented in open court by the Grand Jury and recorded.

Federal Courts have generally fully complied with the requirements of the Fifth Amendment concerning grand jury indictments. As a result, this Honorable Court does not appear to have previously addressed a case in which no order was entered indicting a defendant in a criminal matter. In a rare occurrence of non-compliance, the Fourth Circuit Court of Appeals found that a failure to properly record a grand jury indictment was a fatal defect. In its opinion, the Fourth Circuit Court of Appeals stated concerning proper procedures for grand jury indictments and their importance:

1 Chitty on Crim. Law, 324, describes the mode in which the grand jury returns the results of their inquiries to the court, by indorsing “A True Bill” if found, and “Not a True Bill” if rejected; and says:

“When the jury have made these indorsements on the bills, they bring them publicly into court, and the clerk of the peace at sessions, or clerk of assize on the circuit, **calls all the jurymen by name**, who severally answer to signify that they are present, and then the clerk of the peace or assize asks the jury whether they agreed upon any bills, and bids them present them to the court, and then the foreman of the jury **hands the indictments to the clerk of peace or clerk of assize**.”

4 Blackstone, 306, also describes the functions of the grand jury and the methods of its proceedings, the necessity of 12 at least assenting to the accusation, and adds:

“And the indictment when so found is publicly delivered into court.”

A later text-writer (1 Bishop on Crim. Procedure, § 869) says:

“When the grand jury has found its indictments, it returns them into open court, going personally in a body.”

Renigar v. United States, 172 F. 646, 648 (4th Cir. 1909). The importance of following proper

constitutionally based processes was particularly emphasized in *Renigar*:

Neither sound reason nor public policy justifies any departure from settled principles applicable in criminal prosecutions for infamous crimes. Even if there were a wide divergence among the authorities upon this subject, safety lies in adhering to established modes of procedure devised for the security of life and liberty, nor ought the courts in their abhorrence of crime, nor because of their anxiety to enforce the law against criminals, to countenance the careless manner in which the records of cases involving the life or liberty of an accused, are often prepared ...

Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right as if it consisted more in sound than in substance. It is the duty of all the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments. Their motto should be *Obsta principiis.*"

Renigar, 172 F. at 652, 655.

Williams recognizes that *Renigar* has been criticized and claimed by lower courts to have been abrogated. See, e.g., *United States v. Lennick*, 18 F.3d 814, 817 (9th Cir. 1994). However, *Renigar* has not been deemed invalid law by a ruling of this Honorable Court, which is the only court having authority to do so. It is also the case that *Lennick* specifically is distinguishable in that there was actually an order entered in that case although it was not properly entered in open court. *Id.* In Williams' case, no order of any form was ever entered.

In the case at bar, Williams avers that his constitutional rights were violated as to never being indicted. No court order was ever entered indicting Williams. The only documents found in the courts file pertaining to a grand jury were forms allegedly

signed by a grand jury foreman (Exhibit A). The signature of the alleged foreman is illegible. Similarly, the name of the only purported witness against Williams was crossed out and unintelligible scribbles scrawled on each of the alleged “bills”. Moreover, there is nothing in the court’s records that show that a clerk called each of the grand jurors by name to signify that they were present or asked the grand jury whether they agreed on any bills.

Most significantly, the records of the Circuit Court show no record of any indictment against Williams having been ordered and signed by a judge. The failure of the Circuit Court to enter such an order, that the Grand Jury had returned into open court and presented true bill indictments against Williams are fatal defects, which deprived the Circuit Court of jurisdiction. Accordingly, the judgments against Williams are void for want of jurisdiction of

the Circuit Court. *Cawood*, 4 Va. at 541.

Accordingly, Williams requests that this Honorable Court grant this Petition and rule that the failure to indict Williams are fatal defects that render his indictments nullities and his convictions void for lack of jurisdiction.

VI. **Overall Conclusion**

For all of the reasons stated herein, Williams' Petition for Certiorari should be granted and his convictions vacated.

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by /s/ Dale R. Jensen
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