

19-5340

No. _____

ORIGINAL

U.S. Court, U.S.
F.D. 10

JUL 03 2019

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IN THE

SUPREME COURT OF THE UNITED STATES

Carl Postell

PETITIONER

(Your Name)

vs.

David Zook

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF Appeals For The Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Carl Postell

(Your Name)

1607 PANTERS Road

(Address)

Lynchville, VA 23868

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

PETITIONER ALLEGED THAT BOTH TRIAL AND SENTENCING COUNSEL WERE INEFFECTIVE FOR FAILING TO CONDUCT ANY TYPE OF INVESTIGATION INTO HIS CHILDHOOD CONSIDERING THE VICTIM IN PETITIONER'S CASE IS HIS FATHER. THAT THE PETITIONER WAS SEVERELY ABUSED BY THE VICTIM SEVERAL YEARS PRIOR TO PETITIONER'S CASE MIGHT WELL HAVE INFLUENCED THE JUDGES APPRAISAL OF PETITIONER'S MORAL CAPABILITY. THOUGH PETITIONER'S TESTIMONY WAS DISCARDED BY THE TRIAL JUDGE AND APPEAL COURTS TO PETITIONER'S DISADVANTAGE AS HAVING "NO CREDIBILITY" WHEN PETITIONER'S TESTIMONY WAS SHOWN TO BE IN NO WAY CONTRADICTIVE OR REBUTTED BY ANY EVIDENCE OR TESTIMONY PUT FORTH BY THE COMMONWEALTH, PETITIONER'S TESTIMONY WAS USED TO PETITIONER'S DISADVANTAGE AGAIN AS ADMITTANCE OF GUILT. WHEN PETITIONER TESTIFIED TO PUNCHING THE VICTIM ONLY ONE TIME ONLY AFTER THE VICTIM SWUNG AT PETITIONER FIRST, NO EVIDENCE NOR TESTIMONY WAS PRESENTED BY COMMONWEALTH TO DENY, REBUT, OR CONTRADICT THIS FACT. THE TRIAL JUDGE USED PERSONAL OPINION OVER THE FACTS PRESENTED AS TO WHAT ACTUALLY OCCURRED. PETITIONER'S COUNSEL'S WERE INEFFECTIVE AT TRIAL AND SENTENCING AND PETITIONER'S CONVICTION IS BASED ON INSUFFICIENT EVIDENCE VIOLATING PETITIONER'S RIGHTS OF THE U.S. CONSTITUTION. THE FOURTH CIRCUIT RELIED ON THE STATE COURT'S OPINION AND STATEMENT OF THE FACTS ON DIRECT APPEAL BUT SIGNIFICANTLY MISSTATED EVEN THAT SLANTED VERSION OF THE FACTS. THE CASE THUS PRESENTS THE FOLLOWING QUESTIONS:

Whether THE FOURTH CIRCUIT ERR IN DEFERING TO THE STATE COURT FINDING THAT THE EVIDENCE WAS SUFFICIENT TO FIND INTENT TO SUSTAIN A CONVICTION OF AGGRAVATED MALICIOUS WOUNDING?

Whether EVERY ELEMENT OF THE CRIME REQUIRED BY LAW TO BE PRESENTED, WAS, AND PROVEN BEYOND A REASONABLE DOUBT?

(1)

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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STATUTES AND RULES

U.S. CONST. AMEND. VI

U.S. CONST. AMEND. VIII

U.S. CONST. AMEND. XIV

28 U.S.C. § 2254

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Virginia Supreme court appears at Appendix D to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 11, 2019.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was October 6, 2017.
A copy of that decision appears at Appendix D.

☒ A timely petition for rehearing was thereafter denied on the following date: November 20, 2019, and a copy of the order denying rehearing appears at Appendix E.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Following STATUTORY And CONSTITUTIONAL Provisions ARE Involved In This Case.

U.S. CONST. AMEND. VI

In all Criminal Prosecutions, The Accused Shall Enjoy The Right To A Speedy and Public Trial, by an impartial Jury of the State and district wherein the Crime Shall have been Committed, which district shall have been previously ascertained by law, and To be informed of the Nature and Cause of the Accusation; To be Confronted with The Witnesses Against Him; To have Compulsory Process For Obtaining Witnesses in his Favor, and To have The Assistance Of Counsel For his defense.

U.S. CONST. AMEND. VIII

Excessive Bail Shall Not Be Required, nor Excessive Fines Imposed, nor Cruel and Unusual Punishments Inflicted.

U.S. CONST. AMEND. XIV

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.

28 U.S.C. 2254

(a) The Supreme Court, a Justice thereof, a Circuit Judge, or a district Court shall entertain an application for a writ of Habeas Corpus in behalf of a person in custody pursuant to the judgement of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of Habeas Corpus on behalf of a person in custody pursuant to the judgement of a state court shall not be granted unless it appears that...

(A) the applicant has exhausted the remedies available in the courts of the states or;

(B)(1) there is an absence of available state corrective process; or

(2) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of Habeas Corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the states.

(3) A state shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the state, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the state, within the meaning of this section if he has the right under the law of the state to raise, by any available procedure, the question presented.

(d) An application for a writ of Habeas Corpus on behalf of a person in custody pursuant to the judgement of a state court shall not be granted with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim...

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an Unreasonable determination of ~~many~~ the facts in light of the Evidence Presented in the State Court Proceeding.

(e)(1) In a Proceeding instituted by an Application For a Writ of Habeas Corpus by a Person in Custody Pursuant to the Judgment of a State Court, a determination of a Factual Issue Made by a STATE Court shall be Presumed to be Correct. The Applicant shall have The burden of Rebutting the Presumption of Correctness by Clear and Convincing Evidence.

(2) If The Applicant has failed to develop the Factual basis of a Claim in State Court Proceedings, the Court shall Not hold an Evidentiary hearing on The Claim Unless the Applicant Shows that:

(A) The Claim Relies On —

(i) a New Rule of Constitutional Law, Made Retroactive To Cases On Collateral Review by The Supreme Court, That Was Previously Unavailable; OR

(ii) a Factual Predicate That Could Not have been Previously discovered Through the Exercise of due diligence; and

(B) The Facts Underlying The Claim would be Sufficient To Establish by Clear and Convincing Evidence That but for Constitutional Error, NO Reasonable Fact-Finder Would have Found The Applicant Guilty of The Underlying offense.

(F) If The Applicant challenges The Sufficiency of The Evidence adduced in such State Court Proceeding To Support The State Court's determination of a Factual Made therein, the Applicant, if able, shall Produce That Part of The Record Pertinent To a determination of The Sufficiency of The Evidence To Support Such determination. If The Applicant, because of indigency or other Reasons is unable To Produce such Part of ~~the~~ Record, Then The State shall Produce Such Part of the Record and The Federal Court shall direct The State To do so by order directed To an Appropriate State Official. If The State Cannot Provide Such Pertinent Part of The Record, Then The Court shall determine Under the Existing Facts and Circumstances What Weight shall be Given To The State Courts Factual Determination.

- (g) A Copy of The Official Records of The State Court, duly Certified by The Clerk of Such Court To Be a True and Correct Copy of a Finding, Judicial Opinion, or other Reliable Written indicia showing Such a Factual determination by the State Court shall be admissible in The Federal Court Proceedings.
- (h) Except as Provided in Section 408 of The Controlled Substance Act, in All Proceedings brought Under This Section, and any Subsequent Proceedings on review, The Court may appoint Counsel for an Applicant who is or becomes Financially Unable to Afford Counsel, except as Provided by a Rule Promulgated by The Supreme Court Pursuant to Statutory authority. Appointment of Counsel under this Section shall be Governed by Section 3006A of Title 18.
- (i) The ineffectiveness of Counsel, or The incompetence of Counsel during Federal or State Collateral Post-Conviction Proceedings shall Not Be⁽¹⁾ Ground For Relief in a Proceeding arising under Section 2254.

STATEMENT OF THE CASE

On June 21, 2013 Petitioner was convicted of Aggravated Malicious Wounding & Violation of A Protective Order Resulting in Serious Bodily Injury Against Carlton Hearse, Petitioner's Father. According to The Victim, The Alleged Assault took place because of a scooter Petitioner was in possession of, Co-Signed for by Mr. Hearse, which several hours prior to alleged assault, Mr. Hearse repossessed with police aide from Petitioner's home. During Trial, Prostell (Petitioner) testified that he & his Father did get into an altercation but had nothing to do with the scooter. Petitioner testified to hitting Mr. Hearse one time in defense after Mr. Hearse swung and attempted to hit Petitioner first. The Judge over the trial dismissed Prostell's testimony, stating "...I don't believe his testimony, he has no credibility." There was no evidence or testimony to rebut or contradict Prostell's testimony. Commonwealth's Witness Lashonda Burrell testified that she heard Mr. Hearse say, "hit me" and Petitioner responding "I'm not going to hit you." Burrell and Thomas (Commonwealth Witnesses) testified they did not see any assaultive offense. Commonwealth Witness, Dr. Javier Amado, testified to Hearse's injuries though severe, never said that the injuries came from a punch, punches, a kick, or kicks, or when the injuries to the brain particularly were inflicted. The portion of the brain the Dr. said "disappeared" could very well be attributed to the excessive cocaine & drug abuse by Hearse for years prior to alleged offense. Petitioner was sentenced to an active 30 year sentence. 25 of 50 years was imposed for the Aggravated Malicious Wounding and 5 years was imposed for violating the protective order. A fine of \$25,000 was impractically ordered along with restitution of \$1,250 to be paid to victim's spouse. Petitioner was also ordered to serve an indefinite period of probation upon release. Petitioner appealed conviction and sentence. On January 29, 2015 Court of Appeals Denied Petitioner's appeal. Denied by three-judge panel on May 14, 2015. Record No. ~~0023~~ 0023-14-1. Supreme Court refused Petitioner's appeal on February 17, 2016. Denied rehearing on May 13, 2016. Record No. 150940 On or about October 21, 2016 Petitioner timely filed Petition for Writ of Habeas Corpus in Circuit Court for the City of Newport News. Case No. CL16H01524

On February 1, 2017 The Same Court Denied and Dismissed Petitioner's Petition For Writ of Habeas Corpus. On October 6, 2017 The Supreme Court of Virginia Dismissed Petitioner's Appeal Stating Petitioner had Failed To Timely Filed The Notice Of Appeal and Refused Rehearing On November 20, 2017. Record No. 170580. On September 4, 2018 The United States District Court For The Eastern District of Virginia Dismissed With Prejudice Petitioner's Petition For Writ of Habeas Corpus. No. 1:17cv1328 (LD/TCB). Petitioner Appealed To The U.S. Court Of Appeals And The Court Dismissed Petitioner's Appeal By Unpublished Per Curiam Opinion. Submitted: March 27, 2019 and Decided: April 11, 2019. Petitioner Was Denied C.O.A. and No Rehearing Was Filed by Petitioner. Mandate Filed: May 3, 2019.

Reasons For Granting The Petition

I. The Fourth Circuit's Misapplication Of The Prejudice & Performance Standards Of Strickland Warrants This Court's Attention.

The ~~the~~ Fourth Circuit's Opinion misapplied the Strickland v. Washington, 466 U.S. 668, 687-88 (1984), test for Performance. Counsel failed To Function as The Counsel Guaranteed by The Sixth Amendment. Counsel Jeffrey C. Rountree Did NO investigation Of Petitioner's Background Prior To, During, nor After Trial nor The Sentencing Phase. Counsel's Errors Were Bolstered With A Very Untrue but harmful Affidavit Submitted by Counsel for The benefit of The Commonwealth Statist, 'Counsel Did Not Introduce Mitigation Evidence because he believed The Evidence Was Not Admissible or Relevant To Petitioner's Defense.' The Courts Accepted This Affidavit And Stated That The information Put forth by Petitioner During Post-Conviction Was A Double-Edged Sword. Counsel Rountree Did NO investigation Of Petitioner's Background or Childhood, So how Can Counsel Determine Relevancy or Admissibility When he Conducted No TYPE of investigation at All? During Guilt or Sentencing Phase NO investigation Was Done By Petitioner's Counsel's. Marshall, J. dissenting, Stated That The Announced Standard for The Effective Representation is So Malleable That in Practice it Will Either have No Grip at all or Will Yield excessive Variation in The Manner in Which The Sixth Amendment is interpreted and applied by different Courts, and that the defendant in The Present Case Was Not Effectively Represented at and before The Sentencing Hearing. Strickland v. Washington 466 U.S. 668 (1984). Counsel deprived Petitioner of Fair Counsel, effective Counsel, Effective Assistance of Counsel by failing To Render Adequate Legal Assistance by failing To Conduct ANY investigation during Sentencing Phase. The Evidence Would have Served To Bolster Petitioner's Testimony and Shed True Light On The Dark history of Petitioner & The Victim in Petitioner's Case, Dealing A Serious Blow To The States Argument. Petitioner Was Severely Abused By The Victim for Years Prior To The Present Case. The Evidence Counsel failed To investigate might Well have influenced The Judges Appraisal Of Petitioner's Moral Culpability. The Fact That Counsel failed To do ANY investigation and Submitted an Affidavit To ~~the~~ Petitioner's harm Stating That The information Was ~~very~~ Irrelevant Shows That Counsel's Representation Fell below An Objective Standard of Reasonableness Under ~~existing~~ Prevailing Professional norms.

William Roots, Jr. Represented Petitioner During Sentencing Phase and Did No Investigation To Present Any Mitigational Evidence. In Order To Establish Prejudice On A Claim of Ineffective Assistance of Counsel During Sentencing Phase, The New Evidence That A Petitioner Presents Must Differ in A Substantial Way, in Strength and Subject Matter, From The Evidence Actually Presented at Sentencing; Cumulative Mitigation Evidence Will Not Suffice. Foust v. Hawk, 655 F.3d 524 (C.A.6(Ohio) 2011) The U.S.C.A. For The Fourth Circuit Erred, Accepting The ~~THE~~ State Courts Ruling Against Petitioner That He Was Not Prejudiced by Counsel's Failure To Investigate Any Mitigating Evidence Since New Evidence Painted Altogether Different Picture of Petitioner's Childhood and Would have Given defendant (Petitioner) Substantial likelihood of Receiving different Sentence. The Victim In Petitioner's Case Is The Petitioner's Father. The Family Element between Petitioner and Victim Warrants Investigation into The Petitioner's Childhood And background With The Victim, Petitioner's Father. Petitioner Did Speak/Testify/Allocture During Sentencing Phase Concerning Some of The Abuse Received From The Victim but at This Point, The Judge had already stated Petitioner had, "No Credibility," so it is fair to state that although Petitioner spoke about it had either Guilt Phase or Sentencing Phase Counsel for Petitioner had done an Adequate or Any Investigation for that matter, would have discovered and Presented Mitigating Evidence that might well have Influenced The Judges Appraisal of Petitioner's Moral Culpability When his Father and long Time Severe Abuser Made an attempt to attack him.

These Factual Issues May Not Require The immediate Attention of This Court. What Does Merit Review is the Emerging Practice of The Fourth Circuit of Ignoring Evidence While Performing Prejudice Analysis. This Was Precisely The Type of Review This Court Condemned in Williams (Terry) v. Taylor, 529 U.S. 362, 397-398 (2000)

The State Supreme Court's Prejudice determination Was Unreasonable insofar as it failed To Evaluate The Totality of The Available Mitigation Evidence — both that adduced at trial, and that Evidence adduced in The habeas proceedings in Reweighing it Against The Evidence in aggravation.

This Error is Apparent in its Consideration of the additional Mitigation Evidence developed in the Post Conviction Proceedings...

The State Court failed even to mention the argument in Mitigation that Trial Counsel nor Sentencing Counsel advance — Petitioner turned himself in immediately upon hearing of the victim's injuries, Police had not even issued a warrant for Petitioner's arrest until Petitioner brought attention to the offense through his voluntary surrender, expressing remorse for his actions, and cooperating fully with the police after that. This coupled with the graphic description of the abuse the victim severely inflicted upon Petitioner for years prior to this offense might well have influenced the judges appraisal of Petitioner's moral culpability...

Because the Fourth Circuit Court of Appeals has truncated the scope of Strickland v. Washington, 466 U.S. 688, 687-88 (1984), Prejudice Review, this Court must Grant Certiorari.

II. The Decision Of The Fourth Circuit Is In Conflict With The Decisions Of Other Circuits.

Petitioner was charged and convicted of aggravated malicious Wounding. Petitioner testified to punching the victim one time in defense after the victim attempted to hit Petitioner first. There was no testimony from any Commonwealth witness to rebut or contradict this fact. The victim never denied swinging at Petitioner only that "he did not remember what happened." Commonwealth witness (Burrell) testified to hearing the victim say to Petitioner "Hit Me" and Petitioner responded, "I'm not going to hit you." Two grown men were having an argument and one man was punched one time. There was previous animosity but never any threats made by Petitioner. Petitioner defended himself and once safe, walked away. The Court of Appeals of Virginia held that the Commonwealth must prove every essential element of the offense beyond a

Reasonable Doubt. NORRE V. Commonwealth, 254 Va. 184, 186, 491 S.E.2d 739, 740 (1997). For Circumstantial Evidence to Prove Guilt beyond a Reasonable Doubt, it Must be Wholly Consistent With Guilt and Wholly Inconsistent With Innocence. See, Bishop V. Commonwealth, 227 Va. 1164, 1169, 343 S.E.2d 390, 393 (1984). After All The Evidence Was Presented The Judge Concluded He Did Not Know What Happened and Gave his Personal Opinion of What He Thought happened, which is Unconstitutional in itself because he is no longer making his Ruling off Fact and Law but off Personal Opinion and belief. The injuries sustained by the victim were severe and though Defendant (Prostell/Petitioner) admitted Punching The Victim Once The Judge Dismissed Petitioner's Testimony Stating, "Petitioner has No Credibility, I Don't Believe his Testimony." At This Point, Without Petitioner's Testimony, Which Was in No Way Conflicting With Commonwealth Witness Testimony, There is No One and Nothing to Say Who or What Caused ~~the~~ The Victim's Injuries, Yet The Judge Went on to Misinterpret Facts Presented and Formed Scenarios More Damaging to Petitioner Because The Scenarios Were Not Factual. In ~~Jackson v. Virginia~~ Jackson v. Virginia 443 U.S. 307; 99 S.Ct. 2781; 61 L.Ed. 2d 560; 1979 Mr. Justice Stevens States, "Today The Courts Create a New Rule of law -- One That has Never Prevalled In Our Jurisprudence. According to The Court, The Constitution Now Prohibits The Criminal Conviction of any Person -- including a Person Against Whom The Facts have Already been found beyond a Reasonable Doubt by a Trial Judge and One or More levels of a State Appellate Judges -- except upon Proof Sufficient to Convince a Federal Judge That a Rational Trial of Fact Could have found The Essential Elements of The Crime beyond a Reasonable Doubt. The Due Process Clause Protects an accused against Conviction except upon Proof beyond a Reasonable Doubt of EVERY Fact Necessary to Constitute The Crime With Which he is Charged. In Re Winship 397 U.S. 358 The Court of Appeals Relied on The State ~~and~~ And Trial Courts Ruling That The Presumption of a Greater Battering Took Place Therefore Giving More Weight To The Commonwealth's Weakened Case in Violation of Petitioner's Constitutional Right to a Fair Trial. "A TRIAL COURT May Not Withdraw or Prejudge The Issue by

INSTRUCTION THAT THE LAW RAISES A PRESUMPTION OF INTENT FROM AN ACT. IT OFTEN IS TEMPTING TO CAST IN TERMS OF A "PRESUMPTION" A CONCLUSION WHICH A COURT THINKS PROBABLE FROM GIVEN FACTS. A CONCLUSIVE PRESUMPTION WHICH TESTIMONY COULD NOT OVERTHROW WOULD EFFECTIVELY ELIMINATE INTENT AS AN INGREDIENT OF THE OFFENSE. A PRESUMPTION WHICH WOULD PERMIT BUT NOT REQUIRE THE JURY/JUDGE TO ASSUME INTENT FROM AN ISOLATED FACT WOULD PREJUDGE A CONCLUSION WHICH THE JUDGE SHOULD REACH OF ITS OWN VOLITION. A PRESUMPTION WHICH WOULD PERMIT THE JUDGE TO MAKE AN ASSUMPTION WHICH ALL THE EVIDENCE CONSIDERED TOGETHER DOES NOT LOGICALLY ESTABLISH WOULD GIVE TO A PROVED FACT AN ACRITICISM AND FICTIONAL EFFECT. IN EITHER CASE, THIS PRESUMPTION WOULD CONFLICT WITH THE OVERRIDING ~~WILL~~ PRESUMPTION OF INNOCENCE WITH WHICH THE LAW ENDOWS THE ACCUSED AND WHICH EXTENDS TO EVERY ELEMENT OF THE CRIME. A STATE MUST PROVE EVERY ELEMENT OF AN OFFENSE BEYOND A REASONABLE DOUBT AND MAY NOT SHIFT THE BURDEN OF PROOF TO DEFENDANT BY MEANS OF A PRESUMPTION OF INTENT. SANDSTROM V. MONTANA 442 U.S. 510. IN A CASE WHERE INTENT IS AN ELEMENT OF THE CRIME CHARGED AN INSTRUCTION THAT THE "LAW PRESUMES THAT A PERSON INTENDS THE ORDINARY CONSEQUENCES OF HIS VOLUNTARY ACTS" VIOLATES THE FOURTEENTH AMENDMENT DUE PROCESS REQUIREMENT... SANDSTROM V. MONTANA 442 U.S. 510. GOVT. OF V.I. VS. PARRILL 7 F.3d 1097 (SAME) ESTELLE V. MCGUIRE 502 U.S. 62 (SAME) SULLIVAN V. LOUISIANA 508 U.S. 275 (SAME).

PETITIONER WAS CONVICTED OF AGGRAVATED MALICIOUS WOUNDING BY A JUDGE IN NEWPORT NEWS CIRCUIT COURT AND THE COURT OF APPEALS AFFIRMED THE CONVICTION. EVERY COURT HAS RELIED ON THE STATE COURTS DECISION WHEN THE STATE COURT IS CLEARLY IN ERROR. THE CASES CITED AGAINST PETITIONER DURING TRIAL SUCH AS JOHNSON V. COMMONWEALTH 669 S.E.2d 368, 53 Va. APP. 79 (2008) WERE MALICIOUS WOUNDING CONVICTIONS AND IN THIS CASE THE ACTIONS OF THE DEFENDANT WERE MORE VIOLENT THAN PETITIONER'S IN PRESENT PETITION YET THE DEFENDANT WAS CONVICTED OF MALICIOUS WOUNDING. BURKEEL V. COMMONWEALTH 749 S.E.2d 172, 286 Va. 255 (2013) IN THIS CASE ONE PUNCH WAS SUFFICIENT TO SUSTAIN A CONVICTION OF MALICIOUS WOUNDING. THE DEFENDANT SAANGED OF THE ATTACK. VICTIM WAS NOT EXPECTING THE ATTACK AND WAS HIT IN A

Vulnerable Area of his body Resulting in a Serious & Degrading Injury.
Defendant Bragged of his Strength & Training. Defendant Taunted
The Victim After the Assault and Was Set to Attack Again had Not
A Bystander Intervened and Was Attacked as Well. ~~By~~ Citing This
Case Using The Violence And Brutality as Leverage Against The
Petitioner in Present Petition But Over looking All The Other Factors
in The Case To Constitute The Erroneous AGGRAVATED Malicious
Wounding Conviction of Petitioner Is Unconstitutional And Unjust.
Petitioner Was Prejudiced By These Cases When They all are
Malicious Wounding Convictions But Were Much More Violent And
Brutal Than Petitioner's Case. Eric Duell JACKSON v. Commonwealth of
Virginia No. 0388-99-2, May 23, 2000. Defendant Was Convicted of
Malicious Wounding After Evidence found that he Punched The Victim One Time
and She Fell hitting her head busting it Open Requiring STAPLES To Close
it. ~~XXXXXXXX~~ Victim also Suffered a Broken Jaw. The Evidence Viewed in the
light Most favorable to The Commonwealth Was Just As That for Petitioner ~~But~~
The Present Petition Yet In JACKSON Defendant's Case Was Remanded
For Trial For Unlawful Wounding. Petitioner in Present Petition Was
Convicted of AGGRAVATED Malicious Wounding For One punch. Petitioner
Never Denied The Assault Just Asserted That It Was In defense
because The Victim Swung First. The Cases The State Court Used To
Convict and The higher Courts Used To Affirm The Conviction
Were for Malicious Wounding and Unlawful Wounding, So how Can The
Courts Convict Petitioner of AGGRAVATED Malicious Wounding When The
Circumstances, injuries, actions, Evidence, and Testimony Were Sufficient
For lesser Offenses In Similar Cases? This Warrants The Review of This
Court For The Safety of Petitioner And Future Petitioners from being
Unconstitutionally Convicted of a Crime They've Not Actually Committed.
An Appellate Court Should Not Simply Rubber Stamp Every Discretionary Decision
of a Trial Court, but has An Obligation To Review The Record and upon
doing So To Reverse The Judgement of the Trial Court if it finds Clear
Abuse of discretion. Walsh v. Bennett 530 S.E. 2d 904, 260 Va. 171
Gibaldi v. Gibaldi, 771 S.E. 2d 687, 64 Va. App. 676 (same)

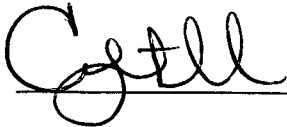
This Petition Merits This Courts Review Due To The Abuse Of Discretion By The Trial Judge And Appellate Courts Because Of Their Failure To Consider Relevant Factors That Should Have Been Given Significant Weight Resulting In A Clear Judgement Of Error And An Unconstitutional Conviction Of A Crime That Violated Petitioner's Right To Due Process And A Fair Trial. Com. Ex Rel. Fair Housing Bd v. Windsor Plaza Cond. Ass'n, Inc., 768 S.E.2d 79 When The Law Circumscribes The Range Of Choice Available To The Court In The Exercise Of It's Discretion, The Abuse-Of-Discretion Standard Includes Review To Determine That The Discretion Was Not Guided By Erroneous Legal Conclusions: Such An Error May Occur When The Court Fails To Fulfill A Conditional Precedent That The Law Requires. Shebelskie v. Brown, 752 S.E. 2d 877, 287 Va. 18

These Cases Illustrate The Fact That The Fourth Circuit Court Of Appeals is Out Of Step With This Court And With Other Circuits In Its Consideration Of What Constitutes An Aggravated Malicious Wounding Conviction And Certiorari Should be Granted To Correct This Error.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 7.1.19