

19-5510

No. _____

Supreme Court, U.S.
FILED

JUN 03 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Maurice P. Fortune, III — PETITIONER
(Your Name)

vs.

Commonwealth of Virginia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Fourth Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Maurice P. Fortune, III

(Your Name)

329 Dellbrook Lane

(Address)

Independence, Virginia 24348

(City, State, Zip Code)

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

(1) Mr. Fortune certifies the Commonwealth of Virginia err in deferring contents essential to the definition of a trial. A trial; as defined by Merriam-Webster's Dictionary of Law, is a judicial examination of issues of fact or law disputed by parties for the purpose of determining the rights of the parties.

Is a fatico hearing; or rather a sentencing hearing, suppliment for the qualifications of a formal trial to answer upon criminal inquest?

(2) Petitioner Fortune alleges that he was bypassed indictment or presentment by a Grand Jury upon his arrest. In all felony prosections in Virginia , the accused has a statutory right to indictment or presentment by the Grand Jury; the Code of Virginia 19.2-217 provides that there shall be a regular grand jury for each term of the circuit court of each county and city. The judges of such courts must annually select 60 to 120 quailified citizens to serve as grand jurors.

Does a summons or warrant produced by a Magistrate replace the fundamental procedure of indictment or presentment by the Grand Jury?

(3) Mr .Fortune maturely merits the denial of the guarantees that the government instills into legal proceedings to be fair; Due Process. Due Process cases are divided into two categories: substantive due process and procedural due process. With procedural due process, rights have been taken away because the proper procedure hasn't been followed. With substantive due process, the rights violated are so important that the procedure really doesn't matter; the rights should never be taken away. Procedural paperwork, fundamental functions of the court, and felonious adjudication of constitutional fact all display clear error.

Are the procedural or substantive due process rights infringed upon Mr. Fortune's conviction; depriving him life, liberty, or property?

(4)Petitioner Fortune's question of law deliberates on the adjudication of Sociology of Law.Mr. Fortune's state of incarceration is in direct violation of the Constitution,deprivation of life,liberty, and property,without due process of law.This is procured by the advancement,and lack there-of produced from the Petitioner upon the field of medical science.

Is someone else's constitutional rights being violated by Mr'Fortune's incarceration?

LIST OF PARTIES

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

[x] 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:

United States District Court
for the Eastern District of Virginia,
Alexandria Divison

401 Courthouse Square
Alexandria, Virginia 22314-5798

Circuit Court of Richmond

400 North 9th Street
Richmond, Virginia 23219

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Commonwealth of Virginia vs. Maurice Fortune CR09-F-4820.....	9
Fortune vs. Herring 1:16cv586(E.D. Va. August 29,2016) (appeal dismissed).....	7
Leach vs. Kolb, 911 F 2d 1249 (7th Cir. 1990),cert. denied, Leach vs. McCaughtry,498 U.S. 972,111 S.Ct. 441,112 L Ed. 424 (1990).....	9
Mortanti vs. Ryan, 2016 U.S. Dist. LEXIS 139902(D.Mass. Oct. 6, 2016).....	9
Mullane vs. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S Ct. 652, 657 (1950).....	10
Murray's Lessee vs. Hoboken Land & Improement Co., 59 U.S. (18 How.) 272, 276 (1856).....	10
Russell vs. United States, 369 U.S. 749, 82 S. Ct. 1038, 8 L. Ed. 2d 240 (1962).....	9
United States vs. Josefik, 753 F 2d 585(7th Cir. 1985), cert. denied,Soteras vs. United States,471 U.S. 1055, 105 S. Ct. 2117, 85 L. Ed. 2d 481 (1985).....	9
STATUTES AND RULES	
18 U.S.C. §3161-3164 (1975 and Supp. 1979).....	9
28 U.S.C. §2244.....	7
28 U.S.C. §2254.....	3,7,9
42 U.S.C. §1983.....	7
Code of Virginia 19.2-217.....	i,9
Federal Rules of Criminal Procedure 23.....	9
U.S. Const., Amend IV.....	3
U.S. Const., Amend V.....	3,9
U.S. Const., Amend VI.....	3,9
U.S. Const., Amned XIV, Sect 1.....	3,9,12
Virginia Criminal Porcedure §19:7 resentencing.....	7
OTHER	
Alexander Hamilton, Remarks on an Act for Regulating Elections, New York Assembly,6 Feb. 1787,in 4 Papers of Alexander Hamilton 34,35(Harold C. Syett ed.,1962).....	10
Black's Law Dictionary 10th Edition.....	10
Blackstone Paralegal Studies, Vol. X Constitutional Law part II.....	10

Magna Charta.....	10
Merriam-Webster's Dictionary of Law.....	i
Pollock and Maitland, History of English Law, 137-155 (2d ed. 1909), Vol. 11, pp. 647-653.....	9
Thomas M. Coolry, A Treatise on the Constitutional Limitations 356 (1868).....	10

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	7
REASONS FOR GRANTING THE WRIT	9
CONCLUSION.....	13

INDEX TO APPENDICES

APPENDIX A	Unpublished opinion and Mandate of the United States Court of Appeals for the Fourth Circuit	1a
APPENDIX B	Opinion of the United States District Court for the Eastern District of Virginia, Alexandria Divison	2a
APPENDIX C	Timely petition for rehearing from the Fourth Circuit Court of Appeals	3a
APPENDIX D	Trust Cerificate of Account History	4a
APPENDIX E	Sociology of Law:Cures for Infectious Diseases	5a
APPENDIX F		

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 _____ 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 _____ 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 _____ court appears at Appendix _____ 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 January 25, 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: March 12, 2019, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following Statutory and Constitutional provisions are involved in this case.

U.S. Const., Amend IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const., Amend 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 offence 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. 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 where in 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 defence.

U.S. Const., Amend XIV, Sect. 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 law.

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 judgment of a state court only on the grounds 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 judgment 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 state; or

(B)(i) there is an absence of available State corrective process; or

(ii) 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 State.

(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 judgment 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 based on 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 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 factfinder would have found the applicant guilty of the underlying offence.

(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 issue 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 reason is unable to produce such part of the record, then the State shall 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 court's 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 the finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substances 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 or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

STATEMENT OF THE CASE

The case at bar Mr. Fortune was charged with malicious wounding on June 30, 2009 of Timothy L. Britton. Without indictment or presentment to a Grand Jury the case progressed to the General District Court of Richmond, Manchester District. According to Larry Moore, a witness who was impeached upon prior bad credit, Mr. Fortune was identified as the assailant without formal procedure. At the General District arrangement Mr. Moore was impeached, and the case was remanded to the Circuit Court of Richmond under the statement of the existence of DNA. Over the first six months at this judiciary process, Mr. Fortune was direct indicted to aggravated malicious wounding, nolli prosequi the original accusation leading to a res adjudicata; and had requested to hold a speedy trial in the absence of his attorney. After the denial of the speedy trial, Mr. Fortune was ordered to attend competency exams at a mental hospital. The examinations lasted for approximately one year, the findings all were incompetent from the fact of Mr. Fortune's blatant innocence and lack of committing an act deemed by society to be criminal. Under the request of Ms. Sarah Gaborik; Mr. Fortune's court appointed attorney, Mr. Fortune lied out of court and understood terms for a lesser sentence. Upon the Circuit Court of Richmond receiving documentation of the manifest injustice, in February of 2011 Mr. Fortune appeared before the Court and was found guilty without being allowed the essential elements for

a trial to dispute by right the contrary. On April 11, 2011, a fatico or sentencing hearing was held; to which Mr. Fortune again stated his innocence and requested a more lenient sentence.

No weapon was ever found. The state presented no evidence except for in credit of an impeached witness. Plus the character witnesses for prosecution were for the character of the victim during the recuse fatico hearing. At the Appellate level of post-conviction, the ground entered by Ms. Gaborik stood rubric upon the use and non-use of a presentence report and sentencing guidelines there-that-of. Virginia Criminal Procedure §19:7 resentencing clearly states the Appellate Court of Virginia will not entertain a petition upon this merit. Mr. Fortune continued to petition for post-relief with the same firm under the same ground of unmerited claim with a Mrs. Catherine Rusz; in the Virginia Court of Appeals, and Ms. Stephanie Cangin; in the Supreme Court of Virginia.

Mr. Fortune further sought post-conviction relief through habeas corpus upon §2254 as a pro se litigant, and was denied on the merit as time barred. The petitioner later filed a second or successive habeas corpus under title 28 U.S.C. §2244, and was denied on the lack of jurisdiction for not obtaining a certificate of appealability. Mr. Fortune filed a complaint pursuant to 42 U.S.C. §1983 in the United States District Court for the Western District of Virginia. By order dated November 8, 2018, petitioner's complaint was construed as a petition for a writ of habeas corpus pursuant to §2254, challenging the constitutionality of petitioner's conviction on the grounds of never receiving a trial, never being indicted by grand jury, and due process. Due to lack of jurisdiction under §2244 the action was dismissed, for the Fourth Circuit for an order authorizing this Court to consider the petition. The United States Court of Appeals for the

REASONS FOR GRANTING THE PETITION

I. THE FOURTH CIRCUIT COURT OF APPEALS IS IN CONFLICT WITH THE CONSTITUTION AND LAWS OF THE UNITED STATES OF AMERICA.

The Constitution and laws of the United States clearly unambiguously states: No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, ... "U.S. Const., Amend V; "In all criminal prosecutions, the accused shall enjoy the right to a speed and public trial, by an impartial jury..." U.S. Const., Amend VI; and "...nor shall any State deprive any person of life, liberty, or property, without due process of law, ..." U.S. Const., Amend XIV, Sect. 1. With the absence of these fundamental elements, the Fourth Circuit Court of Appeals err under 28 U.S.C. §2254. Defined as followed: (1) "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." U.S. Const., Amend VI; see also *Leach v. Kolb*, 911 F.2d 1249 (7th Cir 1990), cert. denied, *Leach v. McCaughtry*, 498 U.S. 972, 111 S.Ct. 441, 112 L. Ed. 2d 424 (1990). Under Federal Rules of Criminal Procedure 23, a criminal defendant may waive a jury trial only upon a written waiver consented to by the prosecution and approved by the court. See Fed. R. Crim. Pro. 23 *United States v. Josefik* 753 F.2d 585 (7th Cir 1985), cert. denied, *Soteras v. United States*, 471 U.S. 1055, 105 S.Ct. 2117, 85 L.Ed. 2d 481 (1985). There is a question as to whether counsel can waive a defendant's Sixth Amendment right to a public trial without knowing assent by the defendant. *Morganti v. Ryan*, 2016 U.S. Dist. LEXIS 139902 (D. Mass. Oct. 6, 2016). However, under the Speedy Trial Act; 18 U.S.C. §3161-3164 (1975 and Supp. 1979), determination is to be immediate according to the recognized method. This recognized method in a broad sense contains the following essential functions: opening statements, evidence for the prosecution, rebuttal by the defence, evidence for the defence, rebuttal by prosecution, and closing arguments. Without these fundamental aspects, the definition of a trial is meritless and outside the jurisdiction of determining if an act deemed by society to be criminal was committed, and if the accused had the requisite malicious intent to do a criminal act. Did a trial occur in *Fortune v. Commonwealth of Virginia* Cr09-F-4820?

(2) An indictment is a written accusation describing the criminal charges returned by a Grand Jury upon which a defendant may be tried. The requirement of a formal written charge by the grand jury "reflects centuries of antecedent development of common law, going back to the Assize of Clarendon in 1166. *Russell v. United States*, 369 U.S. 749, 82 S.Ct. 1088, 8 L. Ed. 2d 240 (1962). *Pollock v. Maitland*, History of English Law, 137-155 (2d ed. 1909), and Vol. 11, pp. 647-655. The United States Supreme Court has never made the Fifth Amendment requirement of prosecution by indictment applicable to the States through the Fourteenth Amendment. However, Virginia supplies code 19.2-217 for supplement. Because each State, as well as the federal government has its own constitutional, statutory, and judicial rules and proscriptions regarding indictments; emphasis is placed on federal constitutional law and judicial rules since they have the

broadest application and may suggest approaches applicable to reviewing and challenging indictment obtained in other jurisdictions. Does an arrest warrant issued by a Magistrate replace indictment by a Grand Jury?

(3) Due Process defined is "the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights including notice and the right to a fair trial before a tribunal with the power to decide the case." Black's Law Dictionary 10th Edition. "The words 'due process' have a precise technical import, and only applicable to the process and proceedings of the courts of justice; they can never be referred to an act of legislature." Alexander Hamilton, Remakes on an Act for Regulating Elections, New York Assembly, 6 Feb. 1787, in 4 Papers of Alexander Hamilton 34, 35 (Harold C. Syrett ed., 1962). "The words, 'due process of law', were undoubtedly intended to convey the same meaning as the words, 'by the law of the land'." in Magna Charta. Murray's Lessee v. Hoboken Land & Improvement Co., 59 U.S. (18 How.) 272, 276 (1856). "Due Process of law in each particular case means, such an exertion of the power of government as the settled maxims prescribe for the class of cases to which the one in question belongs." Thomas M. Cooley, A Treatise on the Constitutional Limitations 356 (1868). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties, of the pendency of the action and afford them an opportunity to present their objections... The notice must be of such nature as reasonably to convey the required informations." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657 (1950). Due Process, in a basic form, is the moral procedure or policies to follow to assure that no miscarriage of justice has happened. Should the intent be to apply meta-ethical views; discussions of what is right or wrong, to the practice if immediate relief upon due process?

As defined by Blackstone, the general guaranties deprivation of life, liberty, or property without due process of law necessarily assume that life, liberty, or property are enjoyed and protected in accordance with law, and that on grounds and in a proper procedure, they may be forfeited. One of the universally recognized methods of compelling members of society to comply with necessary restrictions on the enjoyment of life, and liberty and the use of property essential to preserve a similar enjoyment and use on the part of other members, is by inflicting criminal punishment on any person who violates such restrictions. Such punishment may consist in the forfeiture of property, liberty, or even life. But such forfeiture is to be enforced only in accordance with due legal procedure, that is due process of law. However, if such enforcement is attempted, it must fall within the proper function of the judiciary department of government to determine the sufficiency of the grounds of forfeiture and of the methods that may be resorted to. In short, where the deprivation of life or liberty or the forfeiture of property is for punishment for a crime, it must first appear that the act of conduct being punished is really a crime, has actually been committed, and has been determined according to the recognized method. The power to declare

what conduct is so detrimined according to the public welfare that it must be punished as a crime rests with in legislature in the exercise of its broad police power. But the determination of the guilt of a person accused of crime rests within the judiciary. The executive's function in the connection is to enforce the judgments of the courts.

II. THE FOURTH CIRCUIT COURT OF APPEALS IS IN CONFLICT WITH THE CONSTITUTIONALITY OF SOCIOLOGY OF LAW.

In the U.S. Constitution, Amendment XIV, Section 1, the Constitution speaks of not depriving any person of life, liberty, or property. Is this right forfeited upon someone else being or becoming incarcerated? Sociology of Law is the effect of one's incarceration on society as a whole. The Fourth Circuit Court of Appeals err by opinion in the fact that society as a whole is effected negatively by Mr. Fortune's current status. Mr. Fortune trier of fact is supplied in the knowledge and advancement of medical science presented in Appendix E.

The relation to the economic and social standing relies upon the contribution; if any, to the human condition; produced by the additon of health and financial accomplishments shaped by the Petitioner in like mature merits. The burden on the political economy is on relativity \$60,000 per year. These events ripple the downward slope of today's fiscal market. This states contra bonos mores; latin for against good morals: harmful to the moral welfare of society, creating a liberty interest detour from duties in official copacity under the colour of law. Proven jurisprudentially by common construction of the interlocking directorate of the U.S. Constitution, Amendment XIV, Section 1. Does the fact of millions of men, women, and children being deprived life stand Constitutionally for immediate relief under this section of Law?

For these reasons, a writ of certiorari should issue to review the judgments and opinions of the Fourth Circuit Court of Appeals; United States District Court for the Eastern District of Virginia, Alexandria Division; and the Circuit Court of Richmond. Plus remand to litigate, contest, or resolve in a court of law or last resort supplemented under the rule of four.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

M. Patrick Fortune

Date: May 21, 2019

Maurice P. Fortune, III #1437726
RiverNorth Correctional Center
329 Dellbrook Lane
Independence, Virginia 24348
Maurice Fortune @ JPay.com