

No. _____

~~19-5534~~

IN THE

SUPREME COURT OF THE UNITED STATES

JAMES W. ROYSTER

(Your Name)

PETITIONER
FILED

JUN 29 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

Commonwealth of Virginia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

VIRGINIA SUPREME COURT

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

PETITION FOR WRIT OF CERTIORARI

JAMES W. ROYSTER #1026579

(Your Name)

Wallens Ridge State Prison

P.O. Box 759

(Address)

Big Stone Gap, Va. 24219

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Petitioner filed two (2) Motions with the Henrico County, Virginia Circuit Court per Virginia Code Sections 8.01-428(D) and 19.2-227, upon the ground: Void ab initio judgment for Want of Jurisdiction. The Circuit Court denied both motions via Sua Sponte; for the reason it did not have jurisdiction to consider the motions per Virginia Supreme Court Rule 1:1. Petitioner appealed the Circuit Court's decision to the Virginia Supreme Court, in which, that Court affirmed the Circuit Court's decision. Thus, this case presents the following question:

Did the Henrico County, Circuit Court err in determining that it did not have jurisdiction to consider such motions per Virginia Supreme Court Rule 1:1 and did the Virginia Supreme Court err in affirming such opinion?

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:

JAMES W. ROYSTER, #1026579
PRO-SE PETITIONER
Wallens Ridge State Prison
P.O. Box 759
Big Stone Gap, Va. 24219

COMMONWEALTH OF VIRGINIA
RESPONDENT BY COUNSEL
SHANNON L. TAYLOR,
Henrico County, Virginia Commonwealth's Attorney
Henrico County Commonwealth's Attorney Office
P.O. Box 90775
Henrico, Va. 23273

TABLE OF CONTENTS

OPINIONS BELOW	1 of 8
JURISDICTION.....	2 of 8
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3 of 8
STATEMENT OF THE CASE	4 of 8
REASONS FOR GRANTING THE WRIT	5-6 of 8
CONCLUSION.....	7 of 8
CERTIFICATE OF SERVICE.....	8 of 8

INDEX TO APPENDICES

APPENDIX A Virginia Supreme Court's June 28, 2019 Opinion.

APPENDIX B Henrico County, Virginia Circuit Court's August 23, 2018 decision.

APPENDIX C N/A

APPENDIX D N/A

APPENDIX E N/A

APPENDIX F N/A

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>United States Supreme Court</u>	
Bowles v Russell, 551 U.S. 205 (2007)	5-6
Kontrick v Ryan, 540 U.S. 443 (2004)	5-6
Schacht v U. S., 398 U.S. 58 (1970)	5-6
Johnson v Zerbst, 304 U.S. 458 (1938)	6
<u>Virginia Supreme Court</u>	
In re Barnes, 221 Va. 780 (1981)	6
Cunningham v Smith, 205 Va. 205 (1964)	6
Dorn v Dorn, 222 Va. 288 (1981)	5
Singh v Mooney, 261 Va. 48 (2001)	6
Morrison v Bestler, 239 Va. 166 (1990)	6
<u>Virginia Court of Appeals</u>	
Smith v Commonwealth, 56 Va. App. 351 (2010)	5
STATUTES AND RULES	
Virginia Code Section 8.01-428 (D)	5
Virginia Code Section 19.2-227	6
Virginia Supreme Court Rule 1:1	5-6
OTHER	N/A

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 _____ 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 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 Henrico County Circuit 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.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

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 June 28, 2019. A copy of that decision appears at Appendix A.

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

1. United States Constitution, 14th Amendment due Process clause and Equal Protection of the law clause.
2. Virginia Constitution, Article 6, Section 5.
3. Virginia Code Section 8.01-428 (D).
4. Virginia Code Section 19.2-227.

STATEMENT OF THE CASE

1. Petitioner on August 20, 2018, filed a Motion to Vacate with the Henrico County Circuit Court per Virginia Code Section 8.01-428 (D). [Case No. CR08-4215-00]. Petitioner also on August 20, 2018, filed a Motion in Arrest of Judgment with the Circuit Court per Virginia Code Section 19.2-227. [Case No. Supra]. See; also Appendix B

2. On August 23, 2018, the Circuit Court enter the final Order dismissing Petitioner's two (2) motions on procedural grounds per Virginia Supreme Court Rule 1.1, upon the ground that it no longer had jurisdiction to consider such motions. See; attached Appendix B, Circuit Court's August 23, 2018, order.

3. Petitioner appealed the Circuit Court's decision to the Virginia Supreme Court; and it affirmed the Circuit Court's decision on June 28, 2019, See; attached, Appendix A, Virginia Supreme Court's Order, Record No. 181386.

REASONS FOR GRANTING THE PETITION

I. THE DECISION(S) OF THE HENRICO COUNTY, CIRCUIT COURT AND VIRGINIA SUPREME COURT ARE IN CONFLICT WITH THE DECISION OF THIS COURT.

This Honorable Court has recognized that Court - prescribed rules of practice and procedure that describe time limits, "do not create or withdraw jurisdiction of a Court, as opposed to statutory time limits". E.g. Bowles v Russell, 551 U.S. 205, 210-12, 127 S.Ct. 2300, 2364-65, 168 L.Ed.2d 96 (2007), Kontrick v Ryan, 540 U.S. 443, 453, 124 S.Ct. 906, 914, 157 L.Ed.2d 867 (2004), Schacht v U.S., 398 U.S. 58, 64, 90 S.Ct. 1555, 1559, 26 L.Ed.2d 44 (1970).

IN Petitioner's Case before the Court, Virginia Supreme Court Rule 1: Provides:

"All final judgments, orders, and decrees, irrespective of terms of Court, shall remain under the control of the trial Court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer. But notwithstanding the finality of the judgments, in a criminal case the trial Court may postpone execution of the sentence, in order to give the accused an opportunity to apply for a writ of error and supersedeas; such postponement, however, shall not extend the time limits herein after prescribed for applying for a writ of error." Id.

"Virginia Supreme Court Rule 1:1 is a court prescribed rule of practice and procedure that describes a time limit, but do not create or withdraw the state court's jurisdiction." E.g. Smith v Commonwealth, 56 Va. APP. 351, 360-362, 693 S.E.2d 765, 770-771 (2010).

Petitioner filed his Motion To Vacate with the Circuit Court per Code Section 8.01-428(D). "Rule 1:1 was not intended to limit, and in fact could not limit the trial court's statutory authority to consider a motion filed per Code Section 8.01-428." E.g. Dorn v Dorn, 222 Va. 288, 279 S.E.2d 393-395 (1981) ("Quoting Virginia Constitution, Article 6, Section 5 - prohibits the promulgation of any court rule in conflict with the general law as the same shall, from time to time, be established by the General Assembly." Id., FN3)

REASON(S) FOR GRANTING THE PETITION

Petitioner also filed a Motion in Arrest of Judgment with the Circuit Court per Code Section 19.2-227.

Code Section 19.2-227 provides: "Judgment in any criminal Case shall not be arrested or reversed UPON any exception or objection made after a verdict to the indictment, unless it be so defective as to be in violation of the Constitution". Id.

Petitioner argues the "Unless it be so defective as to be in violation of the Constitution" provision of Section 19.2-227 makes a constitutional violation a defect in the trial court's subject-matter jurisdiction. Compliance with mandatory provisions of the Constitution is essential to subject-matter jurisdiction of the trial court to try the accused. E. g. Johnson v Zerbst, 304 U.S. 458 (1938), accord, In re Barnes, 221 Va. 780 (1981), Cunningham v Smith, 205 Va. 205, 135 S.E. 2d 770 (1964). Petitioner argues further, Section 19.2-227 do not express a time limit that an objection made after a verdict to the indictment can be made. Id.: "The reason for such, is a defect in subject-matter jurisdiction can not be waived or cured by passage of time." E. g. Morrison v Bestler, 239 Va. 166 (1990). Even more so, a judgment that is void ab initio for want of subject-matter jurisdiction is a complete nullity that may be impeached collaterally by all persons, anywhere, at any time, or in any manner. E. g. Singh v Mooney, 261 Va. 48, 541 S.E. 2d 549 (2001) ("Consequently, Virginia Supreme Court Rule 1:1, twenty-one (21) days after the entry of the final judgment time, limit does not apply to a judgment which is void ab initio." Id.) Therefore, the Henrico County Circuit Court deprived Petitioner of his Fourteenth Amendment due process of law clause and Equal Protection of the law clause when it denied Petitioner's two (2) motions via Virginia Supreme Court Rule 1:1. Thus, the Circuit Court's and Virginia Supreme Court's decisions are in conflict with the decision of Bowles v Russell, supra., Kontrick v Ryan, supra, and Schacht v U.S., supra..

WHEREFORE, after this Honorable Court has reviewed the facts and laws presented in this matter; Petitioner respectfully request the Court to grant him the below relief requested.

1. Grant him a Writ of Certiorari,
2. Reverse the Virginia Supreme Court's and Henrico County, Circuit Court's decisions, and
3. Remand with instruction for the Circuit Court to address the merit of his two(2) motions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

*James W. Royster

Date: July 29, 2019