

19-6165  
No. \_\_\_\_\_

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Ricky Glandall Davis - PETITIONER  
(Your Name)

Supreme Court, U.S.  
FILED  
JUL 26 2019  
OFFICE OF THE CLERK

VS.

Commonwealth of Virginia - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI

Court of Appeals of Virginia

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

PETITION FOR WRIT OF CERTIORARI

Ricky G. Davis #1035106  
(Your Name)  
Greensville Correctional Center  
9101 Corrections Way  
(Address)

JARRATT, Virginia 23870  
(City, State, Zip Code)

(434) 535-7000  
(Phone Number)

## QUESTION(S) PRESENTED

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- I. CAN VIRGINIA CONSTITUTIONALLY HALE A PERSON INTO ITS CRIMINAL COURTS AND THERE FORCE A LAWYER UPON HIM, EVEN WHEN HE INSIST THAT HE WANTS TO CONDUCT HIS OWN DEFENSE ?
  
- II. THE VIRGINIA COURTS ERRED WHEN THEY CONCLUDED THE UNITED STATES CONSTITUTION DOES NOT PROVIDE A RIGHT TO COUNSEL IN A PROBATION REVOCATION HEARING. THE COURTS ERRED BY NOT UPHOLDING PETITIONER'S STATUTORY AND CONSTITUTIONAL RIGHTS.

## **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:

## **RELATED CASES**

Ricky G. Davis v. Commonwealth of Virginia  
Supreme Court Record No. 180962

Ricky G. Davis v. Commonwealth of Virginia  
Court of Appeals Record No. 0760-17-1

Ricky G. Davis v. Commonwealth of Virginia  
Circuit Court No. CR00-420-05, CR00-421-04

Ricky G. Davis v. Robert O'Hara Jr. et. al.,  
Civil Action No. 3:19CV218-HEH

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### OTHER

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 is unpublished.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 E 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 is unpublished.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 State Trial 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 February 7, 2019. A copy of that decision appears at Appendix C.

A timely petition for rehearing was thereafter denied on the following date: May 10, 2019, and a copy of the order denying rehearing appears at Appendix D.

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**

### **AMENDMENT 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 accusations; to be confronted with the witness against him; to have compulsory process for obtaining witness in his favor, and to have the assistance of Counsel for his defence.

### **AMENDMENT 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.

## STATEMENT OF THE CASE

This case arises from the Circuit Court of Southampton County, Virginia. The Honorable Robert G. O'Hara, Jr., Judge presided.

The Petitioner was originally sentenced on November 16, 2000, to three years in the Virginia Department of Corrections on one count of Possession of Cocaine in violation of § 18.2-248 of the 1950 Code of Virginia, as amended (Case No. CR00-420, and to three years on one count of Possession of Heroin in violation of § 18.2-248 of the 1950 Code of Virginia, as amended (Case no. CR00-421). The Court suspended all of the aforementioned sentences conditioned upon successful completion of three years of supervised probation and other conditions. Mr. Davis has been found in violation of his probation on these charges on three prior occasions. First, -in a hearing held on September 29, 2008, the court revoked and resuspended all of the previously suspended time. The suspended time was conditioned upon successful completion of five years of supervised probation and other conditions. Mr. Davis was again found in violation of his probation in a hearing on April 30, 2013. In that hearing, -the court revoked three remaining years on each charge, and resuspended two years and six months of the previously suspended time on each charge. The suspended time was conditioned upon successful completion of three years of supervised probation and other conditions. Finally, in a hearing on April 28, 2016 Mr. Davis was once again found in violation of his probation, in that hearing, the court revoked the remaining time two years and six months on each charge On case number CR00-420 the court resuspended two years and three months of the previously suspended time. The Court resuspended all the remaining time on case number CR00-421. The Suspended time was conditioned upon successful completion of two years of supervised probation and other conditions. The instant case represents Mr. Davis Fourth Violation on these charges. The total

time left to serve is four years and nine months.

Mr. Davis was charged with violation the terms and conditions of his probation pursuant to § 19.2-306 of the Code of Virginia, as amended. The revocation proceeding was being handled by a private attorney, but Petitioner withdrew representation due to conflict on September 13, 2016, and the public defender was appointed to represent Mr. Davis on that same date. On November 29, 2016, counsel moved the court to have Mr. Davis evaluated for competency to stand trial, because Mr. Davis advised counsel that he would like to represent himself. The motion was granted, and a review date was set for February 23, 2017. On February 23, 2017 after reviewing the report on competency, the court found Mr. Davis competent to stand trial and a date was set for the violation hearing.

The revocation proceeding was held on April 26, 2017 nearly ten months later. At that proceeding, the probation and parole department presented guidelines that reflected a recommendation for one year to one year and six months of incarceration.

Mr. Davis was found in violation of his probation. After hearing evidence and argument of counsel, the court revoked the previously suspended sentence and ordered them to be served in their entirety, the total time Mr. Davis was ordered to serve was four years and nine months.

Mr. Davis timely noted his appeal. The record of the case was received at the Court of Appeals on July 13, 2017, the appeal was granted, and oral argument was heard on March 28, 2018. A memorandum opinion was issued on May 1, 2018, wherein the court declined to consider Mr. Davis arguments and affirmed the lower courts rulings. Mr. Davis then filed a petition for rehearing and for rehearing en banc, these petitions were also denied. Mr. Davis sought review in the Virginia Supreme Court the Court denied Mr. Davis petition for appeal. on February 7, 2019 he then sought review en banc and on May 10, 2019 his petition for review

petition for rehearing was denied. Mr. Davis then pro se filed his Notice of Appeal to (SCOTUS) that was ordered on June 20, 2019 and now this case is before (SCOTUS) on Writ of Certiorari.

#### STATEMENT OF FACTS

Mr. Davis was to begin his current active probation on July 6, 2016. He would have been supervised by the Norfolk, Virginia probation and parole office.

When the case was called, before any proceedings were held on the violation of probation, Mr. Davis through counsel, asserted his right to represent himself. (Tr. p:3). Counsel then requested that he be allowed to sit in the hearing as shadow counsel to Mr. Davis. The court responded by inquiring whether this was the "first calling of the case." (Id). The Commonwealth then gave a brief history of the case, including the dates with prior counsel as well as the motion for competency evaluation and subsequent review of the competency report (Tr. p. 3-4).

After ascertaining the history of the case, the court addressed Mr. Davis stating "I've not yet decided whether you can represent yourself or not because I must first caution you about representing yourself, that I assume you are not schooled in the law". (Tr. p. 5) Mr. Davis then declared "Judge im representing myself." (Id.) The following discussion ensued: The Court: "Just try to answer the question. At least pay attention to the question. Mr. Davis : No Sir.

The Court: "And please just answer the questions that I direct to you. Have you attended or graduated from a law school...?"

Mr. Davis: "Your honor, with all due respect, I'm not asking to represent myself pro se so the court can hold me to a legal position, I'm asking to represent myself in propria persona [sic] in my right as a sovereigner."

The Court: "Are you asking the court to   "

Mr.Davis: Judge I understand what you are saying."

The Court: "I'm not sure you do."

Mr.Davis: "And I'm answering that question to the best of my ability. I'm not asking to represent myself pro se because I know if I represent myself pro se that I'm going to be held to the standards that lawyers are held to."

The Court: "Exactly. that's what I'm going to tell you."

Mr.Davis: "Right. I'm asking to represent myself as a sovereigner in my own person, Your Honor." (Tr. p. 4-6)

Following this brief discussion, the court decided to deny Mr.Davis request to represent himself based upon two stated factors: First, that the request was not timely made, and second that in the courts opinion, Mr.Davis had "in effect withdrawn his request." (Tr.p. 6) to the latter factor, the assertion that the request had been withdrawn, Mr.Davis retorted "Your Honor, its a complete misunderstanding." (Id). The Court, however made no futher inquiry to determine what may have been misunderstood, but simply stated to Mr.Davis Counsel "You'll be his lawyer and proceed." (Id.) Mr.Davis once again dissented and indicated that he did not consent to the lawyer representing him, but the court admonished Mr.Davis to "cooperate with your attorney " and not to be disruptive or he would be removed and "forfeit his right to be present in court". (Tr. p. 7). Mr.Davis the requested that he be given his "Sixth Amendment right to confront the person that I'm accused of injuring". (Id.) The Court replied that Counsel would do that for Mr.Davis, and Mr.Davis reiterated that he wanted to ask [the ] probation officer a question" and that he would respond by allocution." (Id.) The Court simply replied "Counsel is available to do that. I've denied his request."

It is clear at this point that the court considered the matter of self-representation settled. However, Mr.Davis quickly pointed out that the court had denied his request.

had denied his rights. (Tr. p. 8) The court responded that Mr. Davis was being disruptive, but agreed that Mr. Davis request had been denied, reiterating that " it was'nt timely made, and ... you just withdrew it a few moments ago... (Id.) Mr. Davis responded that he never withdrew his motion, and stated "I stand on my rights,"Your Honor". (Id.) The court then warned Mr. Davis again that "any further contact may be considered disruptive." (Id.) As the court began to address the violation report, Mr. Davis objected and challenged the jurisdiction of the court". (Id.) It was at this point that the court ordered Mr. Davis removed from the proceedings, but ordered that he be held somewhere where he can consult with an attorney from time to time if the court so directs." (Tr. p. 8-9) After Mr. Davis had been removed as directed, the court called for the Commonwealth's first and only witness, explaining that the courts intent was to allow counsel a brief recess to meet with Mr. Davis prior to and following cross-examination. (Tr. p. 9).

The basis of the instant revocation proceeding was that Mr. Davis had violated condition 6 of probation conditions. Specifically, Ms. Jana Sauerbrunn a probation officer in Norfolk testified that the violation resulted from Mr. Davis refusal to relinquish his personal keys "car keys" to the probation officer when directed to do so, from a subsequent verbal altercation that ensued between herself and Mr. Davis, and from Mr. Davis refusal to leave the building when directed to do so. (Tr. p. 13-15) Ms. Sauerbrunn stated that "one of her colleagues" informed her that Mr. Davis had parked a car in the staff parking lot, and that she assumed that his driver license was still suspended". (Tr. p. 12)(emphasis added) She said that she ran a VCIN and found she was correct in her assumption.(Id.)

Ms. Sauerbrunn went on to say that Mr. Davis had given her some good info regards steps he had taken to get snap benefits and to attain employment (Tr. p. 12-13) She also stated that Mr. Davis had signed his preliminary conditions

of probation. She also addressed the fact that Mr. Davis license was suspended, and that he would need to call someone to come get him and his vehicle. (Tr. p. 13). According to Ms. Sauerbrunn, things were going well until she told Mr. Davis that he would have to relinquish his keys to a supervisor" until.... someone that has an official driver's license can pick them up because we dont want you to drive away." (Tr. p. 13). It was at this point That Mr. Davis attitude changed. She said that Mr. Davis started to reflect on the previous actions that led to his probation revocation in February 2016," and said he was'nt going to be treated that way again." In February 2016 Mr. Davis had to relinquish his personal keys over and it was'nt because he didn't have a valid driver license. Mr. Davis got more agitated and felt he was being profiled, he began to use curse words, and agreed that he was frustrated. In response, she directed Mr. Davis to go back to the lobby and told him that she was going to get a supervisor so that he could express his frustrations and whatnot. (Tr. p. 13-14). As they walked down the hall, Mr. Davis continued to use curse words and Ms. Sauerbrunn said that she told him to "watch your language" to which he replied that she had better watch herself. (Tr. p. 14). Ms. Sauerbrunn then testified that when they reached the lobby, Mr. Davis turned and looked at her and stated " you derserve to have your fucking face punched in." and took a step towards her. (Id.) At this point Ms. Sauerbrunn stated that she repeatedly asked Mr. Davis to leave the building, but that he would not..(Tr. p. 14-15) After consulting with a supervisor the decision was made to call the police, and Mr. Davis remained in the lobby until they arrived. (Tr. p. 15.).

After direct examination, the court addressed counsel for Mr. Davis, stating "[before] you proceed with questioning. I'm going to give you an opportunity to meet briefly with your client and ascertain if he's willing to return to court, but he'll have to do so and remain assisting you to a degree he can, but not disruptive." The court indicated that in order to return to the

courtroom Mr. Davis would have to assure the court that he could remain in the courtroom without being disruptive. (Tr. p. 18) Counsel then told the court that Mr. Davis had certain things he wants to put before the court. (Id.) The court indicated that Mr. Davis would have the right to testify, and some discussion was had regarding Mr. Davis right to allocution, and indicated that he could confer with counsel at counsel table in a nondisruptive manner. (Tr. p. 20) The court then directed counsel to proceed with cross examination.

On cross-examination, Ms. Sauerbrunn stated that Mr. Davis came in unscheduled after being released from jail, and that she was not slated to be his actual probation officer. In fact, she said that she was just with Mr. Davis to review the initial paperwork and to give him his next appointment where he would meet with senior probation officer Ms. Kay Simmons. (Tr. p. 21) She did however, indicate that she had supervised Mr. Davis previously and that she violated Mr. Davis last time she had supervised him (Tr. p. 21-22) In response Ms. Sauerbrunn was asked if the prior situation had been for the same basic reason: that she had "asked him for his car keys and he refused." While she equivocated a bit at first, stating that the prior situation had been different, she did admit that requiring Mr. Davis car keys had been part of the earlier situation. She did, however, contrast the earlier situation stating that it had been because he was not able to drive a vehicle in a safe manner "because he was under the influences of substances". (Tr. p. 22) Counsel then asked Ms. Sauerbrunn when she learned that Mr. Davis did not have a license. She stated that it was when he came into the office on July 36, 2016, when she ran the VCIN. (Tr. p. 25) Counsel then asked when she knew he did not have a license before that date, and she replied that she "did not know.". (Id.) When further questioned why she would then wonder whether Mr. Davis "didn't have a license still", she made a comment about how "a lot of judges suspend the license for a period of time" when people are revoked. (Id.) "this is not true".

(emphasis added) Ms.Sauerbrunn stated that she knew that Mr. Davis had some psychological issues, and that he was seeing a psychiatrist, and also said that Mr.Davis had signed a set of preliminary conditions, but that the signed copy had been destroyed in a flood " during hurricane Matthews [sic] (Tr. p. 26).

Ms.Sauerbrunn was then asked why, if she allowed Mr.Davis to call someone to come and pick him up, it was necessary to take his keys if she saw that this was agitating him. (Tr. p. 27) She said that her step to alleviate that was to tell him that he was going to meet with a supervisor. (Tr. p. 28) She was then asked again why it was neccessary to take his keys at all if he had someone coming to pick him up. She responded that it was not uncommon in [her] thinking. (Tr. p. 29) After cross-examination of Ms.Sauerbrunn, the Commonwealth rested.

Mr. Davis took the stand to testify in his own defense. Mr.Davis testified that he remembered the altercation that he had with Ms.Sauerbrunn, and that at the time, he did not know if his license was suspended or not. He did, however, state that he still had a physical driver license in his possession at the time. (Tr. p. 31-32) He also stated that his license had been valid at the time he was last incarcerated, but that he had not checked on it since he had been released. (Tr. p. 32) He stated that even though he had payment plans in place for his court fines and fees, he later learned that there was one matter in Portsmouth, Va. that he had overlooked that caused his license to be suspended. (Id.) Mr.Davis was then asked about the preliminary terms of probation that Ms.Sauerbrunn stated he had signed, and he replied "I wasn't given anything" I was told to wait." (Id.) He then stated that he never signed any papers, and the meeting lasted only four or five minutes. (Tr. p. 33) Mr. Davis admitted to remaining in the probation office and agreed that he had gotten beligerant, but says that the comment about Ms.Sauerbrunn being punched

in the face was not made to Ms. Sauerbrunn, but was made to his sister on the phone. (Tr. p. 34) He also said that the situation with the keys was like "posttraumatic stress" [sic] because it was "the same situation as before." (Tr. p. 35) Mr. Davis then apologized to the court for his prior actions and stated that he had never been given any conditions of probation for this term, and that he felt that his keys were being stolen contrary to his Fourth Amendment rights. (Tr. p. 35-36)

On cross-examination, Mr. Davis admitted that this was the fourth time he had been charged with a probation violation, and that he generally knew the terms and conditions of probation. (Tr. p. 37-38). Mr. Davis also denied that he was ever told to leave the building, and that he was remaining in the lobby to wait for his ride. (Tr. p. 38-39). Mr. Davis never received the initial paperwork.

At the close of evidence, counsel informed the court that Mr. Davis had instructed counsel to ask the court to take judicial notice of "the code of Virginia Title 53.1-145, the powers and duties of probation and parole officers in general, and specifically in the second paragraph where it states that they shall furnish every such person, meaning probationers, with a written statement of the conditions of his probation and instruct him therein." (Tr. p. 39-40) The court never responded to this request, but simply went on to discuss other facts in the record.

In argument, the Commonwealth opined that the essence of the case was that Mr. Davis "has not figured out that he has to be of good behavior, and that his conduct was unreasonable throughout his interaction with this probation officer." (Tr. p. 43) The Commonwealth argued that Mr. Davis did not do what he was told, but he also made directed threatening comments. (Tr. p. 43-44) The Commonwealth then argued that since this was not Mr. Davis first violation, but instead his fourth, that all of the remaining time should be revoked. (Tr.

p. 44) Mr.Davis argued through counsel, that there are limits on what a officer can tell a probationer to do, and that Mr.Davis was never given any specific directives as to his terms and conditions of this particular term of probation. (Tr. p. 44-45) Mr.Davis also argued that some of the blame rested on the Ms. Sauerbrunn for exacerbating a situation that she had been in with him before, acting in a way that she knew had agitated and frustrated him in the past. (Tr. p.45). Mr.Davis pointed out that probation officers are not immune to being wrong, and that mistakes were made on both sides( alluding, once to the fact that Ms.Sauerbrunn, seeing that Mr.Davis was agitated, continued to press her authority instead of attempting to diffuse the situation (Tr. p. 46-47) In sum, Mr.Davis argued that he could not have violated conditions where it cannot be proved that he ever signed or even received them, Ms.Sauerbrunn was not his probation officer, but that she still made demands of him and violated him, and that, while he acted improperly, Mr.Davis being unaware that his license was suspended at the time, did not understand why his keys were being demanded of him by the same officer that had done this to him previously where he ended up getting violated in the past. Mr.Davis then asked the court to find that he was not in violation of his probation, or, in the alternative, that if he was in violation, that the ten months that he had already served was sufficient for the acts committed. (Tr. p. 48-49)

In rebuttal, the Commonwealth argued that because Mr.Davis had previously been on the probation that he understood that he had to be of good behavior, that it is not the probation officer's job to defuse.[sic] him in a way that he thinks is great or that works for him..., that he made choices to "misbehave and act in a manner that is inconsistent with expectations " and that he should be found in violation and his time revoked. (Tr. p. 50-51)

In his allocution, Mr.Davis stated that he did not understand the "nature and cause of [the] proceeding," because he said he was there"(at the probation

office) and that he cooperated." (Tr. p. 52) He further stated that he only got agitated when the probation officer threatened him with jail and stated "I should lock your ass back up" breathing down my neck." However, he denied ever stepping towards Ms. Sauerbrunn in any threatening manner. (Tr. 52-53) Mr. Davis alleged that Ms. Sauerbrunn acted improperly, and even intentionally, and stated "[s]omeone has to stand and correct the government when it's not right." (Tr. p. 53-54) Mr. Davis further stated that he had only been home for three days when he went to the probation officer, and that at the time of the hearing, he had been jailed for ten months awaiting the violation hearing. (Tr. p. 53-55)

In finding Mr. Davis in violation of his probation, the court opined that Mr. Davis did understand that he was "under supervision and/ or probation and general rules and orders for suspended sentences to keep the peace and be of good behavior, that Mr. Davis "did not act reasonably, but unreasonably [at the probation office], and the Probation Officer acted reasonably and not unreasonably." (Tr. p. 56) The court further stated that "[p]eace and good behavior he Mr. Davis did not abide on that day," and that "[f]or the court to act on his sentence all it has to find is that ... he's not of peace and good behavior and clearly he was not." (Tr. p. 55-58) The court then noted that this was Mr. Davis's Fourth Violation and revoked the suspended sentences in their entirety. (Tr. p. 58).

## REASONS FOR GRANTING THE PETITION

- I. Can Virginia constitutionally hale a person into its criminal Courts and there force a lawyer upon him, even when he insist that he wants to conduct his own defense?

The Petitioner, Mr.Davis requested to exercise his right of self-representation in his probation revocation hearing on April 26, 2017 in the Court of Southampton County, in Courtland, Virginia. Mr.Davis requested to waive the assistance of counsel; or have counsel sit in as shadow counsel. Mr.Davis wrote to the clerk of the court on November 4, 2016 requesting to remove the public defender, thru motion for leave to withdraw counsel, then on November 22, 2016, counsel of record Ms.Culpepper presented oral motion to proceed pro se to which the Southampton Court denied the motion, see enclosed (Exhibit 1). On November 29, 2016 counsel Ms.Culpepper moved for competency evaluation, in which the petitioner was found to be competent to stand trial; this hearing was held on February 23, 2017, the court would then continue the matter until April 11, 2017 on that date the matter was continued until April 26, 2017, on that date Mr.Davis met with new attorney Mr.Fritzinger a few minutes before the revocation hearing. Mr.Davis advised new counsel Mr.Fritzinger that he wanted to exercise his right of self-representation. Mr.Davis was aware that there was not a hearing held to grant Mr.Fritzinger leave to proceed as new counsel, so Mr.Davis in this particular matter felt that self-representation was the best choice, how could the public defender best represent Mr.Davis if little time was put into the research of the case. Mr.Davis was told Ms.Culpepper no longer worked at the public defender office. See.,(Exhibit 2).

In the beginning of the revocation hearing Mr.Davis was unequivocal and steadfast in stating his desire to waive counsel he even made objections to

note the errors for the court to correct, to prevent unnecessary appeals; but the court was not at all interested in the nature of Mr. Davis's objections. The first objection the court stated to Mr. Davis "I've not yet decided whether you can represent yourself or not because I must first caution you about representing yourself, that I assume you are not schooled in the law" (Tr. p. 5) "I don't know how prejudice and biased this was, because you can't just look at a person and assume he knows nothing about the law; however, Mr. Davis declared then "Judge im representing myself" (Id.) The court however was aaware of Mr. Davis objection by responding about self-representation. This Honorable Court stated in Faretta vs. California, 45 L Ed 2d. 562(1984) FN. 19 " An accused's technical legal knowledge, as such is not relevant to an assessment of his knowing exercise of the right to represent himself."

Forcing an accused, aganist his will, to accept a state-appointed public defender deprives the accused of his constitutional right to conduct his own defense under circumstances where (1) weeks before trial, the accused clearly and unequivocally declared to the trial judge that he wanted to represent his self and did not want counsel, (2) the record affrimately showed that the accused was literate, competent, and understanding, and that he voluntarily exercising his imformed free will, and (3) the trial judge warned the accused that the judge thought it was a mistake not to accept the assistance of counsel and that the accused would be required to follow all the ground rules of trial procedure.

Mr. Davis was never given any inquiry as to whether he could follow the court rules, that question would nee to be addressed to ascertain a valid waiver of counsel, instead the court would force counsel upon Mr. Davis stating to Mr. Davis counsel "You'll be his lawyer and proceed" (Tr. p. 6-7) to which Mr. Davis stated "I don't consent to do anything" as the court would try to commence the probation revocation hearing Mr. Davis objected a second time, "

stating " there are some legal issue we need to resolve before we do anything". The court would say Mr.Davis was speaking out when not being spoken to, but Mr.Davis pointed out the court had denied his right, addressing the judicial determination that his motion for self-representation was not timely, and that Mr.Davis withdrew his motion. Mr.Davis said its a complete misunderstanding that he never withdrew his motion and that he stands on his rights of self-representation. (Tr. p. 8) The court responded that Mr.Davis was being disruptive, but Mr.Davis was only trying to protect his rights in his revocation hearing, his behavior can not be said to be so disruptive that the revocation hearing would have to be carried on without him being present. As the court began to address the violation report Mr.Davis objected and challenged the jurisdiction of the court; at this point the judge ordered that Mr.Davis be removed; absent was uncontrollable and disruptive behavior see., United States vs. Flewitt, 874 F 2d 669 (1989) Mr.Davis was not that belligerant that he had to be removed. The court violated his rights.

The allocation of power to counsel to make binding decisions in regards to many aspects of trial strategy can only be justified by the defendants consent at the outset to accept counsel as his representative. As stated in the beginning " I dont consent to do anything" In a very respectable manner Mr.Davis requested to represent himself, but the court would not ascertain why Mr.Davis wished to shoot himself in the foot.

After the court had Mr.Davis removed the only witness for the Commonwealth would take the stand, the probation officer, this violated Mr.Davis's right to confrontation. A probationer does not enjoy the right guaranteed a defendant at trial he is entitled to due process and a probation revocation hearing very much resembled a criminal trial and not the appeals process. In truth whenever a probationer has his probation revoked in Virginia he is given a new felony conviction,

On April 26, 2017 Mr.Davis did not have freedom of choice as the Southampton Court acted as the Star Chamber of old english law, forcing the public defender upon Mr.Davis without his consent, this alone makes Mr.Davis's term of imprisonment unconstitutional. This Honorable Court stated in McKaskle vs. Wiggins, 465 US. 168, 177n8, 104 S Ct. 944 (1984) " the denial of the right of self-representation constitutes a structural error that is not subject to harmless error review and instead requires automatic reversal.

The right to proceed pro se derives from belief that respect for human dignity is best served by respect for individual freedom of choice Soto vs. United States, 504 F.2d 1339. Mr.Davis has been incarcerated for most of his life, attempting to study law finding definitions like Sui Juris and in re propria studying Black's Law Dictionary understanding that ignorance of the law is not an excuse constantly in and out of jails and prisons and the moment he decided to defend himself the court becomes prejudice and biased, but it is Mr.Davis who is in prison trying his best to get out and not be subject of mass incarceration. Mr.Davis is serving years he did not commit a crime. Mr.Davis felt entrapment would occur if the public defender represented him he told the judge im going to represent myself. The Judge told Mr.Davis that he had better cooperate with the attorney this intimidated Mr.Davis and coerce him to do what he was told. Mr.Davis's Attorney would present a defense but in truth it was his defense and not Mr.Davis's defense. Mr.Davis was only home three days when he had the commotion with the probation officer he never received the initial paperwork to commence his terms and conditions of probation. For this reason he wanted to confront Ms.Sauerbrunn, because the court denied him the right to confrontation this violated his due process rights. The Farett court granted certiorari, when the court forced the attorney on him, this type of judicial behavior can not stand in my country America, it is far departed from the usual judicial proceedings. I pray the cert pool reviewing this Writ grant

it. The Star Chamber was abolished due to the many injustices, if this conviction is not vacated that type of court is well alive today and will enslave many, it is Mr.Davis's duty to defend himself as this matter is personal to him. Mr.Davis did not plead in this revocation hearing, nor was he asked a comprehensive and penetrating inquiry by the Southampton Court regarding the dangers and the dis-advantages of self-representation. Mr.Davis knowingly, intelligently, and voluntarily wanted to waive counsel in his probation revocation hearing, but the trial court ignored him and forced counsel of its own liking on Mr.Davis, this made the hearing unfair. Mr.Davis was deprived of his rights his free will and freedom of speech in the revocation hearing. May (SCOTUS) grant Certiorari and finally determine whether or not the right to conduct ones own defense is constitutionally guaranteed People v. McIntyre, 36 NY2d 10, 364 NYS 2d 837, 324 NE2d 322 (1974).

II. The Virginia Courts erred when they concluded the United States Constitution does not provide a right to counsel in a probation violation hearing. Virginia Courts also erred when they compared a revocation hearing to the appeal process?

Mr.Davis Constitutional and statutory rights was violated at his probation revocation hearing on April 26, 2017 in Southampton County Circuit Court in Courtland, Virginia. The Virginia Courts believe that the concept of constitutional dimension has not been firmly recognized in a revocation hearing and would not consider sua sponte issues that bear great importance for persons like Mr.Davis who find themselves before a state court in a probation violation situation. The Court of Appeals of Virginia which granted Mr.Davis appeal states that "no court has yet concluded that the Fourteenth Amendment contains ..." a right to counsel at probation violation hearing," Mr.Davis asserts that

it does. In fact, this honorable court stated in Mempa v. Rhay, 389 US 128, 19 L Ed 2d. 336, 88 S Ct. 254 (1967)" There is a constitutional right to counsel on revocation of probation, also in Gunsolus v. Gagnon, CA. 7th, 1971, 454 F 2d. 416 "There is a right to counsel whether or not sentence was imposed originally or was deferred". Mr. Davis on the original sentence of the drug convictions was not given jail or prison time, but now nearly twenty years later he is given a harsh sentence of four years and nine months, whereas the sentencing guidelines for the acts committed was one year to one year and six months. see (Exhibit 3).

Ever since 1789 a federal criminal defendant has had a statutory right to conduct his own defense without the assistance of counsel 28 USCS § 1654 Appearance personally or by counsel. "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as by the rules of such courts, respectivielly, are permitted to manage and conduct causes therein."

In Virginia the legislature has given a stautory right Virginia Code Sections §§ 19.2-157 and a right to waive counsel under Virginia Code Section 19.2-160. The Virginia Courts declined to consider this argument showing no respect for its own laws and knowing how important this case would be for Virginians who find themselves before the court for a probation revocation hearing, which is similiar to sentencing at trial.

On September 8, 2016 the Virginia Supreme Court in Walker v. Forbes, 292 Va. 417 held that the inmate did not have a due process right to counsel at probation revocation hearing, and thus was not entitled to the effective assistance of counsel either at the hearing or on appeal. Walker v. Forbes is a case where the inmate on probation pleaded guilty to third offense petit larceny. Forbes never contested the violation of probation as he did not deny that he had committed new crimes while on probation.

Mr. Davis unlike Mr. Forbes has not committed any new crimes, therefore he would be contesting the condition 6 technical probation violation. Mr. Davis's revocation hearing is one which would give rise to constitutional due process right to counsel and the right to waive counsel under Gagnon. Mr. Davis may not be afforded all the rights equal to a defendant at trial in this probation revocation hearing a probationer is entitled to Due process citing Gagnon v. Scarpelli, 411 US 778 (1973) Since Mr. Davis was not allowed his free will to defend himself he was not given a fair hearing unlike Forbes. Mr. Davis had a federal constitutional right to counsel in his probation revocation hearing, therefore he had the right to waive counsel and represent himself. Mr. Davis was prejudiced as a result of invoking his rights.

Mr. Davis believes in his revocation hearing he had established that he had a right to counsel, as fundamental fairness the touchstone of due process, "Counsel from the outset of the proceeding stated Mr. Davis wanted to represent himself, the record does not state whether or not Mr. Davis pleaded guilty to the probation violation, but it does reflect Mr. Davis many times contested the violation. Mr. Davis states" I was never given a fair warning, because Ms. Sauerbrunn the probation officer failed to perform her duty in accordance with Virginia Code Section § 53.1-145, as stated in the violation report; she was only meeting with Mr. Davis on first report to review the initial paperwork , this is done to advise Mr. Davis about his terms and conditions. The trial Court never gave any judicial determination about this but it was addressed to the court through court appointed counsel at (Tr. p. 39-40) Mr. Davis never received any fair warning about his terms and conditions of probation the officer was so concerned with chastening Mr. Davis making him hand over his personal keys, that she forgot to perform her duty reviewing the initial paperwork.

Mr. Davis was not allowed due process in accordance with Virginia Code

Section § 53.1-170, as he was not allowed confrontation to prove he did not receive his initial paperwork he did ask the court at (Tr. p. 7). During the revocation proceeding the witness could not produce any documents that Mr. Davis allegedly signed because he did not sign anything, she told the court that the documents had been destroyed in a flood, how realistic this can be but Mr. Davis informs this court that every other time he has went to began probation an electronic signature was done but at this particular time he did not sign anything to satisfy a fair warning nor was he instructed. Mr. Davis does admit that a court may revoke a defendant's suspended sentence for substantial misconduct not involving a violation of law, Marshall v. Commonwealth 116 S.E. 2d 273, 274., however due process requires that individuals have notice of those acts which may lead to a loss of liberty see. Mark\$ v. United, 430 US 188, 191 51 L Ed 2d 260, 97 S Ct. 990 (1977) "when as now a court is ready to prescribe conduct that is not itself unlawful, the dictates of due process forbid the forfeiture of an actor's liberty by reason of such conduct unless he is given a fair warning. United States v. Gallo, 20 F. 3d 7, 12 (1st Cir, 1994).

In the case at bar Mr. Davis was upset because Ms Sauerbrunn the probation officer had provoked Mr. Davis acting in a way that resulted in Mr. Davis probation being revoked in February 2016. This was the second time this officer demanded him to relinquish his personal keys" threatening him with incarceration if he did not hand over the keys. Counsel at trial stated probation officers are not immune to doing wrong this officer was exacerbating a situation with Mr. Davis that she had been in with him before where he ended up being incarcerated. The probation officer knew Mr. Davis had a disability yet she demanded him to perform acts outside of probation. Mr. Davis can only conclude that he is being violated for cursing out his previous probation officer and giving her the finger for treating him in such a way.

On November 6, 2017 the Court of Appeals granted Mr. Davis an appeal per curiam, however on error whereas Mr. Davis was denied confrontation counsel for purposes of appeal was ineffective, counsel did not request further proceedings pursuant to Virginia Code § 17.1-407(D) and Rule 5A:15(a) as Mr. Davis was not present in the hearing when the commonwealth's only witness the probation officer testified, due process requires that a defendant be present at every stage of trial, Mr. Davis was not allowed to be present during the direct examination of the officer this denied him constitutional rights and Virginia statutory rights recognized in Virginia Code Section § 53.1-170 where it states the right of confrontation. This Writ of Certiorari is now submitted to redress the aforementioned errors.

For the foregoing reasons, the Petitioner, Ricky G. Davis in propria persona prays this court (SCOTUS) find that the Virginian Courts erred the questions on direct appeal should have been considered sua sponte under the Virginia Court Rules. Mr. Davis prays this court will not allow Virginia to be above the grace given by the Virginia General Assembly. May the Court grant Certiorari just as it did in the Faretta Case and uphold Mr. Davis's rights, and remand the case with instructions to vacate the conviction and grant Mr. Davis a new probation revocation hearing whereas, Mr. Davis can exercise his right of self-representation.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ricky G. Davis, pro per  
Date: September 25, 2019

Ricky Glendell Davis  
Greenville Correctional Center  
901 Corrections Way  
Jarratt, Virginia 23870