No. _____

In The
Supreme Court of the United States

DAN HAENDEL,

Petitioner,

vs.

ANNE REED
BB CULLY
RAYMOND C. ROBERTSON
JIM WILLIAMS
MARK R. HERRING
HAROLD W. CLARKE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

DAN HAENDEL
8900 Lynnhurst Drive
Fairfax, Virginia 22031
703-915-2625

QUESTIONS PRESENTED

1. Does *Heck v. Humphrey* bar Appellant's federal court review of the constitutionality of actions by local Virginia investigative and law enforcement officials in violation of the plain language of the Virginia Interception Act pursuant to the Fourteenth Amendment's due process guarantee?

2. Is an Alford plea equivalent to a guilty plea for purposes of providing an exception to *Heck v. Humphrey* bar as provided by cases in the U.S. Court of Appeals for the Fourth Circuit?

3. Is a guilty or Alford plea not an intelligent, knowing and voluntary plea in violation of defendant's constitutional right to a fair trial where a defendant has no access to legal resources and/or his attorneys' failure to inform him of a Virginia statue's pre-trial suppression motion for disclosure and/or use of evidence obtained by an interception of electronic communications, even if the interception itself is not illegal, the plain language of the statute provides that disclosure and/or use of such interception by law enforcement officials constitutes a felony?

LIST OF PARTIES

The parties to the proceedings in the courts whose judgments are the subject of this petition are as follows:

Anna Reed
Assistant Commonwealth Attorney, City of Staunton

BB Cully
Police Officer, City of Staunton

Raymond C. Robertson
Commonwealth Attorney, City of Staunton

Jim Williams
Chief of Police, City of Staunton

Mark R. Herring
Attorney General Commonwealth of Virginia

Harold W. Clarke
Director Virginia Department of Corrections

Opposing counsel in the proceedings in the court whose judgment is subject to this petition are as follows:

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Richard Hustis Milnor (for BB Cully; Jim Williams)
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LIST OF PARTIES – Continued

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and Harold Clarke) (phone: 804-786-5630)
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Richmond, VA 23219

DIRECTLY RELATED CASES

Haendel v. Reed, et. al., No. 18-7216, U.S. Court of Appeals for the Fourth Circuit, Judgment entered February 13, 2018, September 10, 2018, May 6, 2019, mandate issued May 14, 2019

Haendel, v. Reed, et. al., U.S. District Court for the Western District of Virginia, No. 7-18-cv-00119-JLK-RSB, Judgment entered March 26, 2019, USCA notice of stay April 4, 2019, Order of USCA, May 6, 2019, notice of appeal filed May 14, 2019

Haendel v. Gilmore, No. 7-18-cv-00317-MFU-RSB, U.S. District Court for the Western District of Virginia, Judgment entered March 12, 2019

Haendel v. Virginia, No. 17-30, U.S. Supreme Court, Denial of writ of certiorari, October 2, 2017

Haendel v. Virginia, No. 160752, Supreme Court of Virginia, Judgment entered February 3, 2017

DIRECTLY RELATED CASES – Continued

Haendel v. Virginia, No. 0095-16-3, Court of Appeals of Virginia, Judgment entered May 12, 2016

Haendel v. Cully, et. al., No. 161174, Supreme Court of Virginia, Judgment entered January 30, 2017

Haendel v. Cully, et. al, No. CL 16000041-00, Circuit Court of the City of Staunton, Judgment entered July 11, 2016

Virginia v. Haendel, No. CR1400014-03, CR1400014-04, Circuit Court of the City of Staunton, Judgment entered December 13, 2015

Virginia v. Haendel, No. CR14000114-03, CR14000114-04, Circuit Court of the City of Staunton, Judgment entered, December 30, 2014

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JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, 4th Amendment and 14th Amendment

Amendment IV. Searches and Seizures; Warrants

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches 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 and things to be seized.

Amendment XIV. Section 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 laws.

Constitution of the Commonwealth of Virginia; Article 1, Sections 10 and 11.

Section 10. General warrants of search or seizure prohibited

That general warrants, whereby an officer or messenger may be commanded to search suspected places

without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

Section 11. Due process of law; obligation of contracts; taking or damaging of property; prohibited discrimination; jury trial in civil cases

That no person shall be deprived of his life, liberty, or property without due process of law; . . .

The Federal Wire and Electronic Communications Interception and Interception of Oral Communications Act, 18 U.S.C. Sections 2510 through 2522 [key provisions at Appendix J]

The Virginia Interception of Wire, Electronic, or Oral Communications Act, Va Code Sections 19.2-61 through 19.2-70.3, and Va Code Sections 18.2-370 and 18.2-374.3 [key provisions at Appendix J]

STATEMENT OF THE CASE AND CONSTITUTIONAL ISSUES

Petitioner was arrested on May 13, 2014 on charges of violating Va Code Sections 18.370 and 18.2-374.3. Petitioner entered an Alford plea at the Circuit Court of the City of Staunton which sentenced him on December 30, 2014. He had no access to legal materials while incarcerated at Middle River Regional Jail from May 13, 2014 with the Court denying bail. He had no choice but to rely solely on his attorneys, Kenneth

Zwerling and Thomas McPherson for legal advice. His attorneys never informed him of the existence or potential applicability of the Virginia Interception of Wire, Electronic, or Oral Communications Act, Va Code Sections 19.2-61 through 19.2-70.3 ("Virginia Interception Act").

Petitioner notes that the opportune time to present the issue whether the "sting" operation by interception of electronic communications and/or use and disclosure of the contents of such interceptions by local Virginia investigative and law enforcement officials violate the Virginia Interception Act, to include their committing felonies, and the U.S. Constitution's Fourteenth Amendment due process guarantee, would have been in a pretrial motion pursuant to Va Code 19.2-68(H). He would have requested that his attorneys do so if they had advised him of the statute's existence, let alone the specific provisions.

Since becoming aware of the Virginia Interception Act upon his transfer to Haynesville Correctional Center in May 2015, Petitioner has been seeking a court's review of his argument that actions by local Virginia investigative and law enforcement officials violate the Virginia statute, to include their committing felonies pursuant to the statute, thereby violating the U.S. Constitution's Fourteenth Amendment due process guarantee. Requiring state investigative and law officials to follow the plain language of the Virginia Interception Act modeled on the federal counterpart, the Federal Wire and Electronic Communications and Interception of Oral Communications Act, 18 U.S.C. Sections 2510

through 2522, with the former setting stricter standards so as not to impinge on U.S. constitutional due process, is a fundamental federal court issue. Moreover, without the benefit of knowing about the existence of the Virginia statute, Petitioner's Alford plea was not intelligent, knowing, and voluntary given the lack of information of a key statutory suppression provision.

Petitioner filed a motion for reconsideration and presented a collateral attack to the Circuit Court of the City of Staunton arguing that the "sting" operation was void ab initio based on the plain language of the Virginia Interception Act and the U.S. Constitution's due process guarantee. An order is void ab initio and is a "complete nullity that may be impeached directly or collaterally by all persons, anywhere, at any time, or in any manner." *Collins v. Shepherd*, 274 Va 390, 402, 649 S.E. 2d 672, 678 (2007) A sentencing order is void ab initio if "'the character of the judgment was not such as the court had the power to render.'" *Rawls v. Commonwealth*, 278 Va 213, 221, 683 S.E. 2d 544, 549 (2009). Petitioner also noted that his Alford plea was not a voluntary, knowing, and intelligent plea because he did not know and was not made aware by his attorneys of the Virginia Interception Act such as to bar all non-jurisdictional defenses antecedent to a guilty plea. *Peyton v. King*, 210 Va 194, 169 S.E. ed 569 (1969). The Circuit Court of Staunton ruled it had no jurisdiction and did not address the collateral attack. Petitioner appealed to the Virginia Court of Appeals which held that the criminal appeal was beyond the time limit but

recognized the collateral attack in Appellant's appeal entitled "Petition for Appeal, Attack on Indictment, Judgment and Sentence As Void Ab Initio, Motion for Writ of Mandamus, and/or Habeas Corpus – Amended" over which it ruled it had no jurisdiction but transferred the case to the Virginia Supreme Court for resolution. That Court did not accept the appeal. Appellant appealed to the U.S. Supreme Court which did not grant a writ of certiorari.

Petitioner filed a 42 U.S.C. Section 1983 cause of action as well as a petition for a writ of habeas corpus in the U.S. District Court for the Western District of Virginia. Petitioner appeals the decision of the U.S. Court of Appeals for the Fourth Circuit affirming the District Court's decision that his Section 1983 action is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). Petitioner notes that the U.S. District Court for the Western District of Virginia has issued an opinion that Petitioner's federal habeas petition is time-barred, a decision that Appellant has appealed to the U.S. Court of Appeals for the Fourth Circuit. That Court has affirmed the District Court's decision which also ruled that Petitioner did not raise any constitutional issues, a conclusion clearly at odds with Petitioner's claims. Petitioner's objectives are 1) a federal court review as to the constitutionality pursuant to the Fourteenth Amendment's due process guarantee of the actions of local Virginia investigative and law enforcement officials in conducting "sting" operations and/or use and disclosure of the contents of intercepted electronic communications – even if the interception is not unlawful

per Va Code 19.2-62(B)(2) – knowing they are from an interception in violation of the plain language of the Virginia Interception Act, and/or 2) a review by this Court as to whether Appellant's Alford plea was a knowing, intelligent, and voluntary plea given that he did not have access to legal materials and his attorneys did not inform him of the existence and/or applicability of the Virginia Interception Act.

Judge Souter's critical concurrence as the swing vote in Heck highlights the remedy provided by Section 1983 where officials violate federally protected rights by emphasizing that the Supreme Court's decision has given "full effect to the language of Section 1983 by recognizing that Section 1983 provides a remedy, to be liberally construed, against all forms of official violation of federally protected rights." Thus, "we should not cast doubt on the ability of an individual unaffected by the habeas statute to take advantage of the broad reach of Section 1983." Indeed, the Court of Appeals for the Fourth Circuit has held that Section 1983 provides a unique federal remedy against incursions under the claimed authority of state law upon rights secured by the U.S. Constitution, wrongful imprisonment in *Wilson v. Johnson*, 535 F. 3d 262 (CA 4 [Va] 2008). The Court emphasized that the Appellant in *Wilson* should not be left without access to a federal court. The Court held that a habeas action in that case would be inappropriate to redress his most precious right, freedom, because he was not seeking release from custody. Furthermore, he was ineligible for habeas relief because he was no longer incarcerated. As

noted above, Petitioner in this case is no longer incarcerated and did not seek release from incarceration in his petition for a writ of habeas corpus to the U.S. District Court of the Western District of Virginia or in any other court action, state or federal, for that matter. This Petitioner has been seeking what the Courts suggest is a requirement, that is, to provide an opportunity to litigate an alleged state incursion of a constitutionally protected right.

The U.S. Supreme Court clarified its position on *Heck* by differentiating between a plaintiff's challenge to his conviction as opposed to a challenge to the constitutionality of a state statute. In this case, Petitioner's constitutional challenge is to the implementation of the statute with the practice and procedures of Virginia officials "fishing expeditions" by a "sting" operation based on the use and/or disclosure of the contents of interception of electronic communications by local investigative and law enforcement officials in contravention of the plain language of the Virginia Interception Act, as a violation of the Fourth and Fourteenth Amendment of the U.S. Constitution as well as specific provisions of the Virginia Constitution. Indeed, if *Heck* bars plaintiff's constitutional challenge, plaintiff would have had no court – state or federal – review and address his arguments since the Fourth Circuit's dismissal of his habeas petition, his release from incarceration, or another reason. Avoiding that result is a key holding of *Skinner v. Switzer*, 562 U.S. 521 (2011), that is, that an Appellant may challenge the constitutionality of the state court's construing of the state statute.

Appellee's have previously argued that *Heck* "and its progeny" bar a state prisoner's Section 1983 action regardless of the relief sought "if success in that action would necessarily demonstrate the invalidity of confinement or its duration. *Wilkerson v. Dotson*, 544 U.S. 74, 81-82 (2015)," a position adopted by the District Court. That position glosses over a key point in *Wilkerson*, specifically that Section 1983 is available to a state prisoner for procedural challenges where success in the action would not necessarily spell immediate or specific release for the prisoner. Appellee's position, as well as the District Court's opinion, would limit a state prisoner's relief solely to a state court invalidating his conviction or confinement, a position at variance with the key role of federal courts in determining U.S. constitutional issues where state and local officials violate the plain language of state law as well as the U.S. Constitution's due process guarantee. Such a federal review and decision does not in any way impinge on a federal court's providing state courts with appropriate comity. Appellant raised the issue in state courts which did not address it and a federal court's refusal to allow the issue to be litigated would gut the essence of the *Skinner* decision, not to mention the role of federal courts in protecting constitutional rights.

In an opinion in response to Petitioner's motion for reconsideration relying on *Covey v. Assessor of Ohio County*, 777 F.3d 186 (4th Cir 2015) to point out that *Heck* does not apply, the District Court held that Appellant's Alford plea does not constitute a guilty plea. Leaving aside the argument that an Alford plea is an

oxymoron, the U.S. District Court for the Western District of Virginia bases its conclusion on a defendant's reliance on admitting that the prosecution has sufficient evidence to convict, without admitting the facts of his involvement. First, at no time or in any legal action, has Petitioner challenged the facts of his arrest and charges. What he is challenging is constitutionality of the application of the law to those facts, in particular the applicability of the Virginia Interception Act to the "sting" operation as well as the use and/or disclosure of the contents of the intercepted electronic communication, to include the commission of felonies by the investigative and law enforcement officials. Second, the Alford opinion requires "voluntarily, knowingly, and understandingly" consenting to the imposition of a prison sentence, a sentence that Appellant has already served. Appellant, having not been informed by his attorneys of the existence or applicability of the Virginia Interception Act as well as having no independent access to conduct legal research prior to entering into a plea agreement, suggests that those factors alone negate any semblance of a voluntary, knowing, and understanding consent, let alone that his Alford plea was intelligent, knowing, and/or voluntary. *Jones v. Willard*, 224 Va 602, 299 S.E. 2d 504 (1983).

The U.S. District Court relies on *North Carolina v. Alford*, 400 U.S. 25 (1970) and *Carroll v. Commonwealth*, 280 Va 641, 701 S.E.2d 414 (2015) for its decision that an Alford plea is not equivalent to a guilty plea for Covey purposes to preclude a Heck bar. The District Court's reliance on Carroll is misplaced.

Carroll dealt with an Alford plea and whether the defendant could be required to admit his guilt in sex therapy treatment, where not admitting it would result in a probation violation. The Court held the concession in an Alford plea is a one of law not of fact and is not a bar to a post-Alford proceeding in which the issue is whether, as a matter of fact, the accused participated in the acts constituting the offense. The Court concluded that nothing in *Alford*, *Parsons v. Carroll*, 272 Va 560, 636 S.E. 560 (2006), or any other Virginia case indicates that an Alford plea is a bar to a post-Alford proceeding in which a sex offender is required to admit his guilt during treatment. It proceeded to underscore the distinction without a difference between an Alford plea and a guilty plea by 1) noting a colloquy where the judge asks the defendants if he understands that the legal consequences of an Alford plea are the same as a guilty plea or a finding of guilt, and 2) relying on the following from a Wisconsin Supreme Court case: "Whatever the reason for entering an Alford plea, the fact remains that when a defendant enters such a plea, he becomes a convicted sex offender and is treated no differently than he would be had he gone to trial and been convicted by a jury. *State ex rel Warren v. Schwartz*, 579 N.W. 2d 697 at 706-07 (Wis. 1998)" Indeed, the Virginia Supreme Court has referred to a "guilty plea" in many cases before it without noting that the defendant entered an Alford plea at trial.

As noted above, Petitioner submitted a petition for a writ of habeas corpus to the U.S. District Court which ruled against Petitioner claiming that Petitioner did

not raise constitutional issues and the petition is time barred. The ruling against Petitioner by the Fourth Circuit leaves him with no federal court review or decision on the substance of his challenge to the implementation employed by local Virginia investigative and law enforcement officials, with no Virginia court addressing it except for a civil case for damages. The absence of such federal opportunity should weigh on the Court's decision as to the applicability of Petitioner's Section 1983 action. Petitioner submits that in a civil case pursuant to Va Code 19.2-69, Judge Gamble, the only judge to examine Petitioner's argument as to the Virginia Interception Act, noted correctly that the law in Virginia on his claim is unsettled because the Virginia Supreme Court has not issued a precedent-setting decision, with its sole decision an unpublished opinion in *Horn v. Clarke*, Supreme Court of Virginia, unpublished petition for writ of habeas corpus, August 24, 2014, whose guidance Judge Gamble felt compelled to follow without first finding it convincing, as required by Virginia Supreme Court precedent, relying solely on a cursory, dismissive, superficial, and erroneous conclusion in *Horn*: " . . . no violation of the Interception of Wire, Electronic or Oral Electronic Communications Act, Code Section 19.2-61 through Section 19.2-70.3 or the Federal Wire and Electronic Communications Interception and Interception of Oral Communications Act, 18 U.S.C. Section 2510 through 18 U.S.C. Section 2522, occurred because the officer was a party to the communications. Code Section 19.2-62(B)(2); 18 U.S.C. Section 2511(2)(C)." This conclusion fails to recognize the stricter standards of the Virginia

Interception Act to include, among other provisions, the deletion of the federal provision allowing interceptions of electronic communications under cover of law, substituting a knowledge standard for the violation standard for an interception in the federal statute, and other key differences set forth in detail in Petitioner's two state and federal actions and highlighted in the comparative analysis of the statutes set forth in Appendix J.

Petitioner has laid out the substantive argument as to the constitutional and statutory violations in his Section 1983 action as well as his federal habeas petition and provides the statutory comparison with notations establishing the legal argument in Appendix J. He is indifferent whether his requested federal review is pursuant to his Section 1983 action or habeas corpus petition.

REASONS FOR GRANTING THE WRIT

1. The U.S. Supreme Court has a critical role in insuring that a state not deprive its citizens of liberty and justice through the misconduct of its police and prosecutors by their violation of the plain language of state statutory requirements, to include the use and/or disclosure of intercepted electronic communications, as provided by the Fourteenth Amendment.

The Virginia Interception statute does not provide specific exemption for investigative or law enforcement official to investigate crimes not listed in Va. Code

Section 19.2-66 by means of interception of electronic communications thereby making the sting operation unauthorized and, therefore, unlawful. The Commonwealth of Virginia claims that its authority is based on Va Section 19.2-62(B)(2) but that provision applies solely to an interception by a party to the communication. Va Section 19.2-62(A)(4), for example, provides that "A. Except as otherwise specifically provided in this chapter any person who: . . . ; **or** (4) Intentionally uses, or endeavors to use, the contents of any wire, electronic or oral communications, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication, shall be guilty of a Class 6 felony." (Emphasis added to indicate that interception, use and/or disclosure are independent felonies). Therefore, even if the electronic communication interception was not unlawful, the use and/or disclosure by the Commonwealth Attorney Reed and Police Officer Cully is a felony.

2. The U.S. Supreme Court has a duty to insure the rule of law and Petitioner has confronted a "law" – and served his incarceration sentence – for which there is no precedent-setting Virginia Supreme Court decision on the issue, as the Circuit Court of Staunton noted in its decision in a related civil case for damages brought by Petition pursuant to Va Code Section 19.2-69.

Petitioner asserts that law enforcement officials of the Commonwealth of Virginia are violating the plain language of the Virginia Interception Act, as noted above, and calls on this Court to review the means by which Virginia officials violate the plain language of

the statute as a blatant violation of the U.S. Constitution's Fourteenth Amendment.

3. The U.S. Supreme Court has a vital interest in emphasizing the key role of the exclusionary rule in state statutes to prevent or deter the misconduct of Virginia local police and prosecutors not complying with the warrant, authorization, or judicial review requirements, as well as committing intentional use and disclosure felony violations by introducing the contents of intercepted electronic communications in state legal proceedings in violation of plain, explicit Virginia statutory language.

As Judge Gamble noted in his rationale for his opinion, the Virginia Supreme Court has not opined in a precedent-setting case as to Va Code Section 19.2-62(B)(2). The *Horn v. Clarke* opinion is not a published opinion. Therefore, the law in Virginia is not settled. Nevertheless, Virginia officials proceed by violating the plain language of the statute by use and disclosure in court cases and in the interception of such electronic communications, despite *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) which underscores that the capture of electronic communications, including electronic chats, constitutes an interception. In short, Assistant Commonwealth Attorney Reed and Police Officer Cully committed felonies pursuant to Va Code Section Va. Code Section 19.2-62(A)(2)(3) and/or (4). They knew that the contents of the electronic communications were from an interception but despite the plain language of the statute proceeded to use and disclose it in court proceedings.

4. The U.S. Supreme Court must insure that a guilty or Alford plea be intelligent, knowing, and voluntary in order to be valid. Where a defendant is not privy to a statute which explicitly provides for the suppression of evidence and makes illegal as well as a felony the use and/or disclosure of intercepted electronic communications in court proceedings, such defendant cannot reasonably be held to have made his plea in an intelligent, knowing, and voluntary manner.

As set forth in *Boykin*, and underscored in *Godinez*, a plea must be voluntary, knowing, and intelligent with an emphasis on whether a defendant understands the significance and consequences of a decision. While rational decision-making requires complete information, the defendant in this case not only had no opportunity to do legal research, but his attorneys did not inform him of the existence of a clearly stated statutory suppression pre-trial motion set forth in Va Code 19.2-68(H). *Boykin v. Alabama*, 395 U.S., 238 (1969); *Godinez v. Moran*, 509 U.S. 359 (1993) This omission was not some brilliant strategy on the part of these attorneys but rather laziness or lack of expertise. Indeed, their lack of knowledge of the Virginia Interception Act and the key differences between the provisions of that statute versus the counterpart federal statute cited above meant that defendant was left with no advice or, worse, poor advice, regarding making an informed decision, let alone a knowing and intelligent plea. *Boykin* labels absence of an informed decision a violation of Due Process that renders the plea void. As noted above, the Virginia Interception Act in plain language states that

a use or disclosure of the contents known to be from an electronic interception is a felony and there is no exception from such use or disclosure in Va Code 19.2-62(B)(2) which provides a party to the interception solely with exemption from the criminal offense of the interception.

CONCLUSION

Petitioner relies on the plain language of the Virginia Interception Act and the U.S. Supreme Court's holding that "courts must presume that a legislature says in a statute what it means and means in a statute what is says there. When the words of a statute are unambiguous, then, this first canon is also the last judicial inquiry is complete." *Conn. National Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Petitioner respectfully requests that this Court review and decide, rather than remand to the U.S. District Court for the Western District of Virginia or the United States Court of Appeals for the Fourth Circuit, Petitioner's request for a 1) federal review of his substantive arguments regarding the procedural issues he raises with respect to the actions, to include the commission of felonies, by the investigative officer and Assistant Commonwealth Attorney Reed pursuant to the Virginia Interception Act as well as due process violations pursuant of the U.S. Constitution's Fourteenth Amendment, and 2) his claim that his Alford plea was not an

intelligent, knowing, and voluntary plea such that it is not a valid plea.

Therefore, this petition for a writ of certiorari should be granted.

Respectfully submitted,

DAN HAENDEL
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APPENDIX A

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF STAUNTON

COMMONWEALTH OF VIRGINIA	:	
V.	:	**Case No. CR14000014-03; 04**
DAN HAENDEL,	:	
Defendant		

ORDER

This matter came on this day upon the Motion of defendant for Reconsideration and Motion to Suppress Evidence filed on September 14, 2015; upon the Motion In Opposition filed by the Commonwealth on September 30, 2015; upon the Motion in Rebuttal filed by the defendant on October 13, 2015; and upon the Motion to Set Court Hearing filed by defendant on December 21, 2015.

After considering the foregoing Motions, the Court finds that the Adjudication and Sentencing Order, which was a final order in this case, was entered on December 30, 2014. The Court further finds that defendant has been transferred to the Department of Corrections, and the Court lacks jurisdiction to suspend or otherwise modify defendant's sentence pursuant to Virginia Code Section 19.2-303 and Rule 1:1 of the Rules of the Supreme Court of Virginia. For the foregoing reasons, the Motions filed by the defendant are hereby denied.