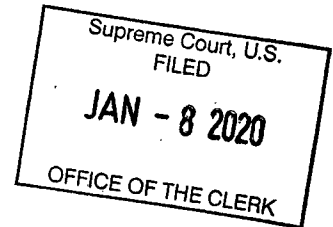


No. 19-7297

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



CHRISTOPHER J. BURTON — PETITIONER
(Your Name)

vs.

HAROLD W. CLARKE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF VIRGINIA (RECORD NO: 190797)

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

PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER J. BURTON No. 1378567

(Your Name)

K.M.C.C.

P.O. BOX 860

(Address)

OAKWOOD, VA 24631

(City, State, Zip Code)

276-498-7411

(Phone Number)

QUESTIONS PRESENTED

1) IN THIS CASE OF FIRST IMPRESSION, I ASK THIS COURT TO FINALLY DECIDE WHETHER THE NATURE OF CIVIL COMMITMENT, ITS PROCEDURAL SIMILARITY TO DEPORTATION PROCEEDINGS, THE SEVERE PENALTIES ASSOCIATED THEREWITH AND ITS INTIMATE RELATION TO CRIMINAL JUSTICE PROCEEDINGS RENDERS THE DISTINCTION BETWEEN COLLATERAL AND DIRECT CONSEQUENCES INAPPLICABLE WHEN DEFINING THE SCOPE OF REASONABLE PROFESSIONAL ASSISTANCE OR DETERMINING WHETHER COUNSEL'S ADVICE PERTAINING THERETO WAS WITHIN THE RANGE OF COMPETENCE DEMANDED OF DEFENSE ATTORNEYS?

2) IN VIRGINIA, AS MOST STATES, CIVIL COMMITMENT HAS BECOME AN INTEGRAL COMPONENT OF CRIMINAL PROCEEDINGS WHEN A DEFENDANT IS CHARGED WITH CERTAIN OFFENSES AND NUMEROUS NEGATIVE CONSEQUENCES FLOW AUTOMATICALLY FROM A CONVICTION THEREOF; E.G., PERMANENTLY CATEGORIZED AS A SEXUALLY VIOLENT PREDATOR, SUBMISSION INTO THE SEXUALLY VIOLENT PREDATOR DATABASE AND EVALUATION BY THE CIVIL REVIEW COMMITTEE FOR CIVIL COMMITMENT; THEREFORE, SHOULDN'T A DEFENDANT BE APPRISED OF THIS CRITICAL ISSUE BEFORE HIS DECISION TO PLEAD GUILTY CAN BE CONSIDERED A VOLUNTARY, KNOWING AND INTELLIGENT ACT?

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:

TABLE OF AUTHORITIES CITED:

<u>CASES:</u>	<u>PAGE No.:</u>
1) HILL-V-LOCKHART, 474 U.S. 52 (1985):	15
2) LIBRETTI-V- U.S, 516 U.S. 29 (1995):	10
3) McMANN-V- RICHARDSON, 397 U.S. 759 (1970):	10
4) PADILLA-V- KENTUCKY, 559 U.S. 356 (2010):	12

<u>STATUTES AND RULES:</u>	<u>PAGE No.:</u>
5) 37.2-900	14
6) 37.2-901	13
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9) 37.2-904	14
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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 NOVEMBER 21, 2019; 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 _____.

☐ 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 Nov. 21, 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:

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, BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

VIRGINIA CODE SECTION:

TITLE 37.2-BEHAVORIAL HEALTH AND DEVELOPMENT SERVICES: SEE: APP. B
CHAPTER 9-CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS: SEE: APP. B

37.2-900: SEE: APP. B

37.2-901: SEE: APP. B

37.2-902: SEE: APP. B

37.2-903: SEE: APP. B

37.2-904: SEE: APP. B

37.2-905: SEE: APP. B

37.2-906: SEE: APP. B

STATEMENT OF THE CASE

IN 2009, THE PETITIONER AND HOLLY RAINES HAD A DAUGHTER NAMED ALYSSA, (HEREINAFTER 'A'), WHICH WAS THE PETITIONERS 3RD BIOLOGICAL CHILD. IN EARLY 2013, HOLLY WAS INCARCERATED AND THE COURT GRANTED THE PETITIONER FULL LEGAL CUSTODY OF 'A'; THE PETITIONER ALSO HAD VISITATION WITH MY OTHER (2) CHILDREN, C.J. AND KELLY.

DURING THIS TIME PERIOD THE PETITIONER, AND MY NEW GIRLFRIEND SARAH, HAD MY 4TH CHILD, MADDIE. WHILE HOLLY WAS SERVING HER SENTENCE THE PETITIONER WAS AWARDED LEGAL CUSTODY OF 'A' AND SHE RESIDED WITH US. WHEN HOLLY WAS RELEASED IN NOVEMBER OF 2014 SHE WAS HOMELESS AND COULD NOT ACQUIRE GAINFUL EMPLOYMENT OR A STABLE RESIDENCE AND THIS INSTABILITY RESULTED IN THE COURT DENYING HER JOINT CUSTODY.

IN EARLY 2015, THE PETITIONER AGREED TO ALLOW HOLLY TO MOVE IN WITH US, YET I REGRET THIS DECISION BECAUSE HER PRESENCE, ATTITUDE AND BEHAVIOR CREATED A TOXIC ENVIRONMENT THAT CAUSED SUBSTANTIAL DISTURBANCES IN MY FAMILY'S DOMESTIC DYNAMICS. BY THE END OF AUGUST OUR LIVING SITUATION WAS UNBEARABLE AND I ASKED HOLLY TO FIND AN ALTERNATIVE RESIDENCE.

WE ENCOUNTERED A SIGNIFICANT DISPUTE REGARDING HOLLY'S VISITATION, WHICH WAS AT MY DISCRETION BECAUSE SHE HAD NO LEGAL RIGHTS. THIS CREATED AN INCREASINGLY HOSTILE RELATIONSHIP BETWEEN MYSELF, SARAH AND HOLLY, WHICH ULTIMATELY RESULTED IN HOLLY BEING ARRESTED FOR PHYSICALLY ASSAULTING SARAH.

IN OCTOBER OF 2015, THE PETITIONER WAS ARRESTED FOR SEVERAL ACCUSATIONS OF LARCENY RELATED OFFENSES AND WHILE I WAS DETAINED HOLLY SOMEHOW PICKED UP 'A' AND RETAINED CUSTODY OF HER. IMMEDIATELY UPON MY RELEASE ON BOND, I LOCATED MY DAUGHTER AND CALLED THE POLICE. THEY ESCORTED ME TO HER LOCATION, AND BECAUSE I HAD FULL LEGAL CUSTODY, WE RESCUED 'A' FROM HER SITUATION.

HOLLY REPEATEDLY INSISTED THAT I ALLOW HER UNSUPERVISED VISITS, BUT SHE HAD THREATENED TO TAKE 'A' OUT OF STATE, SO I REFUSED. SHE HAD ALSO TOLD MY SISTER HEATHER THAT SHE WOULD DO ANYTHING TO GET CUSTODY OF 'A'. THIS WAS AN ONGOING DISPUTE BETWEEN US AND BECAME OBVIOUS THAT HOLLY REFUSED TO RECOGNIZE THAT HER SUBSTANCE ABUSE, CRIMINAL HISTORY AND MENTAL HEALTH ISSUES RENDERED HER AN UNFIT MOTHER, DESPITE DCSE AND THE COURT PREVENTING HER FROM PARENTING HER OTHER (3) CHILDREN

IN EARLY DECEMBER OF 2015, SARAH'S FATHER EXPERIENCED SERIOUS MEDICAL ISSUES AND WE AGREED TO VISIT FOR A FEW DAYS AND ASSIST IN HIS CARE. AFTER A FEW DAYS HE RECOVERED SUFFICIENTLY FOR US TO RETURN TO OUR APARTMENT, WHICH WE DID ON 12-11-15. ONCE WE ARRIVED AT OUR RESIDENCE WE IMMEDIATELY NOTICED THAT IT WAS RAMSACKED DURING A BURGLARY.

WE NOTICED A SEARCH WARRANT ON THE TABLE AND AFTER CONTACTING SGT. SHEPARD WE WERE ADVISED THAT OFFICERS HAD RESPONDED TO A CALL FROM THE NEIGHBORS INVOLVING A BREAK-IN AT OUR RESIDENCE, AND UPON ARRIVING THEY WERE CONFRONTED WITH DRUG PARAPHERNALIA IN PLAIN SIGHT AT THE OPEN BACK DOOR, WHICH WAS PROPPED OPEN WITH A PILLOWCASE FULL OF MY CHILDREN'S TOYS. THESE OFFICERS OBTAINED SAID SEARCH WARRANT AND DISCOVERED MORE DRUG PARAPHERNALIA IN PLAIN VIEW.

WE WERE ADVISED THAT, DUE TO OUR VERIFIED ABSENCE FOR SEVERAL DAYS AND THE SUSPICIOUS MANNER IN WHICH THE DRUG PARAPHERNALIA WAS SET OUT IN PLAIN SIGHT, NO CHARGES WERE FILED AGAINST US. THE DETECTIVES APPRISED US THAT THE NEIGHBORS DESCRIBED THE SUSPECTS AS (1) MALE AND (2) BLOND HEADED FEMALE AND (1) RED HEADED FEMALE WHO TRANSPORTED THE PILFERED PROPERTY IN A GREEN SUBURBAN.

MY TWO DAUGHTERS, MADDIE AND 'A', SHARED A BEDROOM AND THE ONLY THINGS STOLEN WERE ALL OF THE POSSESSIONS BELONGING TO 'A'. WE ADVISED THE DETECTIVE THAT HOLLY AND I WERE INVOLVED IN A CUSTODY DISPUTE, SHE WAS BLOND HEADED, USED DRUGS, WAS FRIENDS WITH A RED HEADED WOMAN NAMED EVE BROWN, (WHO DRIVES A GREEN SUBURBAN), AND WAS MOST LIKELY THE CULPRIT IN THIS ARMED BURGLARY.

I WAS ASSURED THAT AN INVESTIGATION WOULD BE CONDUCTED INTO THIS OPEN CASE, BUT POLICY MANDATED THAT C.P.S., D.C.S.E AND SOCIAL SERVICES BE NOTIFIED DUE TO THE CIRCUMSTANCES INVOLVED. THIS REPORT COMPELLED THE SOCIAL SERVICES DEPARTMENT TO ORDER ME AND SARAH TO UNDERGO A URINE SCREEN TO DETERMINE IF WE WERE USING DRUGS, AND UNFORTUNATELY WE FAILED THOSE TEST. WE WERE ALSO NOTIFIED THAT, ON 12-12-15, HOLLY HAD FLAGGED DOWN A POLICE OFFICER IN FRONT OF MY RESIDENCE AND MADE ALLEGATIONS THAT I HAD SEXUALLY ASSAULTED 'A'; THEREFORE A TEMPORARY PROTECTIVE ORDER WAS ISSUED WHILE THE ACCUSATIONS WERE INVESTIGATED.

HOLLY ALLEGED THAT, SOMETIME IN AUGUST OF 2015, I HAD COMMITTED CERTAIN SEXUAL OFFENSES AGAINST OUR DAUGHTER AND I WAS CHARGED WITH (3) FELONY CRIMES THAT CARRIED POTENTIAL LIFE SENTENCES. THE COURT APPOINTED SCOTT WEBBER TO REPRESENT ME AND AT OUR INITIAL CONSULTATION HE WAS CONVINCED THAT I WOULD BE VINDICATED OF THESE FALSE ALLEGATIONS.

I EXPLAINED EVERYTHING IN DETAIL AND HE APPEARED CONFIDENT THAT HOLLY WAS FABRICATING THESE ACCUSATIONS AND COACHING 'A'; HER MOTIVE WAS CLEAR AND SUBSTANTIAL EVIDENCE EXISTED TO DEVELOP A VIABLE DEFENSE, ESPECIALLY SINCE THERE WAS NO SCIENTIFIC OR BIOLOGICAL EVIDENCE TO SUBSTANTIATE HOLLY'S ASSERTIONS.

ONCE I ARRIVED IN THE VA. PENAL SYSTEM I WAS NOTIFIED THAT MY GUILTY PLEA TO THESE CHARGES AUTOMATICALLY SUBJECTED ME TO THE CIVIL COMMITMENT PROVISIONS CODIFIED UNDER CHAPTER 9 OF VA. CODE SECTION 37.2. I'VE BEEN CLASSIFIED AS A SEXUALLY VIOLENT PREDATOR, ENTERED INTO THE DATABASE AND WILL BE EVALUATED BY THE COMMITMENT REVIEW COMMITTEE FOR COMMITMENT IN AN INSTITUTION THAT COULD BE FOR THE REST OF MY LIFE.

I WAS ADAMANT THAT I WAS INNOCENT OF THESE CHARGES AND WANTED TO GO TO TRIAL. INSTEAD OF PERFORMING THE NECESSARY INVESTIGATIONS OR CONDUCTING ANY OTHER DUTIES OF A COMPETENT DEFENSE ATTORNEY, MR. WEBBER COMPLETELY CHANGED HIS POSITION AND ADVISED ME TO PLEAD GUILTY. I WAS SENTENCE TO 70 YEARS, 59 SUSPENDED,

NEITHER MY ATTORNEY, NOR THE COURT, MADE ME AWARE OF CIVIL COMMITMENT AND THE RELEVANT FACT, IF THEY HAD, I WOULD HAVE REJECTED THE PLEA AND CONTINUED TO TRIAL. I TIMELY FILED A WRIT OF HABEAS CORPUS PURSUANT TO VA. CODE SECTION 8.01-654, YET THE VA. SUPREME COURT DENIED MY CLAIM; CASE NO. 190297. THE VA. SUPREME COURT HELD THAT CIVIL COMMITMENT IS MERELY A COLLATERAL CONSEQUENCE AND COUNSEL HAS NO DUTY TO MENTION IT. CITING KIM-V-DIRECTOR, 163 F. SUPP. 3d (2015) AND CARROLL-V-COMMONWEALTH, 280 VA 241 (2010). HOLDING BAUDER-V-DEPT. OF CORR. FLA, 619 F3d 1272, 1274-75 (11TH CIR. 2010) "HOLDING COUNSEL CAN BE INEFFECTIVE FOR AFFIRMATIVELY MISADVISING A CLIENT REGARDING THE THREAT OF CIVIL COMMITMENT."

REASONS FOR GRANTING THE WRIT:

IT'S A FUNDAMENTAL RIGHT THAT, BEFORE A DEFENDANT PLEADS GUILTY IN A CRIMINAL PROCEEDING, HE IS ENTITLED TO THE EFFECTIVE ASSISTANCE OF COMPETENT COUNSEL WHO PROVIDES ADVICE THAT IS WITHIN THE RANGE OF COMPETENCE DEMANDER OF DEFENSE ATTORNEYS. SEE: McMANN-V-RICHARDSON, 397 U.S. 759 (1970). THIS COURT HAS CONSISTANTLY HELD THAT COUNSEL MUST ADVISE HIS CLIENT OF "THE ADVANTAGES AND DISADVANTAGES OF A PLEA" I.D., LIBBETT-V-U.S., 516 U.S. 29 (1995), AS WELL AS THE CONSEQUENCES OF ACCEPTING A GUILTY PLEA SO THAT THE DECISION WILL REPRESENT AN INTELLIGENT, KNOWING, AND VOLUNTARY ACT. SEE: HILL-V-LOCKHART, 474 U.S. 52 (1985).

IN THE PRESENT CASE, THE VA. SUPREME COURT HAS DECIDED THAT A DEFENSE ATTORNEY IS ONLY REQUIRED TO ADVISE HIS CLIENT OF THE DIRECT CONSEQUENCES OF A GUILTY PLEA, AND SINCE CIVIL COMMITMENT IS ONLY CONSIDERED A COLLATERAL CONSEQUENCE, ANY FAILURE OF MY ATTORNEYS NEGLECT TO APPRISE ME OF THIS CRITICAL FACT DOESNT RENDER HIS PERFORMANCE CONSTITUTIONALLY DEFICIENT OR UNDERMINE THE VALIDITY OF THE GUILTY PLEA.

MANY COURTS THROUGHOUT THE UNITED STATES, STATE AND FEDERAL, HAVE ADOPTED SIMILAR STANDARDS WHEN ADJUDICATING UPON INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS PERTAINING TO COUNSELS MISADVICE OR NONADVICE ABOUT CIVIL COMMITMENT. THIS HAS RESULTED IN COUNTLESS DEFENDANTS HAVING TENDERED GUILTY PLEAS TO OFFENSES THAT AUTOMATICALLY SUBJECT THEM TO THE STATUTORY PROVISIONS OF CIVIL COMMITMENT, WITHOUT BEING COGNIZANT OF THE DETRIMENTAL CONSEQUENCES THAT ARE DIRECTLY ASSOCIATED WITH CIVIL COMMITMENT, AND THATS CERTAINLY FUNDAMENTALLY UNFAIR.

THE LINE BETWEEN DIRECT AND COLLATERAL CONSEQUENCES IS NOT ALWAYS CLEAR, MORE IMPORTANTLY, THIS COURT HAS NEVER DISTINGUISHED BETWEEN THEM WHEN DEFINING THE SCOPE OF CONSTITUTIONALLY ACCEPTABLE ASSISTANCE OF COUNSEL. YET THE LOWER COURTS HAVE EBREGIOSLY CATEGORIZED CIVIL COMMITMENT AS A COLLATERAL CONSEQUENCE THAT IS UNIMPORTANT TO A DEFENDANTS DECISIONAL PROCESS WHEN HE IS CONSIDERING HIS AVAILABLE OPTIONS AND THEREFORE A DEFENSE ATTORNEY HAS NO OBLIGATION TO CORRECTLY ADVISE OR ADVISE THE DEFENDANT AT ALL CONCERNING CIVIL COMMITMENT.

IN PADILLA-V-KENTUCKY, 559 U.S. 356 (2010), THIS COURT DECIDED A CASE INVOLVING AN ATTORNEY'S MISADVICE CONCERNING DEPORTATION AND ULTIMATELY CONCLUDED THAT IT WAS DEFICIENT PERFORMANCE UNDER THE FIRST COMPONENT OF THE STRICKLAND ANALYSIS WHEN AN ATTORNEY INACCURATELY INFORMS HIS CLIENT ABOUT THIS CONSEQUENCE, DESPITE DEPORTATION BEING PREVIOUSLY CATEGORIZED AS ONLY A COLLATERAL CONSEQUENCE.

MATERIALLY INDISTINGUISHABLE FROM THE ARGUMENT PRESENTED IN PADILLAS CASE, MY CLAIMS TO THE VA. SUPREME COURT PERTAINING TO MY ATTORNEY'S FAILURE TO APPRISE ME ABOUT THE CIVIL COMMITMENT STATUTES ARE EQUALLY MERITORIOUS. THIS POSITION IS PREMISED ON THE SIMILARITIES BETWEEN THE PROCEEDING FOR DEPORTATION AND CIVIL COMMITMENT, AS WELL AS THEIR INTIMATE RELATIONSHIP TO THE CRIMINAL JUSTICE SYSTEM, WHICH MAKE THEM BOTH UNIQUELY DIFFICULT TO CLASSIFY AS EITHER DIRECT OR COLLATERAL CONSEQUENCES.

CIVIL COMMITMENT, LIKE DEPORTATION, IS SO CRITICAL TO A DEFENDANT'S DECISIONAL PROCESS WHEN DETERMINING WHETHER TO ACCEPT A PROFFERED PLEA THAT, LIKE DEPORTATION, THIS COURT NEEDS TO PLACE THEM IN THE SAME CATEGORY...

WHEN A COURT IS CONSIDERING AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM INVOLVING AN ATTORNEY'S ADVICE PERTAINING THERETO. THIS COURT CAN DECIDE THIS IMPORTANT ISSUE THAT AFFECTS ALL INDIVIDUALS SIMILARLY SITUATED BY DETERMINING THAT CIVIL COMMITMENT INVOLVES EQUALLY NEGATIVE, IF NOT MORE DETRIMENTAL CONSEQUENCES AS DEPORTATION.

THE LOWER COURTS DEEM CIVIL COMMITMENT AS A CIVIL PROCEEDING, AND THEREFORE, ITS CONSIDERED A COLLATERAL CONSEQUENCE THAT COUNSEL HAS NO DUTY TO DISBURGE TO A CLIENT. THE PETITIONER ARGUES THAT CIVIL COMMITMENT IS SO INTERRELATED WITH A DEFENDANT'S CRIMINAL PROCEEDING THAT THIS COURT CAN BE JUSTIFIED IN CATEGORIZING IT AS A DIRECT CONSEQUENCE. THIS POSITION FINDS MERIT IN THE FACT THAT NO OTHER CIVIL PROCEEDING CAN RESULT IN A LITIGANT BEING INCARCERATED, WITH THE MOST VIOLENT OF SEXUAL PREDATORS, FOR A PERIOD UP TO HIS REMAINING LIFE. ITS ALSO PERSUASIVE TO ARGUE THAT A DEFENDANT'S CONSTITUTIONAL RIGHTS TO CONFRONT WITNESSES, REMAIN SILENT AND HAVE THE REPRESENTATION OF COUNSEL ONLY ARE APPLICABLE TO CRIMINAL PROCEEDINGS, YET THESE RIGHTS ARE GUARANTEED TO A LITIGANT FACING CIVIL COMMITMENT. SEE: VA. CODE SECTION 37.2-901.

IN VIRGINIA, THE LAWS PERTAINING TO CIVIL COMMITMENT ARE CODIFIED UNDER SECTION 9 OF TITLE 32 OF THE CODE OF VIRGINIA AND THE LANGUAGE OF THESE PROVISIONS ARE CLEAR AND UNAMBIGUOUS. SIMILAR TO DEPORTATION, CERTAIN CONVICTIONS MAKE A DEFENDANT ELIGIBLE FOR CIVIL COMMITMENT AND HEARINGS ARE CONDUCTED TO DETERMINE THE OUTCOME. SEE: VA CODE SECTION 37.2-904, 37.2-905, 37.2-906, UNLIKE DEPORTATION, WHERE THE RESULTS IS RETURNING TO THE COUNTRY OF ORIGIN AS A FREE MAN, A DEFENDANT WHO PLEADS GUILTY TO ANY OF THE OFFENSES IDENTIFIED UNDER VA CODE SECTION 37.2-900 WILL BE AUTOMATICALLY ENTERED INTO THE SEXUAL VIOLENT DATABASE, (37.2-903) AND EVALUATED BY THE COMMITMENT REVIEW COMMITTEE, (37.2-902), WHERE THE RESULTS ARE DETAINMENT IN A PENAL INSTITUTION WITH THE MOST VIOLENT SEXUAL PREDATORS FOR AN UNDETERMINED PERIOD.

THE ISSUES PERTAINING TO CIVIL COMMITMENT HAS BECOME A NATIONAL DEBATE ABOUT THE CONSTITUTIONALITY OF THE LAWS GOVERNING CIVIL COMMITMENT. CHANGES TO THESE LAWS HAVE DRAMATICALLY RAISED THE STAKES OF A DEFENDANT WHO IS CHARGED WITH A CRIME CLASSIFIED AS A "SEXUALLY VIOLENT OFFENSE." THIS IS DUE TO THE DRAMATIC MEASURES INVOLVED IN CIVIL COMMITMENT, AND...

THE CONSEQUENCES INVOLVED THEREWITH WHICH CAN EASILY BE DISCERNED FROM A READING OF THE RELEVANT STATUTES CIVIL COMMITMENT, LIKE DEPORTATION, IS NOT PRESUMPTIVELY MANDATORY AND THIS COURT HELD THAT AN ATTORNEY MUST ADVISE HIS CLIENT OF THIS POTENTIAL CONSEQUENCES PRIOR TO TENDERING A GUILTY PLEA.

THE VITAL IMPORTANCE OF ACCURATE AND ADEQUATE LEGAL ADVICE FOR PERSONS CHARGED WITH ANY OF THE CRIMES DEEMED SEXUALLY VIOLENT HAS NEVER BEEN MORE IMPORTANT, THUS AS A MATTER OF FEDERAL CONSTITUTIONAL RIGHTS, CIVIL COMMITMENT IS AN INTEGRAL COMPONENT OF THE CONSEQUENTIAL PENALTY THAT MAY BE IMPOSED UPON A DEFENDANT WHO PLEADS GUILTY TO THE CRIMES SPECIFIED BY STATUTE.

THE STATE AND FEDERAL COURT DECISIONS HOLDING THAT AN ATTORNEY HAS NO OBLIGATION TO ADVISE HIS CLIENT ABOUT CIVIL COMMITMENT ARE IN DIRECT CONFLICT WITH THE DECISIONS OF THIS COURT. I.E; PADILLA-V-KENTUCKY, SUPRA, HILL-V-LOCKHART, SUPRA, AND McMANN-V-RICHARDSON, SUPRA, FOR A FEW EXAMPLES THAT DETERMINE AN ATTORNEY MUST ADVISE HIS CLIENT ABOUT THE 'RELEVANT LAWS,' THE CONSEQUENCES ASSOCIATED

WITH A GUILTY PLEA AND ANY OTHER MATERIAL FACTS IN ORDER FOR THE REPRESENTATION TO BE CONSTITUTIONALLY ACCEPTABLE AND THE RESULTING PLEA TO REPRESENT A KNOWING, INTELLIGENT AND VOLUNTARY ACT.

DEPORTATION AND CIVIL COMMITMENT PROCEEDINGS ARE VIRTUALLY IDENTICAL IN THEIR PROCEDURAL POSTURES AND THIS COURT HELD IT IS OBJECTIVELY UNREASONABLE FOR AN ATTORNEY TO IMACURATELY OR INSUFFICIENTLY APPRISE HIS CLIENT OF THIS CONSEQUENCE. THE PETITIONERS CASE, AND ALL OTHER CASES PERTAINING TO COUNSELS FAILURE TO ADVISE ME ABOUT CIVIL COMMITMENT IS MATERIALLY INDISTINGUISHABLE FROM THE HOLDING IN PADILLA-V-KENTUCKY, SUPRA, WHICH RENDERERS THOSE DECISIONS IN CONFLICT WITH DECISIONS OF THIS COURT ON THIS IMPORTANT FEDERAL QUESTION.

HOW CAN MY PLEA, OR ANY OTHER DEFENDANTS PLEA OF GUILTY FOR CRIMES DEEMED SEXUALLY VIOLENT BE CONSIDERED AN INTELLIGENT OR VOLUNTARY ACT, MADE WITH AN INFORMED UNDERSTANDING OF THE POTENTIAL CONSEQUENCES AND AVAILABLE OPTIONS, IF I WASNT MADE AWARE THAT MY GUILTY PLEA FOR THE OFFENSES AT ISSUE...

WOULD AUTOMATICALLY SUBJECT ME TO BEING PERMANENTLY LABELED AS A SEXUAL VIOLENT PREDATOR, ENTERED INTO THE SEXUALLY VIOLENT DATABASE AND ASSESSED BY THE C.R.C. FOR COMMITMENT.

MY ATTORNEY ADVISED ME THAT I WOULD BE RELEASED AFTER SERVING MY ACTIVE SENTENCE OF 13 YEARS, MINUS GOOD TIME CREDITS. THIS IS GROSSLY INACCURATE BECAUSE I CAN BE DETAINED CIVILLY AFTER MY PENAL SENTENCE IS SERVED AND I ARGUE THAT I HAD A RIGHT TO BE APPRISED OF THIS VERY ESSENTIAL ISSUE PRIOR TO PLEADING GUILTY, MY ATTORNEY WAS DEFICIENT UNDER THE 1ST COMPONENT OF STRICKLAND'S TWO-PART ANALYSIS AND MY GUILTY PLEA WAS NOT A KNOWING, INTELLIGENT, OR VOLUNTARY ACT BECAUSE I WOULD HAVE CHOSEN TO CONTINUE TO TRIAL HAD I BEEN MADE AWARE OF THIS CONSEQUENCE THAT COULD RESULT IN MY INCARCERATION FOR THE REST OF MY LIFE.

CONCLUSION:

THIS PRO-SE PETITIONER HAS PROFFERED THIS COURT A CASE INVOLVING AN ISSUE OF NATIONAL IMPORTANCE, WHICH IS NOT ONLY VIOLATIVE OF THE 6TH AMENDMENTS GUARANTEE TO THE EFFECTIVE REPRESENTATION OF COUNSEL, BUT PERTAINS TO A MATTER THAT NUMEROUS COURTS HAVE RENDERED DECISIONS THAT CONFLICT WITH GOVERNING HOLDINGS OF THIS COURT.

CIVIL COMMITMENT IS SO INTERRELATED WITH THE CRIMINAL JUSTICE SYSTEM AND INVOLVES SERIOUS CONSEQUENCES THAT PRECEDENT BY THIS COURT NEEDS TO FINALLY ADDRESS THIS VITALLY IMPORTANT ISSUE THAT EFFECTS THE EQUITABLE JURISPRUDENCE AND FUNDAMENTAL FAIRNESS OF A DEFENDANTS TRIAL.

THIS PETITION FOR A WRIT OF HABEAS CORPUS SHOULD BE GRANTED FOR THE AFOREMENTIONED ARGUMENTS.

DATE: 01/08/20

Respectfully Submitted,
181 Chris J. Burton
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