

LAWRENCE E. MATTISON V. BOB McCABE (Superintendent)
PETITION FOR HABEAS CORPUS

INDEX TO APPENDICIES

APPENDIX A

Page No.

May 9, 2017 Unpublished ORDER of the Virginia Supreme Court

Denying amendment 1a

July 25, 2018 Unpublished OPINION of the Virginia Supreme

Court DIMISSING the Habeas Corpus Petition 2a

October 19, 2016 Initial Petition for Habeas Corpus as

accepted by the Virginia Supreme court 7a

1869-70 Act of the Virginia General Assembly c. 325

ceding lands to the federal government for the
erecting of the HVAMC Hospital 23a

1a
VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Tuesday the 9th day of May, 2017.*

Lawrence E. Mattison,

Petitioner,

against Record No. 161511

Bob McCabe, Superintendent,

Respondent.

Upon a Petition for a Writ of Habeas Corpus

On April 17, 2017 came the petitioner, who is self-represented, and filed a motion to amend in this case.

Upon consideration whereof, the Court denies the motion.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By:



Deputy Clerk

1a
~~Exhibit 2~~

2a

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 25th day of July, 2018.

Lawrence E. Mattison, Petitioner,

against Record No. 161511

Bob McCabe, Superintendent, Respondent.

Upon a Petition for a Writ of Habeas Corpus

Upon consideration of the petition for a writ of habeas corpus filed October 19, 2016, the rule to show cause, the respondent's motion to dismiss, and petitioner's reply to the motion to dismiss, the Court is of the opinion that the motion should be granted and the writ should not issue.

Petitioner was convicted by the court in the Circuit Court for the City of Hampton of misdemeanor stalking and misdemeanor making intentionally annoying phone calls and was sentenced to twelve months' incarceration for stalking and a \$500 fine for making intentionally annoying phone calls. Petitioner's appeals to the Court of Appeals of Virginia and to this Court were unsuccessful, and he now challenges the legality of these convictions.

As an initial matter, the petition must be dismissed to the extent it challenges petitioner's conviction for making annoying phone calls. Petitioner did not receive a sentence of actual or potential incarceration for that conviction and, therefore, he cannot attack it by way of habeas corpus. *See Escamilla v. Superintendent, Rappahannock Reg'l Jail*, 290 Va. 374, 383, 777 S.E.2d 864, 869 (2015); *McClenney v. Murray*, 246 Va. 132, 133-35, 431 S.E.2d 330, 330-31 (1993).

In claim (a), petitioner contends he was denied the effective assistance of counsel because "counsel's representation was so deficient and prejudicial that it deprived petitioner's constitutional right to effective assistance of counsel."

The Court holds this claim satisfies neither the "performance" nor the "prejudice" prong of the two-part test enunciated in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Petitioner has not described with sufficient specificity how counsel's assistance was lacking or how counsel's failing worked to petitioner's detriment. Thus, petitioner has failed to demonstrate that

~~Exhibit 2~~
2a

counsel's performance was deficient or that there is a reasonable probability that, but for counsel's alleged errors, the result of the proceeding would have been different.

In claim (c), petitioner contends various aspects of his trial violated his rights under Va. Const. Art. 1 Sec. 8, which supplies every criminal defendant with the rights to notice of his charge, confront his accusers, present evidence, a speedy and public trial, an impartial jury of his peers, be found guilty by a unanimous jury, judicial process, not incriminate himself, and not be put twice in jeopardy for the same offense. Petitioner explains that his "case was manipulated from a federal agency," the Commonwealth falsely informed the trial court "that there were no March 9, 2015 conversations," the trial court questioned a Commonwealth witness about specific text messages, counsel did not introduce all of the Facebook messages petitioner exchanged with individual he was charged with stalking, A.P., and the Commonwealth withheld or counsel failed to obtain relevant text messages.

The Court holds claim (c) is barred because these non-jurisdictional issues could have been raised during the direct appeal process and, thus, are not cognizable in a petition for a writ of habeas corpus. *Slayton v. Parrigan*, 215 Va. 27, 29, 205 S.E.2d 680, 682 (1974), cert. denied, 419 U.S. 1108 (1975).

In claim (d) and a portion of claim (b), petitioner contends he was denied the effective assistance of counsel because counsel failed to use evidence that would have favored petitioner, which included "[a] protective order filed by petitioner" and "text message conversations in petitioner's favor." Petitioner asserts he discussed this evidence with counsel before trial and counsel agreed he would "submit this information" but did not.

The Court holds this claim satisfies neither the "performance" nor the "prejudice" prong of the two-part test enunciated in *Strickland*. Petitioner fails to articulate with sufficient specificity the character and content of the evidence counsel allegedly neglected. As such, petitioner has not established counsel ignored potentially admissible materials that could have benefited petitioner's defense. Further, petitioner has not alleged, much less explained, how the evidence he obliquely identifies might have affected the court's verdict. Thus, petitioner has failed to demonstrate that counsel's performance was deficient or that there is a reasonable probability that, but for counsel's alleged errors, the result of the proceeding would have been different.

In claim (e) and a portion of claim (b), petitioner contends he was denied the effective assistance of counsel because counsel "failed to submit, through evidence and testimony, that the Commonwealth's main witness (A.P.) made significant statements of material fact under oath on December 15, 2015." Specifically, petitioner, apparently referencing proceedings in the general district court, alleges A.P. testified that "text messages were about 'the weather' or 'work' or 'Hey, how are you' or 'do you need anything.'" Petitioner contends this testimony would have "shown the lack of credibility of the text messages." Petitioner adds that A.P. "texted other people, the texts were overwhelmingly prejudicial." Petitioner asserts he discussed A.P.'s prior testimony with counsel before trial and counsel agreed he would "submit this information" but did not.

The Court holds this claim satisfies neither the "performance" nor the "prejudice" prong of the two-part test enunciated in *Strickland*. Petitioner has failed to articulate how or for what purpose A.P.'s alleged prior testimony would have been admissible during petitioner's trial. Further, petitioner has not alleged, much less explained, how any additional evidence might have affected the court's verdict. Thus, petitioner has failed to demonstrate that counsel's performance was deficient or that there is a reasonable probability that, but for counsel's alleged errors, the result of the proceeding would have been different.

In claim (f) and a portion of claim (b), petitioner contends he was denied the effective assistance of counsel because counsel failed to submit "documentation and testimony of significant statements of material fact made between [A.P.] and Detective Janie Willis." Petitioner claims this evidence would have shown there was no probable cause supporting his charge for stalking and included A.P. saying she rarely sent text messages to petitioner but also stating she always responded to petitioner's text messages. Petitioner recounts also that A.P. informed their former employer that their friendship lasted until March 9, 2015, but petitioner's warrant charged him with stalking A.P. between January 1, 2015, and March 24, 2015. Petitioner asserts he discussed A.P.'s statements with counsel before trial and counsel agreed he would "submit this information" but did not.

The Court holds this claim satisfies neither the "performance" nor the "prejudice" prong of the two-part test enunciated in *Strickland*. Petitioner has failed to articulate how or for what purpose A.P.'s alleged out of court statements would have been admissible during petitioner's

trial. Further, petitioner has not alleged, much less explained, how any additional evidence might have affected the court's verdict. Thus, petitioner has failed to demonstrate that counsel's performance was deficient or that there is a reasonable probability that, but for counsel's alleged errors, the result of the proceeding would have been different.

In an unnumbered claim, petitioner contends he was denied the effective assistance of counsel because counsel "failed to do post-trial relief."

The Court holds this claim satisfies neither the "performance" nor the "prejudice" prong of the two-part test enunciated in *Strickland*. Petitioner has not described the nature of the "post-trial relief" counsel neglected nor has petitioner attempted to articulate how counsel's pursuing that relief would have benefited petitioner. Thus, petitioner has failed to demonstrate that counsel's performance was deficient or that there is a reasonable probability that, but for counsel's alleged errors, the result of the proceeding would have been different.

In claim (g) and a portion of claim (b), petitioner contends he was denied the effective assistance of counsel because counsel did not question the "FBI witness" regarding whether he "created or participated in the surveillance on the Trac Phone which created the triangulation document." Petitioner alleges that, as a result, "counsel never determined if testimony was hearsay."

The Court holds this claim satisfies neither the "performance" nor the "prejudice" prong of the two-part test enunciated in *Strickland*. The record, including the trial transcript, demonstrates FBI Special Agent David Church testified to his analysis of certain cell phone records that were relevant to petitioner's prosecution. Petitioner fails to specify any portion of that testimony that might have been improperly based on hearsay. Further, petitioner fails to proffer any testimony, beneficial or otherwise, that counsel might have elicited or excluded upon further questioning of Church, nor has petitioner alleged, much less explained, how that additional questioning might have affected the court's verdict. Thus, petitioner has failed to demonstrate that counsel's performance was deficient or that there is a reasonable probability that, but for counsel's alleged errors, the result of the proceeding would have been different.

In claim (h) and a portion of claim (b), petitioner contends he was denied the effective assistance of counsel because counsel failed to question Church regarding whether "the surveillance was [a] warranted search." As such, petitioner contends, counsel never ascertained

6a
if the "triangulation search was legal/lawful."

The Court holds this claim satisfies neither the "performance" nor the "prejudice" prong of the two-part test enunciated in *Strickland*. Petitioner fails to proffer any testimony, beneficial or otherwise, that counsel might have elicited through further questioning of Church, nor has petitioner alleged, much less explained, how that additional questioning might have resulted in the exclusion of any evidence. Thus, petitioner has failed to demonstrate that counsel's performance was deficient or that there is a reasonable probability that, but for counsel's alleged errors, the result of the proceeding would have been different.

In his reply to the motion to dismiss, petitioner contends he was denied the effective assistance of counsel because counsel colluded with the Commonwealth and "a Federal Agency" to deprive petitioner of federal employment.

The Court holds this claim is not properly before the Court. The facts of this claim were known to petitioner at the time he filed his petition for a writ of habeas corpus, and petitioner was not granted leave to amend his original petition. *See* Code § 8.01-654(B)(2) (a petition for a writ of habeas corpus "shall contain all allegations the facts of which are known to petitioner at the time of filing"); Rule 5:7(e) (a petitioner may not raise new claims unless, prior to the expiration of the statute of limitations and the entry of a ruling on the petition, he obtains permission from the Court to do so).

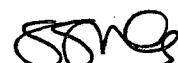
Accordingly, the petition is dismissed and the rule is discharged.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By:



Deputy Clerk

Exhibit 2-5
6a

**Additional material
from this filing is
available in the
Clerk's Office.**