

Supreme Court
of the
United States

No 19-8623

JOSHUA CHARLES LOVELL MOSELEY

Petitioner

V

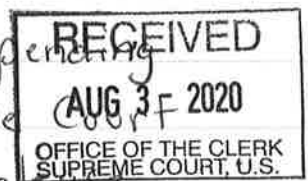
HAROLD W CLARKE

Director of the Department of Corrections
Respondent

WRIT of CERTIORARI

Motion for Stay and Bond

I the Petitioner Joshua C.L. Moseley
pro se pursuant to Federal Rule 41 d 2 C
of the United States Supreme Court files
this motion to stay the Mandate pending
Writ of Certiorari and request the Court
to set a reasonable bond for my release
from custody. In support thereof Petitioner



States:

The Power of an individual Justice to grant a stay pending Certiorari proceeding is derived from 28 USC 210 f which provides that:

In any case which the final judgment or decree of any Court is subject to review by the Supreme Court on Writ of Certiorari the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of Certiorari from the Supreme Court the Stay may be granted by a judge of the Court rendering the judgment or decree or by a justice of the Supreme Court

Relief from a single Justice appropriate when petitioner makes extraordinary showing that decisions below are incorrect both on merits and on proper interim disposition

Rostker v Goldberg 448 U.S. 1306 1308 (1980)

Petitioner convictions of burglary and grand

larceny were reversed and dismissed on grounds of insufficiency of the evidence
Moseley v Commonwealth No. 0881-15-1
2016

The Attorney General Appealed to the Virginia Supreme Court claiming errors made by Virginia Lower court of Appeals and conviction were reinstated
Commonwealth v Moseley 293 VA 455

Petitioner sought grounds for relief in the appropriate lower courts Challenging Legality of Confinement in violation of Constitution and Amendments. Petitioner case has been reviewed at every state and federal level seeking release from custody by petitions and bonds all which were denied (Moseley v Clarke 180230 Virginia Supreme Court) (Moseley v Clarke 3:19 CV40) United State District Court) Moseley v Clarke No. 19-7456 United States Court of appeals.
Copies attach Appendix 1-3

Petitioner seeks relief from the Supreme Court of the United States of Washington D.C.
in Commonwealth v Moseley 293 VA. 455

to review wrongful conviction and violation of Constitution and Amendments
Petitioner has exhausted all available remedies in other court.

Petitioner filed Writ of Certiorari in this Court and it was placed on the docket June 9 2020 as No.19-8623 and Jurisdiction of this court is invoked under 28 U.S.C 1254 (1) and 28 U.S.C. 1257 (a)

In order for a stay to be granted and a bond be set the Petitioner must make a strong showing of likelihood of success on the merits, whether Petitioner will be irreparably injured absent release, whether others interested in the proceeding will be substantially injured and whether the public interest would best be served by release. *Hilton v Braunskill* 481 US 770 776 (1987)

Merits

After Petitioner had convictions reversed

and dismissed Prosecutor introduce prior charges at a different trial and on appeal, by stating hearsay testimony from an officer that Petitioner was a suspect in attempted burglary while he was being tried for grand larceny and burglary (Moseley v Commonwealth Circuit Court City of Hampton CR13-803-00 Trial transcript pg 48 14-28) and Assistant Attorney General Petition for appeal brief Moseley v Commonwealth Record No. 161013 pg 22 12-14)

This violates due process when prosecution made references to Petitioner prior charges Kincaid v Sparkman 175 F.3d 444 6th Cir 1999.

As a general matter the Prosecution may not admit at the trial of a defendant on one charge evidence that defendant has on another occasion committed some other crime Federal evidence 404.5 see U.S. v Phillip 599 F.2 134. 6th Cir 1979

The Supreme Court of Virginia accepted hearsay testimony as if the Petitioner actually

participate in another crime on the appeal process and the Court used such unlawful introduction to draw a conclusion "The Petitioner may be guilty of burglary and grand larceny if he was once a suspect in a attempted burglary (Commonwealth v Moseley 293 VA 455 pg 9 at 1-2) and then the Court reinstated convictions.

However for the Court to accept hearsay testimony that Petitioner participate in another crime without eyewitness their consideration of volunteeriness in assessing trustworthiness of a declarant statement is contrary to Federal law Steven v Ortiz 465 F.3d 1229 1240 (10th Cir 2006)

Prosecution introduction of other charges at a different trial violates 5th Amendment right and 14th Amendment rights and not only that the Prosecution knowingly used a Murder totality Standard and a burglary and grand larceny case aware that they have different governing legal principles Murder relies on probability and Grand larceny is base upon possession

Yet the Virginia Supreme Court not only accepted hearsay testimony in violation of Federal evidence but use Prosecution misapplied standards and concepts to reinstate conviction absent provisions of law

The Court of Appeals, Commonwealth and Supreme Court of Virginia assumes in it's opinion that the circumstantial evidence presented in this case does not prove I the Petitioner had exclusive dominion and control over stolen property found in Kelton Adams-Elkin Crown Victoria (Commonwealth vs Moseley 292 VA 455 pg 11, 5-8

for burglary - larceny inference to apply the accused must be shown to be in exclusive Possession of recently stolen property regardless of how much other incriminating evidence the commonwealth has marshalled (Best v Commonwealth 222 VA 387) Price Case 62 VA 1044 (21 Gratt)

By Virginia Supreme Court own statements and provision of law all other evidences does not

Support a larceny presumption and without this presumption the evidence is insufficient to support the conviction (Tyler case 120 VA 868) Therefore Petitioner conviction should have remain reversed and dismissed because Possession or Awareness was proven to occurred

In U.S. v Kapeliougy Conviction of conspiracy related charges were reversed when prosecution could not prove beyond a reasonable doubt that accused knew value of stolen goods or that he moved them on the interstate see Kapeliougy 547 F.3d 144 151

In U.S. v Mcfall Prosecution's failure to Prove beyond reasonable doubt that defendant obtained any property of intangible right required reversal of conviction for extortion related offenses see Mcfall 558 F.3d 951 958

The Petitioner was not given equal protection and due process as other obtain in similar cases as the 14th Amendment states

Upon review the Court will verify Petitioners

claims and violations and the likelihood of success on merits. This is the reason for submission of Writ of Certiorari and why Petitioner motions for a stay and bond be granted.

Irreparable injury absent release

In response to the Governor of Virginia State of emergency declaration related to the Covid-19 pandemic, a communicable disease and current public health threat to the residents of the Commonwealth of Virginia defined in 44-146.16, 17 Director shall release inmates under one year to serve, low to moderate recidivism rate, No class one violent or sexual offenses and must have a home plan

Petitioner has met criteria as of May 3rd 2020 and has served the minimum sentence as Writ of Certiorari has been dock for July 7 2020 and release may be reasonable under Mathis v Hood 937 F.2d 790 796 (2d cir 1991)

Also by way of Director Non-compliance, as Petitioner fit criteria for release pass by legislation

it seem Respondent is tarrying but I desire to avoid potential irreparable injury due to covid-19 as cases spike and Social distancing is a federal right and Respondent isn't compling to legislation.

Petitioner home plan is his Mother
Stacey Wilkerson at 2718 Irisdale AVE
Henricho VA 2328 cell 757-550-8490 to
verify

Interest of the Public

The Petitioner is not a flight risk and is labeled a non violent offender, he has less than a year remaing on his sentence and no substantial injury will occur to other interested parties in fact Petition may be released at any time due to current pandemic legislation.

Furthermore this case is of public interest, with the Prosecution introduction of Petitioner prior charges at a differant trial and Appeal shows violation of federal right and Constitution. for The Virginia Supreme court to assess charge as if

The Petitioner actually committed another crime coupled with a Murder totality standard applied to an non violent case in which both were used to reinstate conviction, what message does this send to our society: favoritism, partiality neglect, deprivation of constitutional right

To release the Petitioner base upon ground presented in this Court is to sustain the integrity of the United State Court rooms and represents equality and justice for all, the disposal of convictions gain fraudulently in violation of our honorable judicial system is in accordance with the values our stars and Stripes which project nobility and truth.

The Petitioner Joshua C.L. Moseley respectfully moves this court to stay the mandate pending Writ of Certiorari and request the court to set a reasonable bond for my release from custody by aformentioned statements and will promptly return to jurisdiction if writ is denied

Sincerely

" Joshua Moseley 7/19/2020

Copy will be sent to Respondent's counsel
David Uberman
Office of Attorney General VA
202 N 9th Street
Richmond VA 23219

I declare under penalty of perjury
foregoing is true and correct

Joshua Mosely 4/30/20
Deerfield men's work center
15172 Old Belfield Rd
Capron VA 23829

Appendix 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

JOSHUA CHARLES LOVELL MOSELEY,

Petitioner,

v.

Civil Action No. 3:19CV40

HAROLD W. CLARK,

Respondent.

**MEMORANDUM ORDER
(Denying Miscellaneous Request)**

By Memorandum Opinion and Order entered on September 5, 2019, the Court dismissed Petitioner's 28 U.S.C. § 2254 Petition and denied a certificate of appealability. (ECF Nos. 16, 17.) By Memorandum Order entered on October 10, 2019, the Court denied Petitioner's request for a certificate of appealability. (ECF No. 22.) On January 28, 2020, the United States Court of Appeals dismissed Petitioner's appeal, and subsequently, on February 25, 2020, the Fourth Circuit denied the petition for rehearing en banc. (ECF Nos. 23, 26.) On May 22, 2020, Petitioner filed a petition for writ of certiorari in the Supreme Court. (ECF No. 28.)

On July 8, 2020, the Court received a submission from Petitioner titled "Writ of Certiorari Motion under Rule 41" in which Petitioner asks this Court "to stay the mandate pending writ of certiorari and request[s] the Court to set a reasonable bond for my release from custody." (ECF No. 29, at 1.) Petitioner also asks the Court to release him from custody. (*Id.* at 3–4.) Petitioner fails to identify a procedural vehicle that would authorize this Court to take the action he seeks. Accordingly, his request (ECF No. 29) is DENIED.

The Clerk is DIRECTED to send a copy of this Memorandum Order to Petitioner.

It is so ORDERED.

Date: July 10, 2020
Richmond, Virginia

/s/ 
Roderick C. Young
United States Magistrate Judge

FILED: July 9, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7456
(3:19-cv-00040-REP-RCY)

JOSHUA CHARLES LOVELL MOSELEY

Petitioner - Appellant

v.

HAROLD W. CLARKE, Director of the Department of Corrections

Respondent - Appellee

O R D E R

Upon consideration of the motion to stay the mandate, which the court construes as a motion to recall the mandate, the court denies the motion.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**
1100 East Main Street, Suite 501, Richmond, Virginia 23219

July 9, 2020

LOCAL RULE 40(d) NOTICE

No. 19-7456, Joshua Moseley v. Harold Clarke
3:19-cv-00040-REP-RCY

TO: Joshua Charles Lovell Moseley

We are in receipt of your papers in this case.

This court's Local Rule 40(d) states that, except for timely petitions for rehearing en banc, cost and attorney fee matters, and other matters ancillary to the filing of an application for writ of certiorari with the Supreme Court, the office of the clerk shall not receive motions or other papers requesting further relief in a case after the court has denied a petition for rehearing or the time for filing a petition for rehearing has expired.

Pursuant to the provisions of Local Rule 40(d), no further action will be taken in this matter by this court. A petition for writ of certiorari may be filed in the Office of the Clerk, Supreme Court of the United States, 1 First Street, NE, Washington, DC 20543-0001, within 90 days of this court's entry of judgment or, if a timely petition for panel or en banc rehearing was filed, denial of rehearing. Additional information on filing a petition for writ of certiorari is available on the Supreme Court's website, www.supremecourt.gov, or from the Supreme Court Clerk's Office at (202) 479-3000.

Ashley Brownlee, Deputy Clerk
804-916-2704