No. 20-5033 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Abdul-Mu'min, (F/k/a Travis-Jackson: Marron),
Petitioner,

Vs

COMMONWEALTH OF VIRGINIA,
Respondent(s).

On Petition For Writ Of Certiorari To
The U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Abdul-Mu'min,
(F/k/a, Travis-Jackson: Marron) #1091504
Augusta Correctional Center
1821 Estaline Valley Road
Craigsville, Virginia 24430

QUESTION(S) PRESENTED

"Marron" prays this Honorable Court will hear his extraordinary case about the errors of the lower courts when they violated Appellants' Constitutional Rights by misusing Judicial Rulings and Legislative Laws that are in conflict with this Honorable Courts' precedent cases as stipulated below in the following Questions:

1. Did the Virginia Supreme Court and Chesapeake Circuit Court of Virginia Error when it failed to establish Jurisdiction of the Subject Matter?

2. Is the Virginia Supreme Court and Chesapeake Circuit Court in Conflict with this Courts' precedent cases?

3. Did the Virginia Supreme Court and Chesapeake Circuit Court violate petitioners Constitutional Rights by misusing Judicial Rulings and ignoring Legislative Laws?

LIST OF PARTIES

[x] 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:

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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

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix B to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[x] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the **Chesapeake Circuit Court** appears at Appendix E to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[X] For cases from **federal court:**

The date on which the United States Court of Appeals decided my case was April 28, 2020.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 9, 2020, and a copy of the order denying rehearing appears at Appendix A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[x] For cases from **state courts:**

The date on which the highest state court decided my case was March 28, 2020.
A copy of that decision appears at Appendix D

[ ] 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. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section II of The Organic Constitution

STATEMENT OF THE CASE

Comes now, Abdul-Mu'min, (F/k/a Travis-Jackson:Marron), appellant before this Honorable Court, pro se, sui juris, in propria persona, in rem, first duly swears that pursuant to 28 U.S.C. §1746 that all the enclosed Motion(s), Affidavit(s), Exhibit(s), Memorandum(s), etc., are a testament to be admitted as evidence of Facts upon the Court Record in this "cause of action"!

On June 26, 1997, "Marron", was arrested in the City of Portsmouth and charged in the Circuit Court of Chesapeake on June 27, 1997 with 1st Degree Murder, in violation of Virginia Code §18.2-32, Robbery in violation of Virginia Code §18.2-58 & 2 Counts of Use of a Firearm in the Commission of a Felony in violation of Virginia Code §18.2-53.1.

The subject matter jurisdiction of all courts in the Commonwealth is specified in VA. Code Ann § 19.2 – 239 and § 17.1 - 513 and objection to subject matter jurisdiction may be raised in any court at any time. To establish the court subject matter jurisdiction, evidence supporting the conclusion must affirmatively appear on the face of the record, that is, the court rendering the judgment was cognizance. If the appellant is subjected to prosecution by the Commonwealth of Virginia, the Jurisdiction of the Court depends upon compliance with certain mandatory provisions of law, namely that the record during the trial must prove the petitioner committed the offenses within the Commonwealth of Virginia! The appellant brings this appeal because the Chesapeake Circuit Courts and Virginia Supreme Court's rulings are not in accordance with Legislative law, nor this U.S. Supreme Court.

REASONS FOR GRANTING THE PETITION

As to the Questions Presented, #1: The Chesapeake Circuit Court of Virginia and The Virginia Supreme Court erred when it failed to establish Jurisdiction of the Subject Matter? The petitioner stipulates that he filed a "Motion to Vacate Judgment" because, the issue in this appeal is that the trial record does not support that the crimes he's accused of were committed in the Commonwealth of Virginia. In support of that assertion, the Commonwealth relied upon a standard Indictment that the Petitioner was charged in Four Indictments that read, in relevant part, that "on or about June 26, 1997, in the city of Chesapeake, Virginia, the accused, Travis Jackson Marron, did...." (emphasis added). It is irrelevant how an Indictment is to be read, *NO ONE* testified under penalty of Perjury that they witnessed "Marron" commit *ANY* act in the Commonwealth of Virginia! See, *Dobson v Commonwealth*, No. 0733-96-2. Feb 18, (1997). The Virginia Supreme Court itself has held that subject matter jurisdiction "must affirmatively appear on the face of the record, that is, the record must show affirmatively that the case is one of a class of which the court rendering the judgment was given cognizance..." In the appellant's case, *Commonwealth v. Travis-Jackson: Marron*, Case #CR-0097-3158 thru #CR-0097-3161, the record in this case conclusively shows the burden of proof regarding subject matter jurisdiction was not met! See e.g. *Sutherland v. Commonwealth*, 6 Va. App. 378, 382, 368 S.E.2d 295, 297 (1988) (citations omitted) (Allegations of venue contained solely in an indictment cannot supply proof of venue and subject matter jurisdiction).

The trial transcript will show no mention of "VIRGINIA", the evidence merely suggests two places of possibility within the City of Chesapeake. Neither the Chesapeake police nor any witness ever mentions that this crime was committed in the state of Virginia! The record failed to prove that the incident that led to the Appellants conviction occurred within the circuit court's jurisdiction and that the evidence was insufficient to uphold the circuit court conviction, because the record failed to prove by direct or circumstantial evidence that the incident occurred in the Commonwealth. See, e.g., *Thomas v. Commonwealth*, 36 Va. App. 326, 549 S.E. 2d 648. The mere fact that police of a certain jurisdiction investigate a crime cannot support an inference that the crime occurred within their jurisdiction. C.O.V. (1950) §17.1-513 & §19.2-239; (Owusu, id.) (The Commonwealth presented evidence that Corporal Zinn of the Prince Albert County, Virginia Police Department had been assigned to investigate the robbery. However, the mere fact that a Prince Albert County officer investigated the robbery cannot support an inference that the crime occurred within his jurisdiction). See, *Shelton v Sydnor*, 102, S.E. 2d 83 (1920) and *Keesee v Commonwealth*, 217, S.E. 2d 808 (1975);

> "The Commonwealth of Virginia may delegate a portion of its jurisdiction power to a variety of municipal courts. But it may not create -sovereign otherwise than as provided in the federal constitution."

Quoting Virginia law procedure, fourth edition:

> "A city, town or county is not sovereign, so to state that an offense was committed against the peace and dignity of Chesapeake standing alone does

not prove a crime was committed in the Commonwealth of Virginia, thus not establishing all aspects of subject matter jurisdiction as required to make any judgment."

See also, *Thomas v. Commonwealth*, 36 Va. App. 326, 333, 549, S.E. 2d 648, 651 (2001), noting that although the evidence may "Mention a street, address and Chesapeake" neither ties either location to a locality within the Commonwealth of VIRGINIA and nothing in the record provided a basis upon which the trial court could take judicial notice of the location of the crime. *Thomas* and *Dobson* was reversed and remanded!

The trial court also violated C.O.V. §19.2-218 (1950) as amended;

"No person who is arrested on a charge of felony shall be denied a preliminary hearing upon the question of whether there is reasonable ground to believe that he committed the offense and an indictment shall be returned in a court of record against any such person prior to such hearing unless such hearing is waived in writing by the accused." Petitioner was not provided a preliminary hearing until after being arrested & held without bond on the four charges mentioned in the "response".

Also C.O.V. §19.2-218 (1950) as amended states:

"(A) The Judge before whom any person is brought for an offense, shall as soon as practical, in the presence of such person, examine on Oath the witness for & against him. Before conducting the hearing (or) accepting a waiver of the hearing, the judge shall advise the accused of right to Counsel,

etc., ...(B) At the hearing the Judge shall, in the presence of the accused, hear testimony presented for & against the accused in accordance with the rules of evidence applicable to Criminal Trials in this Commonwealth. In felony cases, the accused shall not be called upon to plead, but may cross-examine witnesses, introduce witnesses in his own behalf and testify in his own behalf. (C) A judge may adjourn a Trial, pending before him, not exceeding 10 days at one time, without the consent of the accused."

This violation which requires a preliminary hearing for a person arrested on a charge of felony "Marron" had a statutory right to cross-examine witnesses, introduce witnesses on his own behalf and testify on his own behalf. The action of the Commonwealth Attorney in presenting "short-form" indictments against appellant as a way of circumventing the proper statutory process was improper. All The direct indictments against "Marron" should have been dismissed! By failing to proceed with a preliminary hearing, or call any witnesses on behalf of the Commonwealth, the Warrant upon which defendant was arrested, held in Jail, not to mention the disruption of his personal & professional life as a result of the arrest, search warrant was a violation of defendants statutory rights! Also before the Attorney General argues that a preliminary hearing is not a trial and in certain cases is not dispositive of the case, the Virginia Supreme Court stated:

"The Preliminary purpose is to determine whether there is sufficient cause for charging the accused with the crime alleged, that is, whether there is reasonable ground to believe that the crime has been committed & whether

the accused is the person who committed it." *Moore v Commonwealth*, 218 VA. 388 (1977).

Appellant was not afforded this screening process to determine if there was sufficient cause for charging petitioner with the alleged crimes. Appellant was forced to endure all the obstacles to his freedom without the benefit of the opportunity to cross examine his accusers. The Commonwealth has proceeded in a fashion so as to not subject any witnesses to cross-examination while retaining the benefit of proceeding with the charges against the petitioner while keeping him incarcerated. Especially using a *non-testifying* co-defendants confession which violates the confrontation clause of the Constitution!

Accordingly, C.O.V. §19.2-218 entitles appellant an preliminary hearing which is required for a person arrested on charges of felony waiver. It states:

> "No person who is arrested on a charge of felony shall be denied a preliminary hearing upon the question of whether there is reasonable ground to believe that he committed the offense and *NO* Indictment shall be returned in a court of record against any such person prior to such hearing unless such hearing is waived in writing by the accused."

"Marron" contends he was arrested on charges of felonies and by the Commonwealth, yet he was denied a proper preliminary hearing and the above statute makes it clear that *NO* Indictment shall be returned in a court of record prior to a preliminary hearing unless such hearing is waived. "Marron" did not, has not, and does not waive his rights to a hearing! Virginia Jurisprudence further guides us in determining the

statutory rights of a preliminary hearing, *where the defendant insists upon his statutory rights to a preliminary hearing and Indictment, the failure of the Trial Court to adhere to those procedural requirements is reversible error*! In fact the Court of Appeals of Virginia reiterated that:

> "a person who is arrested on a charge of a felony is entitled to a preliminary hearing upon the question of whether there is a reasonable ground to believe that he committed the offense and no indictment shall be return in court of record against any such person prior to such a hearing unless such hearing is waived in writing by the accused"! Wright v Commonwealth, 52 Va. App. 690 (2008).

Even though the appellant pleaded not guilty initially his not guilty plea cannot establish subject matter jurisdiction because:

1). subject matter jurisdiction cannot be conferred upon the court by consent or agreement since issues of law are the province of the courts, and the courts are therefore not bound to accept as controlling stipulations regarding questions of law;

2). A not guilty plea does not admit as true any fact related to the element of the offense. Although the court acknowledges that the parties before a court cannot establish subject matter jurisdiction by consent or agreement. See, *Owusu v. Commonwealth*, 11 Va. App. 617, S.E.2d 431, (1991);

3). The Courts jurisdiction is the extent of its power to do a variety of judicial acts with respect to the person(s) who engage(s) in stated type(s) of activities in the stated places. Thus, the case will speak of jurisdiction over subject matter and over the

territory affected by the offense, as discussed below. These powers flow from the article of the constitution. Statue enacted under the authority of the article inherent, which common law court identify from time to time. See, *Sutherland v. Commonwealth*, 6 Va. App. 378 (1988), one cannot vest a court subject matter jurisdiction by consent of waiver. If a crime is to be subject of prosecution by the "Commonwealth of Virginia" the sovereign must be established beyond a reasonable doubt over the criminal act. Therefore, circumstantial evidence brought forth by the City of Chesapeake authorities in the trial of the appellant was insufficient to support the jurisdiction subject matter. The subject matter jurisdiction cannot be proven from any of the evidential testimony given at trial.

As to Questions Presented, **#2**: The Virginia Supreme Court and Chesapeake Circuit Court is in Conflict with this U.S. Supreme Courts precedent cases because they misapplied several rulings and the legal reasoning of *Hanson* which has been shown to be erroneous by subsequent binding United States Supreme Court cases: 'While the 5th Amendment to the Federal Constitution requires a presentment or indictment in prosecutions under Federal Statutes "for a capital, or otherwise infamous crime," the Virginia Constitution contains no such requirement. *Farewell v. Commonwealth*, 167 Va. 475, 189 S.E. 321; *Pine v. Commonwealth*, 121 Va. 812, 93 S.E. 652; *Guynn v. Commonwealth*, 163 Va. 1042m, 177 S.E. 227. In this State the requirement is merely statutory...

Since the statutory requirement for an indictment in the present case is not jurisdictional, the failure of the record to show affirmatively that the indictment was

returned into court by the Grand Jury is not such a defect as will render null and void the judgment of conviction based thereon. *Hanson,* 183 Va. At 390-91.

Thus, the *Hanson* opinion implicitly relied upon a premise that the 5th Amendment to the Federal Constitution did not apply to Virginia under the equal protection clause of the 14th Amendment. However, since *Hanson* was decided, this U.S. Supreme Court has held that the 5th Amendment does apply to the States under the 14th Amendment. *Griffin v. California,* 380 U.S. 609, 611 (1965).

Accordingly, the *Hanson* opinion from 1944 is **no longer valid** for the premise relied upon by the defendants because it did not reflect the jurisdictional components of the 5th Amendment applying to Virginia state criminal statutes.

As to Questions Presented, **#3**: The Virginia Supreme Court and Chesapeake Circuit Court did violate Appellants Constitutional Rights by misusing Judicial Rulings and ignoring Legislative Laws! The Circuit Court and Virginia Supreme Court erred by determining that the appellant's original "Motion" was untimely under Rule 1:1, however fraud or a lack of subject-matter jurisdiction is not the only things that can render a judgment void. The appellees avoided the claims by misapplying Rule 1:1 to this civil action. The appellants pleading submitted in his *"Brief in Opposition"*, refuted the appellees stance in his *"Motion to Dismiss"*, when analyzed under federal due process mandates, each of the judgments being challenged are void.

The Circuit Court also avoided appellants claims by agreeing with the misapplied Rule 1:1 and is in error for the reasons stated in this Brief and allows this Court to

remand this case and afford the appellant his 7th Amendment right to a trial by a Civil Jury. A Judgment can be attacked at any time, NOT the Sentencing. Therefore jurisdiction is still in the power of the trial court. Jurisdiction embraces several concepts: **Jurisdiction over a person** and **Subject Matter Jurisdiction**! The authority granted through the U.S. Constitution and/or Statues adjudicates a class of cases and/or controversies, and only Subject Matter Jurisdiction Cannot Be Wavered! The lack of Subject Matter Jurisdiction can be raised at **anytime** and/or **in any manner before any court**! *Nelson v. Warden, 262 VA 276, 552 S.E. 2d 73 (2001).* The U.S. Supreme Court holds that:

> *"Though the court may possess jurisdiction of a cause of the subject-matter, and of the parties, it is still limited in its modes of procedure, and in the extent and character of its judgments. It must act judicially in all things, and cannot then transcend the power conferred by the law." Windsor v. McVeigh, 93 U.S. 274 (1876).*

The Commonwealth adopted *Windsor* in, *Anthony v. Kasey*, 83 Va. 338 (1887), and applied it as recently as the year 2000 in, *Singh v. Mooney*, 261 Va. 48, 52 (2001), where it held:

> *"An order is void ab initio if entered by a court in the absence of jurisdiction of the subject-matter or over the parties, if the character of the order is such that the court had no power to render it or if the mode of procedure used by the court was one that the court could "not lawfully adopt." Evans v. Smyth-Wythe Airport Comm'n,* 255 Va. 69 (1998) (quoting, *Anthony v. Kasey,* 83 Va. 338

(1887). *The lack of jurisdiction to enter an order under any of these circumstances renders the order a complete nullity and it may be "impeached directly or collaterally by all persons, anywhere, at anytime, or in any manner." Barnes v. American Fertilizer Co.*, 144 Va. 692 (1925).

Consequently, Rule 1:1 *limiting the jurisdiction of the trial court to 21 days after the entry of the final order* ***does not*** *apply to an order which is* ***void ab initio****." Singh v. Mooney*, 261 Va. 48, 52 (2001). (Emphasis added). Rule 1:1 does not apply to this civil action.

Furthermore, the Supreme Court of Virginia held that: *"**a motion to vacate is an appropriate procedural device to challenge a void conviction**."* See, *Williams v. Commonwealth,* 263 Va. 189 (2002); *Commonwealth v. Southerly,* 262 Va. 294 (2001). "Additionally, we stated in, *Virginia Dept. Corr. v. Crowley,* 227 Va. 254 (1984) that, *"[w]ant of subject-matter jurisdiction may be raised by motion."* Accord, *Nolde Bros. v. Chalkley,* 184 Va. 553 (1945), aff'd on other grounds sub nom.; *Feitig v. Chalkley,* 185 Va. 96 (1946); *Thacker v. Hubard,* 122 Va. 379 (1918). *A circuit court may correct a void or unlawful sentence at any time. Powell v. Commonwealth,* 182 Va. 327 (1944); See, *Rawls v. Com.,* 278 Va. 213 (Va. 2009). All of these cases point to the undeniable conclusion that this Court has jurisdiction to hear this motion because it challenges subject-matter jurisdiction and proves fraud. The subject-matter jurisdiction of all courts in the Commonwealth is specified in Va. Code Ann § 19.2–239 and § 17.1-513 show's an objection to subject matter jurisdiction may be raised in any Court at any time. The above settled law demonstrates that there is more than

just *"subject-matter jurisdiction and fraud"* that will make a judgment void. The lower courts erred since they didn't determine that: *"An otherwise final judgment is subject to collateral attack only if it was rendered by a court which lacked jurisdiction to do so or was secured by extrinsic fraud."* This court recognizes this principle of law in, *Rawls v. Comm., 278 Va. 213 (Va. 2009)*, (motion to vacate judgment is the proper vehicle to make a lack of subject matter jurisdiction challenge).

Also the appellees try to deceive the courts about the appellants "Guilty Plea", which was attained by ***Extortion***! It too is **null & void ab initio**! It was illegally attainted & was done so in violation of State & Federal Law! As a juvenile the appellant was coerced, threatened and under Duress told to plead guilty by his lawyers! That plea was unknowingly, unintelligently & unintentionally given! The parents of the appellant were never notified of that hearing nor were they present & the law states that no juvenile can enter into any contract without their parent or guardian & All Guilty Pleas are governed by the Laws of Contracts! The U.S. Supreme Court also made a retroactive ruling in 2012 that All Guilty Pleas enjoy the rights of Due Process and **can be overturned**! The appellant wanted a Jury Trial but his lawyers kept telling him, his mother & even youth pastor to have him plead guilty because if he goes with a jury trial they will kill him! There is no Death Penalty for juveniles convicted as adults! The lawyers for the appellant also failed to object & raise his claims on purpose setting him up for the miscarriage of justice he now labors under! The appellant therefore never legally filed his claims and all his claims now are supported by a decision in the United States Supreme Court in, *Martinez v Ryan*,

566 U.S._ 101001(2012). Where, under State Law, ineffective-assistance-of-trial-counsel claims must be raised in an Initial-Review Collateral Proceeding, ***a procedural default "will not" bar a Federal Habeas Court from hearing those claims*** if, in the Initial-Review Collateral Proceeding, ***there was no counsel or counsel in that proceeding was ineffective***. (Emphasis Added)

In this "cause of action", there was no Initial-Review Collateral Proceeding, because petitioners lawyers lied about appealing his judgment and sentence thus causing a procedural default! In Martinez, it states:

> ...where the initial-review collateral proceeding is the first designated proceeding for a prisoner to raise the ineffective-assistance claim, the collateral proceeding is the equivalent of a prisoner's direct appeal as to that claim because the state habeas court decides the claim's merits, no other court has addressed the claim, and defendants "are generally ill equipped to represent themselves" where they have no brief from counsel and no court opinion addressing their claim. *Halbert v Michigan*, 545 U.S. 605, 617.

An attorney's errors during an appeal on direct review may provide cause to excuse a procedural default; for if the attorney appointed by the State is ineffective, the prisoner has been denied fair process and the opportunity to comply with the State's procedures and obtain an adjudication on the merits of his claim. Without adequate representation in an initial-review collateral proceeding, a prisoner will have similar difficulties vindicating a substantial ineffective-assistance-at-trial claim. The same would be true if the state did not appoint an attorney for the initial-review collateral

proceeding. A prisoner's inability to present an ineffective-assistance claim is of particular concern because the right to effective trial counsel is a bedrock principle in this Nation's Justice System.

Allowing a federal habeas court to hear a claim of ineffective assistance at trial when an attorney's errors (or an attorney's absence) caused a procedural default in an initial-review collateral proceeding acknowledges, as an equitable matter, that a collateral proceeding, if undertaken with no counsel or ineffective counsel, may not have been sufficient to ensure that proper consideration was given to a substantial claim. It thus follows that, when a State requires a prisoner to raise a claim of ineffective assistance at trial in a collateral proceeding, [**Slip Op. III**] a prisoner may establish cause for a procedural default of such claim in two circumstances: where the state courts did not appoint counsel in the initial-review collateral proceeding for an ineffective-assistance-at-trial claim; and where appointed counsel in the initial-review collateral proceeding, where that claim should have been raised, was ineffective under, *Strickland v Washington*, 466 U.S. 668. To overcome the default, a prisoner must also demonstrate that the underlying ineffective-assistance-at-trial claim is substantial. Most jurisdictions have procedures to ensure counsel is appointed for substantial ineffective-assistance claims. It is likely that such attorneys are qualified to perform, and do perform, according to prevailing professional norms. And where that is so, States may enforce a procedural default in federal habeas proceedings.

"Whether Martinez's attorney in his first collateral proceeding was ineffective and whether his ineffective-assistance-at-trial claim is substantial, as well as the question of prejudice, are questions that remain open for a decision on remand." This is absolutely the same in *"Marron's"* case and to end the Miscarriage of Justice against him! Justice Kennedy delivered the opinion of the Court and also stated;

> "... While the petitioner frames the question in this case as a constitutional one, a more narrow, but still dispositive, formulation is whether a federal habeas court may excuse a procedural default of an ineffective-assistance claim when the claim was not properly presented in state court due to an attorney's errors in an initial-review collateral proceeding."

Also,

> "... *Coleman v. Thompson, supra,* left open, and the Court of Appeals in this case addressed, a question of Constitutional Law: whether a prisoner has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial. These proceedings can be called, for purposes of this opinion, "initial-review collateral proceedings." ***Coleman*** had suggested, though without holding, that the Constitution may require States to provide counsel in initial-review collateral proceedings because "in [these] cases... state collateral review is the first place a prisoner can present a challenge to his conviction." *Id.*, at 755.

As *Coleman* noted, this makes the initial-review collateral proceeding a prisoner's "one and only appeal" as to an ineffective-assistance claim, *id.*, at 756 (emphasis

deleted; internal quotation marks omitted), and this may justify an exception to the constitutional rule that there is no right to counsel in collateral proceedings. See *id.*, at 755; *Douglas v. California*, 372 U.S. 353, 357 (1963) (holding States must appoint counsel on a prisoner's first appeal).

Also "... a federal court can hear *Martinez's* ineffective-assistance claim only if he can establish cause to excuse the procedural default."

Also "... and if counsel's errors in an initial-review collateral proceeding do not establish cause to excuse the procedural default in a federal habeas proceeding, no court will review the prisoner's claims."

Also "...this opinion qualifies *Coleman* by recognizing a narrow exception: Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial."

Also "...to present a claim of ineffective assistance at trial in accordance with the State's procedures, then, a prisoner likely needs an effective attorney."

Also,

> "...The same would be true if the state did not appoint an attorney to assist the prisoner in the initial-review collateral proceeding. The prisoner, unlearned in the law, may not comply with the State's procedural rules or may misapprehend the substantive details of federal constitutional law. Cf., e.g., *id.*, at 620-621 (describing the educational background of the prison population). While confined to prison, the prisoner is in no position to develop

the evidentiary basis for a claim of ineffective assistance, which often turns on evidence outside the trial record."

Also,

"... A prisoner's inability to present a claim of trial error is of particular concern when the claim is one of ineffective assistance of counsel. The right to effective assistance of counsel at trial is a bedrock principle in our justice system. It is deemed as an "obvious truth" the idea that "any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963)."

Also,

"...by deliberately choosing to move trial-ineffectiveness claims outside the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes prisoner's ability to file such claims. It is within the context of this state procedural framework that counsel's ineffectiveness in an initial-review collateral proceeding qualifies as cause for a procedural default."

Also "...these rules reflect an equitable judgement that only where a prisoner is impeded or obstructed in complying with the State's established procedures will a federal habeas court excuse the prisoner from the usual sanction of default." See, *e.g.*, *Strickler v. Greene*, 527 U.S. 263, 289 **[Slip Op. 11]** (1999); *Reed, supra*, at 16.

Allowing a federal habeas court to hear a claim of ineffective assistance of trial counsel when an attorney's errors (or the absence of an attorney) caused a procedural default in an initial-review collateral proceeding acknowledges, as an equitable matter, that the initial-review collateral proceeding, if undertaken without counsel or with ineffective counsel, may not have been sufficient to ensure that proper consideration was given to a substantial claim. From this it follows that, when a State requires a prisoner to raise an ineffective-assistance-of-trial-counsel claim in a collateral proceeding, a prisoner may establish cause for a default of an ineffective-assistance claim in two circumstances, the first is where the State courts did not appoint counsel in the initial-review collateral proceeding for a claim of ineffective assistance at trial, the second is where appointed counsel in the initial-review collateral proceeding, where the claim should have been raised, was ineffective under the standards of *Strickland v. Washington*, 466 U.S. 668 (1984). To overcome the default, a prisoner must also demonstrate that the underlying ineffective-assistance-of-trial-counsel claim is a substantial one, which is to say that the prisoner must demonstrate that the claim has some merit. Cf. *Miller-El v. Cockrell*, 537 U.S. 322 (2003) (describing standards for certificates of appealability to issue)." And the final decision;

> "...where, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of

ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective."

In *U.S. v Moore*, 931 F. 2d 245, 248 (4th Cir. 1991), the Court noted 6 factors to be considered: **(1)** Whether the defendant provided credible evidence that his plea was not knowing (or) voluntary; **(2)** Whether the defendant credibly asserted his legal innocence; **(3)** Whether there was a delay between entering the plea & moving for withdrawal; **(4)** Whether defendant had close assistance of a competent counsel; **(5)** Whether withdrawal will prejudice the government and **(6)** Whether withdrawal will inconvenience the court & waste judicial resources. (stating & applying 6 factors test), sentence vacated on other grounds, 544 U.S. 916 (2005). Rule 11 (c) does not require a District Court to advise the defendant about the applicable guideline range before accepting a guilty plea, *U.S. v Puckett*, 61 F.3d 1092, 1099 (4th Cir. 1995), but Rule 11 does require District Courts to inform of all applicable statutory minimum & maximum sentences, *U.S. v Hairston*, 522 F.3d 336, 341, 4th Cir. 2008 emphasis in original, citing *Good*, 25 F.3d at 223, but ct. *U.S. v Massenburg*, 564 F.3d 337, 342-46 (4th Cir. 2009); *U.S. v. Daman*, 191 F.3d 561, 565 (4th Cir. 1999), remanding to determine defendant's competency to enter a plea where the defendant advised the District Court he was under the influence of antidepressant drugs & Judge failed to ask follow-up questions regarding the effects of the drug (or) clarity of defendants mind! *U.S. v Goins*, 51 F.3d 400, 405 (4th Cir. 95) – vacating plea where District Court failed to advise defendant of a "Mandatory Minimum" sentence during a Rule 11 Hearing!

The U.S. Supreme Court has unequivocally held that: "It is well-settled and invariable principle that every right, when withheld, must have a remedy and every injury its proper redress, *Marbury v. Madison*, 5 U.S. 137 (U.S. Dist. Col. 1803). The same Court has also held with respect to the Judicial Branch's duty that:

> "We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution," *Cohens v. State of Virginia*, 19 U.S. 264 (U.S. Va. 1821).

In retrospect of these cases, the Chesapeake Circuit Court, the Virginia Supreme Court and its advocates deprived "Marron" of a jury trial and effective assistance of counsel at trial and also caused him harm under a miscarriage of justice and judgment of one if its courts, then the supposed law, rule, statute it misapplied was unconstitutional and void since it was never positive law with a enacting clause! Appellant was not informed of any mandatory/minimum sentences nor the abolishment of parole!

In the Code of Virginia §19.2-227 (and/or) (Criminal Procedures) clearly states: "The Commonwealth must strictly follow mandatory requirements Before incarcerating anyone!" ANY Error in this field (or) of this nature is a "Procedural Error!" These errors must free "Marron" from his unlawful detainment, false imprisonment because the violations involved stripped the Commonwealth of its jurisdiction and further more gives "Marron" immunity from any subsequent or following judgments, proceeding, "cause of action", etc., as Double Jeopardy applies. *Gregory v. Chicago*, 394 U.S. 11...Plethora. Since the Circuit Court was mistaken in law and "Marron"

was denied his ability to present his defense to the grand jury and a trial by jury and since he was given a false promise or compromise while being kept in ignorance by the acts of his court appointed attorneys and the prosecutor and where his attorneys fraudulently without his authority connived to his defeat and gave up their client, these circumstance are the reasons the judgments, "cause of action", etc., against "Marron" must be dismissed, annulled and set-aside and "Marron's"' Petitions, etc., must be granted and his immediate release ordered! See: *Wells, Res Adjudicata*, Sect. 499; *Pearce v. Olney*, 20 Conn. 544; *Wierich v. De Zoya*, 7 Ill. 385; *Kent v. Ricards*, 3 Md. Ch. 392; *Smith v. Lowry*, 1 Johns. (N.Y.) Ch. 320; *De Louis et al. v. Meek et al.*, 2 Iowa, 55. The proper procedure sequence that was supposed to take place under C.O.V. §19.2 was not afforded to "Marron" at any point of his trial because the Commonwealths agents used fraudulent tactics which made the judgment and "cause of action" against him "Procedural Error & Barred!"

This Court has subject matter jurisdiction under 28 U.S.C. §1331 because "Marron" can prove the Commonwealths agents violated his rights under the U.S. Constitution and this court is where the Error firstly occurred. Also under 28 U.S.C. §1343 (a) (3) because "Marron" can prove his rights, privileges and immunities were deprived under color of any State or Federal Law! "Marron" asks this court to issue an "Order" and "Injunction" to VOID the invalid contract / plea agreement and "cause of action" judgment known as **CR97-3158 thru CR97-3161**, which was done under threat, duress and coercion by the agents of the Commonwealth of Virginia!

This court can determine that a "fraud upon the court" has been committed and has the jurisdiction to issue an "Order" for "Marron's" immediate release as cited in, Civil Rule 60 – Relief from Judgment or Order and as applies in Section (b) (4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party and **(C)** Other Remedies. This rule does not limit a Judgment, Order or Proceeding. Also in 42 U.S.C. §2000 cc, **(2)** Authority of the United States to enforce this chapter the United States may bring an "action" for injunctive or declaratory relief to enforce compliance with this chapter. Nothing in this subsection shall be construed to deny, impair or otherwise affect any right or authority of the Attorney General, the United States acting under any law other than this section, to institute or otherwise intervene in any proceeding. The term "*Government*" - - **(A)** means - - **(i)** a State, County, Municipality, or other government Entity created under the authority of a State; **(ii)** any Branch, Department, Agency, Instrumentality or official of an Entity listed in clause **(i)**; & **(iii)** any other person acting under color of law. – **(B)** for the purposes of Section 2000 cc – 2(b) and 2000 cc – 3 of this Title, includes the United States, a Branch, Department, Agency, Instrumentality or official of the United States and any other person acting under color of (law) federal law.

"Marron" is also protected by Federal Codes, Title 18 U.S.C. – Crime And Criminal Procedure Part 1 – Crimes, Chapter 13 – Civil Rights, Section 242: Deprivation of Rights under Color of Law and Section 241: Conspiracy Against Rights! "Marron" has asserted positive law that Jurisdiction was not established, predicated upon fraud

and ERRORS among which "Marron" was incompetent to stand trial as a Juvenile and his rights were violated, since he was never informed of the proceedings and his rights. The court was faced with a defendant that was not advised but coerced and was ignorant in the trappings of the law and was wholly dependent on biased government agents to be protected but fraudulent acts by the agents violated even their ethical duties under the American B.A.R. Association E.C. 7-11 & 7-12. Article III, Section II of The Organic Constitution defines the kinds of Judicial Power the Courts have: **(1)** Common Law, **(2)** Equity, **(3)** Admiralty & **(4)** Maritime. "Marron" was never upon any of these proper jurisdictions in the proper court and never gave consent in any manner to be subjected to an unknown jurisdiction governed by copyrighted laws and never gave consent for government agents to act on his behalf which also shows "Marron's" incompetency to stand trial!

The Commonwealths agents knowingly, methodically and intentionally failed to talk to possible alibi witnesses, withheld a psychological evaluation to use as a defense and told "Marron", his mother, etc., that if he took a jury trial they would kill him. "Marron" was promised a set amount of time, he could petition for parole and he was promised they would appeal his case but never did. "Marron's" witnesses could have testified to his incapacitated state of mind from drugs & alcohol which he was unknowingly drugged! "Marron" thought he was going to trial by jury to maintain his innocence, but was set-up into an illegal guilty plea contract!

In Mooney v. Holohan, 294 U.S. 103 (1935), the U.S. Supreme Court ruled that: "Deliberate deception of the court and jurors is incompatible with the rudimentary

demands of justice." See also, *Giglio v. U.S.*, 405 U.S. 150 (1972); in which the same court held that: "by deliberately deceiving the court in this manner, the prosecution has committed Constitutional ERROR of the First Magnitude and no amount of want, or showing Will Cure It". See also, *Chronic v. U.S.*, 466 U.S. 569 (1984). Also the gross negligence of allowing a non-testifying co-defendants confession to stand as evidence violates the basis of the confrontation clause and presents a case of fraud. The Judge and Jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend. Its impact could not in any real sense be termed fair; *Napue v. Illinois*, 360 U.S. 264 (1959); see also, *U.S. v. Goodson*, 165 F.3d 610 (8th Cir. 1999); *U.S. v. Segmore*, 519 F.3d 700 (7th Cir. 2008); *Monroe v. Angelone*, (4th Cir. 2001) and *Jackson v. Virginia*, (4th Cir. 1979).

The right to effective assistance of counsel is impaired when counsel operates under a Conflict of Interest because counsel breached the duty of loyalty by becoming an advocate for the Commonwealth, leaving "Marron" with NO Defense, No Legal Counsel, where a Constitutional Right to counsel exists, the U.S. Courts 6th Amendment cases have held that there "is a correlative right to representation that is free of Conflict of Interest," *Ward v. Georgia*, 450 U.S. 261, 271 (1981). In *Cole v. Payton*, 389 F.2d 226 (1986), the U.S. Court of Appeals for The Fourth Circuit articulated the prerequisite requirements for effective advocacy of a appointed

counsel to represent an indigent defendant where Judge Winter stated in his Majority panel opinion that:

> "Counsel for an indigent defendant must confer with his client without undue delay and as often as necessary to advise him of his rights and to elect matters of defense or to ascertain that potential defense are available."

The Fourth Circuit holds that prejudice is presumed and a defendant is entitled to relief if he shows that his counsel labored; **(1)** under an Actual Conflict; **(2)** that adversely affected the representation, *James v. Polk*, 401 F.3d 267 (4th Cir. 2005). Since "Marron" wanted to maintain his innocence and have a Jury Trial, and his lawyers did not pursue this but then set-up "Marron" into an illegal guilty plea proves the Actual Conflict and this severely & adversely affected the representation by his 2 Court Appointed lawyers! "Marron" had credible defenses he could have pursued in which would have acquitted him of all charges!

In *Tolliver v. United States*, shows that defense counsel was ineffective because they failed to explore possible defense and misleading advice through failure to research law after notice of possible defense. Also, determination as to whether defendant has been denied right to confront & cross-examine witness requires analysis of purpose of inquiry & role which answer, if given, might have played in defense, *Turner v. Fair*, (1980m CA1 Mass) 617 F.2d 7, 55 ALr Fed. 735; *Lefler v. Cooper*, 132 S. Ct. 1376; "Marron's" co-defendant gave a confession in another state which amounted to bribery since he was told he could have a specific sentence to testify against "Marron", but he also had to give that confession in Virginia. When he then started to deny his

confession and "Marron's" involvement the co-defendant's lawyers made him invoke his 5th Amendment rights to protect his plea deal. The court then allowed the confession to be used against "Marron" and the hearsay statements of what said co-defendant supposedly confessed to that "Marron" did!

In relation plea agreements are grounded in contract law and both parties should receive the benefit of their bargain; *United States v. Dawson*, 587 2.3d 640, 645 (4th Cir. 2009). Rule 11(e) of the Federal Rules of Criminal Procedures says plea agreements are governed by the laws of contracts. It also stipulates that if a defendant alleges that the government breached a plea agreement, he may be entitled to an evidentiary hearing. If the defendant demonstrates that the government did breach the agreement the court may allow withdrawal of the plea or alter the sentence. A guilty plea must be voluntary, i.e. it must be "a voluntary and intelligent choice among the alternative courses of action open to the defendant: *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). C.O.V. Rule 3A:8 (b) determining voluntariness of pleas of guilty or nolo contendere. A Circuit Court shall NOT accept a guilty plea or nolo contendere without first determining that the plea is made voluntary with an understanding of the nature of the charges and the consequences of the plea, **(C)** Under Plea Agreement Procedures, **(1,A)** Move For Nolle Prosequi or Dismissal of the Other Charges; **(1,B)** Make a recommendation or agree not to oppose the defendants request for a particular sentence, without the understanding that such recommendation or request shall not be binding on the court, **(1,C)** Agree that a specific sentence is the appropriate disposition of the case. In any such discussion

under this Rule the Court shall not participate. **(2)** If a Plea Agreement has been reached by the parties, it shall in every felony case, be reduced to writing, signed by the attorney for the Commonwealth, the defendant, and in every case, his attorney, if any, and presented to the Court. The Court shall require the disclosure of the agreement in open court, or upon showing of good cause, in camera, at the time the plea is offered.

Under the 14th Amendment, Due Process has been indicated by the U.S. Supreme Court, that it has 2 aspects: **(1)** Substantive and **(2)** Procedural. The Substantive aspect involves the "Fundamental" rights of the individual (such as life, liberty and property) which are protected from government action. It is a question of whether an individual's interests can be protected by the Federal Courts as a Constitutional Right. The same rights are protected against state action through the 14th Amendment. Substantive Due Process requires that government treat people with "Fundamental Fairness." The Procedural aspect of Due Process deals with the procedures or means by which government action can affect the fundamental rights of the individual; it is the guarantee that only after certain fair procedures are followed can the government affect an individual's rights. In *U.S. v. Saling*, 205 F.3d 764 (5th Cir. 2000), Criminal Law 273.1 (2) – In determining whether government breaches plea agreement, Court must consider whether governments conduct is consistent with defendants understanding of agreement; Criminal Law 1181.5(1) – If government breached plea agreement, sentence MUST be VACATED without regard to whether Judge was influenced by governments actions: Criminal Law 700 (2.1) –

Prosecutor has duty as officer of court to inform court of all factual information relevant to defendants sentence so that that sentence may be imposed based upon complete and accurate record.

CONCLUSION

The appellant offers the following and challenges subject matter jurisdiction only: The subject matter jurisdiction of all courts in the Commonwealth is specified in VA. Code Ann § 19.2 – 239 and § 17.1 - 513 and objection to subject matter jurisdiction may be raised in any court at any time. To establish the court subject matter jurisdiction, evidence supporting the conclusion must affirmatively appear on the face of the record, that is, the court rendering the judgment was cognizance. If the appellant is subjected to prosecution by the Commonwealth of Virginia, the Jurisdiction of the Court depends upon compliance with certain mandatory provisions of law, the court's order, spread upon its order book, must show such compliance or jurisdiction is not obtained. This principle implicates the subject matter jurisdiction of the circuit court. *Moreno*, 249 Va. at 20. Because a court's power to act presupposes subject matter jurisdiction, the lack of subject matter jurisdiction "may be raised at any time, in any manner, before any court, or by the court itself." *Humphreys v. Commonwealth*, 186 Va. 765, 772, 43 S.E.2d 890, 893 (1947); *Rawls v. Commonwealth*, 2009 Va. Lexis 82 (Sept. 18, 2009) (motion to vacate judgment is the proper vehicle to make a lack of subject matter jurisdiction challenge). The Virginia Supreme Court has recognized that a motion to vacate is an appropriate procedural

device to challenge a void conviction. *Alberts v. Commonwealth*, 263 Va. 189, 189, 557 S.E.2d 233, 233 (2002); *Commonwealth v. Southerly*, 262 Va. 294, 299, 551 S.E.2d 650, 653 (2001). Additionally, entry of an order is void ab initio if entered by a court in the absence of jurisdiction of the subject matter ... if the mode of procedure used by the court was one that the court "could not lawfully adopt." *Singh v. Mooney*, 261 Va. 48, 541 S.E.2d 549 (2001).

This Court shall take Judicial Notice that it is clearly established law in this country that no court can summarily dismiss a pro se inmate litigants case unless "it appears 'beyond doubt' that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief," see: *Haines v. Kerner*, 404 U.S. 519, 521 (1972), quoting from *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

Pro Se complaints are held to a less stringent standard than those drafted by Attorneys, and a federal District Court is "Charged" with liberally construing a complaint filed by a pro se litigant To Allow the development of a potentially meritorious case... *Jones v. Lexington County Detention Center*, (D.S.C. 2008) 586 F.Supp. Ld 444; see also, *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978); *Hughes v. Rowe*, 449 U.S. 5, 9, 101 S.Ct. 173, 66 L.Ed. 2d 163 (1980).

"Marron" can prove his facts stipulated to in all his documents in this "cause of action" because even the courts records affirm federal & state laws were violated and a "miscarriage of justice" was committed once "Marron" as a juvenile was coerced by threats and deceived into entering a contract that was Invalid due to his parents never present and never notified of the hearing. A prosecutor should prosecute with

earnest and vigor but may NOT use improper methods calculated to produce a wrongful conviction, *Darden v. Wainwright*, 477 U.S. 168, 181 (1986). An evidentiary hearing is required as soon as possible to determine that "Marron" deserves Injunctive Relief and his immediate release from the Virginia Department of Corrections since his life has been constantly endangered by said department!

Accordingly, with respect to Orders of Circuit Courts, we *MUST* look to Code 17.1-123(A) to determine how such orders should be authenticated. Long-standing binding legal precedent requires proper grand jury proceedings to have been followed in order for a court to have jurisdiction in a criminal case. In order for this court to have had jurisdiction, appellant had to have been properly indicted by a grand jury, the indictment must be presented in open court, and the indictment properly recorded. A detailed review of the records of the circuit court shows no indication that the appellants' grand jury indictments was ever properly recorded. Under Virginia law, although a prisoner has in fact been arraigned on, and has pleaded to, an indictment not appearing by the record to have been found by the Grand Jury, and if a third actual term has passed without such record of the findings, he is entitled under Va. Code §19.2-242 to be discharged from the crime. Pursuant to Virginia Code §§ 8.01-428 A, ii & D, et al, as amended, and common law of Virginia, the appellant hereby respectfully moves this Honorable Court to dismiss the "cause of action" against him which is also known as the stated indictment numbers, vacate his criminal convictions and sentences as void ab initio, for lack of subject matter jurisdiction. The petition for a writ of certiorari should be granted because this Honorable Court is

authorized to grant Declaratory Relief under C.O.V. §8.01-184 and authorized to grant Injunctive Relief under C.O.V. §8.01-620 and C.O.V. §8.01-622. This Court is authorized to award punitive damages under C.O.V. §8.01-38.1. "Marron" has established even by the "*Strickland* Rule" his trial counsels actions were fraudulent and prejudicial and deprived him of a fair trial. Thus the Commonwealths Agents can be held liable in their official & private capacities and this is cognizable under this "Cause of Action" due to the abuse of authority that infringed upon "Marron's" federal and State rights! Since *Ex Parte Young*, 209 U.S. 123, 23 S.Ct. 441, 52 L.Ed. 714 (1908), it has been well settled that the 11th Amendment provides no shield for a state official confronted by a claim that he deprived another of a federal right under the color of law.

I declare under penalty of perjury pursuant to 28 U.S.C. §1746, that the foregoing is true and correct to the best of his knowledge and each and every defense not specifically admitted herein should be denied. The Plaintiff incorporates, by reference, his Motion to Vacate and Appeal with accompanying affidavits.

Respectfully submitted,
All Rights Reserved/Without Prejudice
BY: Abdul Mu'min [seal]
Abdul-Mu'min, pro se
(F/k/a Travis-Jackson: Marron)