

No. 20-5106

ORIGINAL

Supreme Court, U.S.
FILED

JUN 17 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Antwon Gairrio Whitten, prose — PETITIONER
(Your Name)

VS.

Harold W. Clarke, Va. DOC. Dir. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF VIRGINIA

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

PETITION FOR WRIT OF CERTIORARI

Antwon Gairrio Whitten
(Your Name)

10800 H. Jack Rose Highway - P.O. Box 970
(Address)

Pound, Virginia. 24579-0970
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

- 1) Whether the trial court ever acquired Subject matter jurisdiction based on the evidence presented in the Charging instruments and by way of Due process of law?
- 2) Whether the trial court took judicial notice of the crime scene as being committed in the State of Virginia based on the face of the record without any address ever being presented as required by Due process of law?
- 3) Whether the trial court ever presented evidence of Probable cause to arrest, try, convict, and sentence Whitten and never acknowledging this claim per Sup. Ct. Va. 2.3A:24 in the Habeas Corpus petition per Due process of law?
- 4) Whether Whitten asserted Va. Sup. Ct. R. 1:1 in his Habeas Corpus petition contrary to respondent Clark's assertion that I did not thus the Habeas trial court erred in denying my petition based on the false claim by Clark?
- 5) Whether officers of the Court committed fraud upon the Court by way of improper influence with its court rulings, decisions, and affected Whitten's substantial and due process rights as it was an assault on the integrity of the

Court's judicial process itself?, and denied U.S. Const. 14th Amend. Due process of law, right to be heard?

6) Whether trial counsel's representation fell below the objective standard of reasonableness under the professional norm during pretrial and trial, and that the prejudice done is cause that a reasonable probability that, but for their errors the results would have been different?

7) Whether the trial court in case no. CL19-336-Whitten v. Clark, committed reversible error when it violated this procedure in failing to respond to my probable cause claim as due process requires?

8) Whether due process of law right to be heard under the U.S. Const. 14th Amend. was violated and prejudice resulted when the Sup. Ct. Va. Clerk of Court handed down the final order of Whitten's Habeas Corpus petition, in violation of Sup. Ct. Va. R. 5:1(11)?

9) The exceptional Question(s) of Importance Question(s) at claim #6?

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:

RELATED CASES

- 1) Whitten v. Clarke, 190683 (Sup. Ct. Va. Mar. 20, 2020).
- 2) Whitten v. Clarke, CL19-336 (Stafford County Cir. Ct. Va. 4/25/19).
- 3) Whitten v. Clarke, CL19-336 (Stafford County Cir. Ct. Va. 2019).
- 4) Whitten v. Clarke, 190683 (Sup. Ct. Va. ECF no. 12).
- 5) Whitten v. Clarke, 190683 (Sup. Ct. Va. 8/29/19).
- 6) Whitten v. Clarke, 190683 (Sup. Ct. Va. ECF no. 118).
- 7) Whitten v. Clarke, 190683 (Sup. Ct. Va. ECF no. 125).
- 8) Whitten v. Clarke, ~~190683~~, 190683, (Sup. Ct. Va. Jan. 22, 2020).
- 9) Whitten v. Commonwealth, ~~2814-05-4~~ 061708, (Sup. Ct. Va. Jan. 4, 2007).
- 10) Whitten v. Commonwealth, 2814-05-4 (Va. Ct. App. 7/26/2006).
- 11) Commonwealth v. Whitten, CR03-1070-00 and 01 (Oct. 27, 2005).

INDEX TO APPENDICES

- Appendix A - Whitten v. Clarke, 190683 (Sup. Ct. Va. Mar. 2020) Denied
- Appendix B - Whitten v. Clarke, C119-336 (Stafford County Cir. Ct. Va. 4/25/19) Denied
- Appendix C - Whitten v. Clarke, C119-336 (Stafford Co. Cir. Ct. 2019) Denied
- Appendix D - Whitten v. Clarke, 190683 (Sup. Ct. Va. Denied ECF no. 12),
- Appendix E - Whitten v. Clarke, 190683 (Sup. Ct. Va. 8/29/19) Denied
- Appendix F - Whitten v. Clarke, 190683 (Sup. Ct. Va. ECF no. 118) No ruling
- Appendix G - Whitten v. Clarke, 190683 (Sup. Ct. Va. ECF no. 125) Denied
- Appendix H - Whitten v. Clarke, 190683 (Sup. Ct. Va. Jan. 20, 2020) Granted
- Appendix I - Whitten v. Commonwealth, 061708 (Sup. Ct. Va. Jan. 4, 2007) Denied
- Appendix J - Whitten v. Commonwealth, 2814-05-4 (Va. Ct. App. 7/26/2006) Denied
- Appendix K - Commonwealth v. Whitten, CR03-1070-00 (Oct. 27, 2005 Va.) Guilty

Attachments—

- A1 - Exhibit A - Freedom of Information Act request, see the July 30, 2015 information.
- A2 - History of Stafford County, Virginia (3) pages, 1 front and back, the other pg. is single.
- A3 - Exhibit D - Affidavit in support of search warrant. pg's 2, 3, and 4
- Copies of:

- 1) Sup. Ct. Va., Clerk's ruling on "Motion to Amend habeas Corpus Petition" by Appellant - Whitten v. Clarke, 190683 (Aug. 29, 2019) Denied.
- 2) Sup. Ct. Va., Clerk's ruling on "Motion for Leave to file Reconsideration for leave to file habeas Corpus Petition by Appellant, Whitten v. Clarke, 190683 Febr. 24, 2020. Denied.
- 3) Motion to Amend - Whitten v. Clarke, 190683 (Jan. 20, 2020) Granted.
- 4) Whitten v. Clarke, 190683 (Sup. Ct. Va. Mar. 20, 2020) Habeas Corpus Denied by Clerk. Final order.

TABLE OF CONTENT

OPINIONS BELOW	1
JURISDICTION	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	8
REASONS FOR GRANTING THE WRIT	12
CONCLUSION	40

Attachments:

- 1) EX. # AB - Freedom of Information Act request (FOIA).
- 2) EX. # A2 - History of Stafford County, Virginia. 3 pgs.
- 3) EXHIBIT # D - AFF. in Supp. of Search Warrant, pgs. 2, 3 and 4.
- 4) Copies of Sup. Ct. Va. Clerk's rulings:
 - 1) Whitten v. Clarke, 190683 (Sup. Ct. Va. Aug. 29, 2019).
 - 2) Whitten v. Clarke, 190683 (Sup. Ct. Va. Febr. 24, 2020).
 - 3) Whitten v. Clarke, 190683 (Sup. Ct. Va. Jan. 22, 2020).
 - 4) Whitten v. Clarke, 190683 (Sup. Ct. Va. Mar. 20, 2020).
- 5) Motion For Leave To Proceed In Form Pau Peris, Whitten v. Clarke, Supreme Court United States Filed: (June 11, 2020).

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner, Antwon Gairrio Whitten, prose, respectfully
Pray that a writ of certiorari issue to review the
Judgment below.

OPINION BELOW

[✓] For cases from state courts:

The opinion of the Supreme Court of Virginia
appears at Appendix A to the petition and is [✓]
reported at: Whitten v. Clarke, Record no. 190683 (Sup. Ct. Va.
March 20, 2020). SEE: ECF no.

The opinion of the Stafford County Circuit Court appears
at: Whitten v. Clarke, case no. CL19-336, Appendix B to
the petition as reported.

The opinion of the Supreme Court of Virginia appears at: Appendix C to the petition and is reported at: Whitten v. Commonwealth, record no. 061708 (Jan. 4, 2007).

The opinion of the Virginia Court of Appeals appears at appendix D to the petition and is reported at: Whitten v. Commonwealth, case no. 2814-05-4. decided: (7-26-2006).

The opinion of the Stafford County Circuit Court appears at Appendix E to the petition and is reported at: Commonwealth v. Whitten, case no. (S) CR03-1070-00 & CR03-1070-01
Decided: (Oct. 27, 2005).

The opinion of the Supreme Court of Virginia appears at Appendix F to the petition and is reported at: Whitten v. Clarke, record no. 190683 - Decided: ECF. no. 51.

The opinion of the Supreme Court of Virginia appears at Appendix G to the petition and is reported at: Whitten v. Clarke, record no. 190683 - Decided: ECF. no. 117, 8/29/19.

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 March 29, 2020.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on _____ (date) in Application No. ____ A ____.

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

TABLE OF AUTHORITIES

Adams v. United States ex rel McLann, 317 U.S. 269, 275, 276 (1942).	19
Anthony v. Kasey, 83 Va. 338, 5 S.E. 176, 177 (1887).	7, 15
Anthony v. Kasey, 83 Va. 338, 5 S.E. 176, 1887 Va. Lexis (May 19, 1887).	19
Brooks v. Commonwealth, 61 Va. 576 S.E. 224 (2013).	2
Brown v. Commonwealth, 215 Va. 143, 145, 207 S.E. 833, 835 (1974).	2
Commonwealth v. Whitten, CRO3-1070-00 (Cr. Ct. Va. Oct. 27, 2005).	1, 4, 6, 8, 15, 16, 18, 19, 21
Commonwealth v. Whitten, CRO3-1070-01 (Cr. Ct. Va. Oct. 27, 2005).	1, 4, 6, 8, 12, 15, 16, 18, 19, 21
Etheridge v. Commonwealth, 210 Va. 328, 171 S.E. 2d 190 (Dec. 1, 1969).	6, 21
Evans v. Smyth-Wythe Airport Comm'n, 255 Va. 69 (1999).	17
Ex parte Commonwealth of Virginia, 100 U.S. 339, 25 L.Ed 676 (Mar. 1, 1880).	17
Frank v. Mangum, 237 U.S. 309, 327, 35 S.Ct. 582, 587, 59 L.Ed 696 (1915).	19, 18
Gardner v. Florida, 430 U.S. 349, 97 S.Ct. 1197, 51 L.Ed. 2d 393 (1977).	19
HALL-ATLAS Glass Co. v. Hartford Empire Co., 322 U.S. 238, 44 S.Ct. 997 (1944).	16
Georgi v. Commonwealth, 280 Va. 678, 701 S.E. 2d 407, 413-14 (2010).	19
Hohn v. United States, 534 U.S. 236, 241 (1998).	12
Howard v. Commonwealth, 281 Va. 455, 462, 706 S.E. 2d 885, 889-89 (2011).	19
Jones v. Willard, 224 Va. 602, 607, 299 S.E. 2d 504, 508 (1983).	2
Keese v. Commonwealth, 216 Va. 174, 175, 217 S.E. 2d 808-809 (1975).	5
Keen v. United States, 518 U.S. 81, 116 S.Ct. 2035, 2047 (1996).	4, 8, 11, 17
Lockwood v. Bowles, 46 F.R.D. 625, 632 (D.D.C. 1969).	16
Lockwood v. Bowles, 46 F.R.D. 625, 634 (D.D.C. 1969).	16
Matthew v. Commonwealth, 216 Va. 358 S.E. 2d 538 (1975).	2
Matthew v. Commonwealth, 216 Va. 358, 359, 61, 218 S.E. 2d 538, 539-40 (1975).	2
Messerschmidt, 132 S.Ct. at 1250.	9
Messerschmidt v. Millender, 132 S.Ct. 1235, 1245, 183 L.Ed. 2d 47 (2012).	9
Miller v. Prince George County, 475 F.3d 621, 627 (4th Cir. 2007).	9
Moonuf v. Holohan, 294 U.S. 103, 113, 55 S.Ct. 349, 342, 79 L.Ed 791, 98 A. L.R. 406 (U.S. Cir. 1935).	10
Moore v. Hinkle, 259 Va. 479, 537 S.E. at 423 (2000).	5
Moreno v. Baskerville, 249 Va. 16, 452 S.E. 2d 653 (Va. 1995).	5
Nelson v. Warden, 262 Va. 276, 281, 552 S.E. 2d 73, 75 (2001).	4
Olan supra, at 732, 113 S.Ct. 1770.	15
Orner v. Shakala, 30 F.3d 1307 (6th Cir. 1994).	2, 5
Owusu v. Commonwealth, 11 Va. App. 671, 401 S.E. 2d 431 (1991).	

<i>Rook v. Rook</i> , 233 Va. 95, 353 (1987).	2
<i>Rowe v. Rowe</i> , 33 Va. App. 250 p. 257-258 (2001).	8
<i>Shai Kh v. Johnson</i> , 276 Va. 537, 549, 666 S.E. 2d 325, 331 (2008).	7
<i>Shoatz v. Shoatz</i> , 27 Va. App. (April 28, 1998).	11, 17
<i>Slaughter v. Commonwealth</i> , 222 Va. 787, 791, 284 S.E. 2d 824, 826 (1981).	2
<i>State v. Chapman</i> , 671 F.2d 531, 538 (Kan. 1981).	2
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).	18, 18
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S.Ct. 2052 (1984).	18, 18, 19
<i>Strickland v. Washington</i> , 466 U.S. 668, 687, 104 S.Ct. 2052 (1984).	18
<i>Sutherland v. Commonwealth</i> , 6 Va. App. 378, 383, 368 S.E. 2d 295, 298 (1988).	5
<i>Sutther v. Easterly</i> , 354 Mo. 282, 189 S.E. 2d 284 (1945).	16
<i>Torchinsky v. Siwinski</i> , 942 F.2d at 262.	9
<i>U.S. v. Cotton</i> , 535 U.S. 625, 636 (2002).	2
<i>United States v. Olano</i> , 507 U.S. 725, 731, 113 S.Ct. 1776 (1993).	4, 17, 20
<i>United States v. Olano</i> , 520 U.S. at 467, 117 S.Ct. 1544 (1993).	4, 17
<i>Watkins v. Watkins</i> , 220 Va. 1057, 1054, 265 S.E. 750, 752-53 (1980).	7, 15
<i>Whitten v. Clarke</i> , CN19-336 (Feb. 13, 2019 Tr. Ct. Va.).	19
<i>Whitten v. Clarke</i> , CN19-336 (Mar. 18, 2019 Va.).	16, 18, 19
<i>Whitten v. Clarke</i> , CN19-336 (April 25, 2019 Va.).	3, 4, 5, 5, 6, 6, 7, 8, 8, 9, 9, 10, 14, 17, 17, 18, 18, 19.
<i>Whitten v. Clarke</i> , 190683 (Sup. Ct. Va. 11/25/2019).	3
<i>Whitten v. Clarke</i> , 190683 (Sup. Ct. Va. Mar. 20, 2020).	4, 4, 5, 8, 10, 11, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21.

Statutes & Rules

Sup. Ct. Va. R. 1:1.
 Sup. Ct. Va. R. 3A:11.
 Sup. Ct. Va. R. 3A:24.
 Sup. Ct. Va. R. 5:1 (1).
 Sup. Ct. Va. R. 5:25.
 Sup. Ct. Va. R. 5A:12 (C) (1).
 Sup. Ct. Va. R.

Va. Code § 8.01-3

Va. Code § 8.01-654 (B) (1)

Va. Code § 3A:11	28, 19
Va. Code § 8.01-3	19
Va. Code § 8.01-654(B)(4)	7
Va. Code § 8.01-654(B)(5)	19, 17, 18, 19
Va. Code § 8.01-655	34, 6, 13
Va. Code § 8.01-660	6
Va. Code § 17.1-500	16
Va. Code § 17.1-505	16
Va. Code § 18.2-31(d)	
Va. Code § 18.2-58	
Va. Code § 19.2-220	239
Va. Code § 19.2-220(d)(2)	5, 18, 21
Va. Code § 19.2-231	21
Va. Const. Art. I, sec. 8	1
Va. Const. Art. I, sec. 11	15, 14
Va. Const. Art. III, § 2, cl. 3	9, 5
Va. Const. Art. III § 17	8
Va. Const. Art. § III, sec. 5	
Va. R. Evid. 2:402	19, 35
Va. Sup. Ct. R. 1:1	34, 14, 18
Va. Sup. Ct. R. 3A:24	4, 9, 19, 11
Va. Sup. Ct. R. 5:1(1)	4, 8, 13, 17, 19, 20, 31, 35, 35
Va. Sup. Ct. R. 5A:12(c)(1)	2, 7
28 U.S.C. § 1257(c)	
28 U.S.C. § 2254(d)(1)	

1st Amend. U.S. Const. —

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances....

6th Amend. U.S. Const. —

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, which district shall have been previously ascertained by law, and to 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 assistance of counsel for his defense... 2, 5, 17, 18, 19, and, 33, 35.

Sec. 1 -

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law... 1, 2, 5, 8, 9, 9, 10, 11, 11, 14, 15, 17, 17, 18, 18, 19, 31.

STATEMENT OF THE CASE

Petitioner, Whitten, pro se, do assert as follows:

On the morning of September 13, 2003 (approx. 4:30 AM) in Prince William County Virginia, while driving to work in Manassas, Va, I was pulled over and taken to Stafford County, Virginia, as an arrest warrant had been issued there on Sept. 12, 2003 (approx. 10 p.m.). The arresting officers were Stafford County, Detectives (Bond) George Bond, Jr. & (DeBord) J.L. DeBord. They claimed I was a suspect in Stafford for Murder and Robbery. They presented me with (2) to (3) photos of an unknown Black man & said, "it was me in the photos." The offenses occurred on July 14, 2003.

I was put on trial in Stafford County, Virginia in their Circuit Court, convicted and sentenced to (2) life terms. The Va. Ct. of App. denied my appeal on (7/26/06). The Sup. Ct. Va. denied the App. on (Jan. 4, 2007). No state Habeas Corpus was filed after that. All relevant Court documents information is contained within this writ of Certiorari.

I, Whitten, pro se, was assigned to Walkers Ridge State Prison, and while having a general conversation about Northern Virginia, it was stated by another inmate from Fredericksburg, Virginia, that Stafford County was not the location of Earl's True Value Hardware Store and that Fredericksburg was so. Also, that Fredericksburg was not in Stafford County, Virginia. That Fredericksburg was an independent city. I began to inquire into those statements and filed a request with the (FOIA) Freedom of Information Act/Privacy Act. They sent me (2) large Manilla envelopes in (2015) SEE: EX-15 AB & BC attached. This package contained several documents that I never saw at trial or pretrial and it at that time became apparent that Stafford County Circuit Court was without total want of jurisdiction. I also knew that Fraud upon the Court

took place at trial by my attorney's and the prosecution & Judges.
In case Whitten v. Clarke, CH19-336, Filed 1-22-2019 as pet. CHA,
see: pp. 43A, @ #8 & #11, 12 & 13, for the proof.

My claim of Lack of Subject matter Jurisdiction, not venue was
denied by the Habeas trial court and respondent, Harold W. Clarke, Dir.
VA. Dept of Corr. (Clarke) claims in his "Mot. to Dis." that I raised a
venue argument, which is a false statement, the habeas trial
court agreed with Clarke and denied my "pet." This issue is in
dispute as evidence will show. The court credited my defense
trial attorney (Barclord) Allen Barclord's "Aff." to deny my writ
of habeas corpus state "pet." My Decl. was not even given a
thought in the process. Stafford County Circuit Court's judgment is void.

My Flawed upon the Court claim was basically dismissed as the
court tried to explain that the crime scene was in Stafford
County, Virginia, and they used the trial Map Exhibit as their
bases for their decision, which was respondent, Clarke's argument
as well. However, the Map is not conclusive of jurisdiction
or that the crime took place in the state of Virginia. It does
not from the face of the record (accusatory instrument and indictments)
have an address or location (nor) does it charge an offense per/
by law. The Map is in Pet. CHA, pp. 43A @ ; the charging instruments
are at 4, 5, 6, and 7, in pet. CHA, pp. 43A. This claim is in dispute
as the officer's of the court named within did plan and scheme
to deceive the court itself and Whitten, also the public. The
habeas trial court was bias and it continues to prejudice Whitten,
pro se, as my incarceration was obtained illegally and thus, I
never had an opportunity to defend these charges in the proper
tribunal/a court of competent jurisdiction. The App. Ct.'s of Va.
denied my claims but, were not valid as of this upon mentioned
claim. Due process was denied and no laches attack to a void
judgment.

During the trial my trial attorneys failed to give me adequate and effective assistance of counsel as they not only allowed the state to offer extract DNA vs. a true crime scene sample, they accepted it without any objections. They then failed to call my defense DNA expert to trial and, now claim it was sound trial strategy because his testimony would have hurt me more than help me. I dispute this as, the extract was inadmissible as it was not reliable because, its no way to prove its content or where it came from. Barotold and Maslakowski, did not challenge the accusatory instruments or indictments or request a B.I.P of particulars (or) Amendment. No crime charged for Robbery stated nor any address to give the trial court its required judicial notice or jurisdiction by law. They also allowed all the states evidence to be used against me at trial but failed to have the DNA tested or make the required proper and timely objections. They also had all the necessary legal documents in hand to prove my claims but either withheld it from me and/or worked to help the state convict me. Their concealment of pertinent evidence and their silence was a fraud upon the court. Prejudice resulted as my continued illegal detention is unlawful.

The habeas trial court and trial court abused its discretion in its rulings as this claim is/was apparent. The habeas trial court also failed to respond to all my claims per: Sup. Ct. Va. 3A:24.

Respondent (Clarke) claims, Whitten, pro, failed to assert reasons for the time bar exception to Sup. Ct. R. 1:1 in his petition. See Mot. to Dis. by Clarke on pg. 9, @13 for this error of law by the habeas trial court when it agreed with Clarke, see: Whitten v. Clarke, CA19-336 (1-22-2019 filed), for claim in Feb. C.A., pg. 4 @ #1. This is in dispute and gives Whitten, pro se, an exemption of the default and reason to justify tolling due to the court's lack of subject matter jurisdiction as it was not a court of competent jurisdiction to go forward with the trial of Commonwealth v. Whitten, CR03-1070-00 & 01 Oct. 27, 2005.

When my appeal of case no. Whitten v. Clarke, 190683 (Sup. Ct. Va. (Mar. 20, 2020)) was decided, it was done so illegally by the Clerk of Court without judge(s) ruling on the issues, the jurisdiction claim & fraud upon the court claims were never answered and the ineffective assistance of counsel claim was denied based on a pleading error. A pleading error can not validate a void ab initio judgment from a court that never had legal authority to act as a court.

The trial court conducted this trial in Commonwealth v. Whitten, CR03-1070-00 and 01 without ever taking judicial notice of the crime scene or that it ever was (crimes) proven to have been committed in Virginia, thus, the trial was void ab initio. Convictions and sentencing orders are void.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

A - Conflicts with Decisions of other Courts

Assignments of Error

#1 - Subject matter Jurisdiction / Void Judgment

The "Va. Const. Art. I, §8 provides: That in criminal prosecutions a man hath a right to demand the cause and nature of his accusations, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vicinage;" This was not the case in Commonwealth v. Whitten, case no.(s) CE03-070-00 & 01 (Oct. 27, 2005). The trial court never acquired jurisdiction of the crime scene, thus it was without total want of jurisdiction.

The accusatory instruments did not contain, name of business, street address, town, city, or location of the offense in order to claim jurisdiction. SEE: Pet. CIA, pg. 43A @ 4, 5, 6 & 7. Whitten, Pro SE, made/raised his due process of law claim @ Pet. CIA, pg. 5 @ #3, 4; pg. 6 @ #7, raised his Va. Const. Art. I, sec. 11 Due Process claim, pg. 7 @ 8; pg. 8 @ 10; pg. 9 @ #11. Pet. #5A - Motion for leave to file an Amended Complaint, pg. 3 @ #1, pg. 4 @ 2, pg. 5 @ #5. Respondent Harold W. Clarke, VA. Soc. Dir., (Clarke) Made the claim that I argued Venue. SEE: Motion To Dismiss, pg. 7 @ 8.

This statement by (Clarke) is unbounded, as no venue argument is alleged in my jurisdiction/void judgment claims at any stage of these proceedings. See: Whitten v. Clarke, CH 9-336 1-22-19, pub. CIA, pp. 4-9, all paragraphs. Brooks v. Commonwealth, 61 Va. 576 S.E. 2d 24 (2013) is not applicable to exact para in this case, as Respondent makes the accusation of a venue argument in my claim. Read full claim for dispute. This makes my jurisdiction claim legally factual. See: U.S. v. Lott, 535 U.S. 605, 630 (2002); Rock v. Rock, 233 Va. 92, 352 (1987); Dwusiu v. Commonwealth 11 Va. App. 671, 401 S.E. 2d 431 (1991); and Brown v. Commonwealth, 215 Va. 143, 145, 207 S.E. 2d 833, 835 (1974).

Also, A judgment is void if it was procured by extrinsic fraud or collateral fraud. Jones v. Willard, 224 Va. 602, 607, 299 S.E. 2d 504, 508 (1983) or entered by a court that did not have jurisdiction over the subject matter or the parties. Slaughter v. Commonwealth, 222 Va. 787, 791, 284 S.E. 2d 824, 826 (1981); Matthews v. Com., 216 Va. 358, 218 S.E. 2d 538 (1975); U.S. Const. 14th Amend. Due process of law, right to be heard, as life, liberty and property rights are affected. Whitten, prose, raised this claim in Whitten v. Clarke, CH 9-336 (1-22-19 Va.) @ pub. CIA, pp. 4 @ #2, see: U.S. Const. Art. III, § 2, cl. 3, pp. 5 @ 3, and pp. 8 @ 10, for a void judgment may be challenged or vacated at any time directly or collaterally. See: State v. Chatman, 671 P. 2d 531, 538 (Kan. 1981) where the court stated: An indictment (or) complaint in a criminal case is the main means by which

a court obtains subject matter jurisdiction, and is the jurisdiction instrument upon which a accused stands trial. Thus, the complaint is the foundation of the jurisdiction of the magistrate or court. Thus, if these charging instruments are invalid, there is a lack of subject matter jurisdiction. Once, Whitten, prose, trial attorney's failed to seek Amendments and request a bill of particulars, this prevented Whitten, prose, from raising objections pre-verdict per Va. Sup. Ct. R. 5A:12 (c) (1). Any criminal elements or address of crime scene missing from the face of the record is attributed to trial counsel and court error of law. Criminal law and procedure not followed. A U.S. Const. 14th Amend. Due process of law, right to be heard, and 6th Amend. U.S. Const. right to a fair trial in the proper tribunal was violated, and this created prejudice to Whitten's defense. As my right to life, liberty and property under the U.S. Const. 14th Amend due process of law was denied. Sup. Ct. Va. R. 5:25 does not apply as a void ab initio judgment exception to the objection rule stands without objection. Commonwealth v. Whitten, CR03-1070-00 and 01 (Oct. 27, 2005 Va.) ruling is void and was erroneous due to the court not being a court of competent jurisdiction.

II. Va. Sup. Ct. R. 1:1 was asserted and raised in Pet. CIA, pg. 4 (P) #1 in Whitten v. Clarke, CA19-336 (1-22-19) Habeas Tr. Ct. Manifest error occurred when the habeas Tr. Ct in Whitten v. Clarke, CA19-336, (Stafford County Va. April 25, 2019) made an egregious error of law when it failed to acknowledge my afore mentioned claim (P) Pet. CIA, pg. 4 (P) #1, and agree with the unfounded assertion of respondent, Clarke (a Mot. to Dis. pg. 9 (P) #13 (Mar. 18, 2019), that Whitten failed to challenge the Va. Sup. Ct. R. 1:1 in my Va. Code § 8.01-655 pet.

This proves Whitten, prose, is being held illegal in custody pursuant to a judgment of a state court in violation of the constitution, laws and or treaties of the United States. Plain error occurred and prejudice as an abuse of discretion by the ruling in, Whitten v. Clarke, 119-336 (April 25, 2019 Va.) is applicable. Koon v. United States, 518 U.S. 81, 116 S.Ct. 2035, 2047 (1996); United States v. Olano, 507 U.S. 725, 731, 113 S.Ct. 1770 (1993); United States v. Olano, 520 U.S. at 467, 117 S.Ct. 1544 (1993); Olano supra, at 732, 113 S.Ct. 1770; U.S. Ct. 14th Amend Due process of law, right to be heard violation. Sup. Ct. Va. R. 5:25 is in applicable as to the ends of justice, exception, as failure to object at trial. However, I assert Sup. Ct. Va. R. 5:25 exception to the ends of justice as a void ab initio judgment which was a complete nullity from its inception has no legal effect. After discussed fraud upon the Ct. and lack of subject matter jurisdiction makes the judgment in Whitten v. Clarke, 119-336 (April 25, 2019 Va.) erroneous as the ruling in, Commonwealth v. Whitten, CRA3-1070-00 and 01 (Oct. 27, 2005 Va.) was erroneous and void ab initio also for the above stated reasons. The ruling in Whitten v. Clarke, 190683 (Sup. Ct. Va. Mar. 30, 2020) is also void for lack of jurisdiction due to the illegal/unauthorized ruling/interlocutory order by the final order decision by the Clerk of Court. The federal question in my Va. Code § 8.01-655 Habeas Corpus petition was timely due to the asserted Sup. Ct. Va. R. 1:1 exception in the aforementioned petition. Whitten was prejudiced by these rulings as these claims were raised as 14th Amend. due process of law, right to be heard violation but ignored per Sup. Ct. Va. R. 3A:24. See: Sup. Ct. Va. R. 5:1 (1) for Clerk of Court violation in the Whitten v. Clarke, 190683 (Sup. Ct. Va. Mar. 30, 2020) final order habeas corpus decision. Tolling was therefore warranted... No lack to a void ab initio judgment.

A III. Judicial Notice

Whitten, prose, in the following case laws and Const. violations test the legality of his illegal custody and the lower courts rulings.

In Whitten v. Clarke, CU19-336 Habeas tr. Ct. Va. (1-22-2019) made the judicial notice claim in Pet. CIA, pg. 6 P7 and U.S. Const. 14th Amend. violation of due process of law, right to be heard. Also raised in, Whitten v. Clarke, 190683 (Sup. Ct. Va. March 30, 2020). See: Final order pg. 6 P2 (April 25, 2019) ruling on this claim in Whitten v. Clarke, CU19-336 Va Habeas tr. Ct. Va. Const. Art. 1, 11 also raised in this

Claims @ Pet. CIA, pg. 6 P7. This court's erroneous April 25, 2019 ruling conflicts with other courts as: Judicial Notice must appear on the face of the record is quoted in: Sutherland v. Commonwealth, 6 Va. App. 378, 383, 368 S.E.2d 275, 278 (1988); Keese v. Commonwealth, 216 Va. 174, 175, 217 S.E.2d 808, 809 (1975); and U.S. Const. Art. III, §2, 113 and U.S. Const. 6th Amend. demand that trials to be held in the state where the crime shall have been committed as well before a court of competent jurisdiction. Without these observances, due process has been denied as the fundamental right to be heard is required per U.S. Const. 14th Amend. SEE: Chopping Instruments at Whitten v. Clarke, CU19-336

(Habeas Tr. Ct. April 25, 2019 Va.) @ Pet. CIA, pg. 43A, P5, 6, 7, all lack the mandated judicial notice requirement and the Va. Code §19.2-220 P2 law requirement. SEE: Morero v. Bastonville, 249 Va. 16, 452 S.E.2d 653 (Va. 1995);

Owusu v. Com, 11 Va. App. 671, 401 S.E.2d 431 (1991) both state: Every crime to be punished in Virginia must be committed in Virginia. The Map offered at trial has (2) arrows pointing at (2) street names but, it does not lend any more evidence, circumstantial or otherwise to the court taking judicial notice of the crime scene. Subject Matter jurisdiction is granted by the constitution or a valid statute, and cannot be waived. Nelson v. Warden, 262 Va. 276, 281, 552 S.E.2d 73, 75 (2001). These

Claims were raised in, Whitten v. Clarke, CU19-336 Pet. CIA, pg. 7 P8 and pg. 6 P7 with Const. violations. SEE: Whitten v. Clarke, 190683 (Pet. Ex. #2

Pg. 2, para #2, 11-25-2019 Sup. Ct. Va.), pg. 3 @ 4 and #5. See: Mot. for Leave to Amend Pet. Va. Code § 8.01-655 in, Whitten v. Clarke, CL19-336 Habeas Tr. Ct. Va. Ex. #5A, pg. 3 @ 1, pg. 4 @ 2, and pg. 4A, filed (Febr. 13, 2019).

Thus, the charging instruments were insufficient to apprise Whitten, Pro se, of the location of the offenses charged against me in, Commonwealth v. Whitten, CR03-1070-00 and 01 (Oct. 25, 2005). See: Etheridge v.

Commonwealth, 240 Va. 328, 171 S.E.2d 190 (Dec. 1, 1969). That case involved

the wrong address. The case at hand involves no address at all, not even at trial does the court do so. If it had done so, it would have been an illegal constructive amendment without constitutional safeguards as due process of law. The court used the name

Earl's True Value Hardware Store in Stafford County, in order to take judicial notice of the crime scene, they never provide any address of the business nor is there an address present in the indictments or accusatory instruments. The controversy is in dispute as to whether or not the court took judicial notice of the crime

scene. Thus, the Va. Code § 8.01-660, "App." by Defense Atty. Bareford p. 6 @ 7, cannot be used to dictate facts of the judicial notice to give this Trial court in case Commonwealth v. Whitten, CR03-1070-00 and 01

jurisdiction of the subject matter, its parties and the controversy stands as a genuine material disputed fact. Tolling is applicable as there is no time bar to a void ab initio judgment due to a total want of jurisdiction. See: Whitten v. Clarke, CL19-336 (April 25, 2019)

pg. 7 @ 8 Final order, where this claim raised p. the aforementioned, yet the court ruled it was frivolous, and tries to claim I made conclusory

venue claims. There is not one shred of evidence in the record as to support that the crime scene is in Virginia or was it committed in Virginia. The court continues to argue cases in support of venue arguments, my claim does not make venue

arguments thus, the respondent (Clarke) and the courts ruling fails. See: Final order pg. 9 p. 11, this is egregious conduct to say, See: Whitten v. Clarke, CL19-336, pet. CIA, pg. 4-9, 1-22-2019 filed for dispute.

The petitioner's claim could not be fully determined by the basis of the recorded matters. Shaikh v. Johnson, 276 Va. 537, 549, 666 S.E.2d 325, 331 (2008) (quoting Va. Code § 8.01-654 (B)(4)). The court's reliance on the Bareford, Att. & the Respondent Clark's, (Map) in its final order ruling in Whitten v. Clarke, CH19-336, pg. 6 @ #2, (April 25, 2019) is erroneous and violates due process of law rights to be heard. The Map points to (2) street names on a Map with several countries and the City of Fredericksburg, Va. but, its arrows do not associate the streets with the crime scenes per recorded trial evidence introduced and submitted. Thus, the trial court's mode and procedure used also negates subject matter jurisdiction. Watkins v. Watkins, 220 Va. 1051, 1054, 265 S.E. 750, 750-53 (1990); Anthony v. Kasay, 83 Va. 338, 5 S.E. 176, 177 (1887). SEE: Claim raised @ Pet. CIA. pg. 5 @ #3, and pg. 5 @ #4, also see: pg. 6 @ #5 for Sup. Ct. Va. R. 3A:12(c)(1) exception to the objection rule. SEE: pg. 8 @ #10 for the error of law and abuse of discretion raised as well the reasonable possibility exist that the unlawful seizure and jurisdiction violation caused/contributed to this court's erroneous rulings. It's reversible error as the 4th and 14th Amend. U.S. Const. establish that as a matter of right that criminal convictions that lack subject matter jurisdiction must be vacated. This defect is not mere error, its a federal constitution deminsion. Fundamental due process denied. I was prejudiced by this ruling as I remain unlawfully detained on a void judgment.

Sup. Ct. R. Va. 5:25 is inapplicable to a void ab initio judgment. The ends of justice exception would be a mandatory requirement in any other instance. However, I base my exception to the plain error of the court as it made an manifest error of law when it tried, convicted, and sentenced me without obtaining judicial notice of the controversy or subject matter jurisdiction over the person, parties or subject matter. Fraud upon the court, and ineffective assistance of counsel as well. Which will be explained in this writ in detest claims. The habeas trial court also failed to follow Art IV §17, a mandate from a higher court must be followed. Rowe v. Rowe, 33 Va. App. 250 @ 257-258 (2000). see: Claims of law from higher courts @ Fed. CIA, pg. 6 @ 7; pg. 7 @ 8; pg. 8 @ 10, and pg. 9 @ 11. The prejudice from the Whitten v. Clarke, CH 9-336 (Apr. 25, 2019) ruling was erroneous as it failed to adhere to due process. The Sup. Ct. Va. Whitten v. Clarke, 190683 (Mar. 20, 2020) ruling was also erroneous and an abuse of discretion as the Clerk of the Court's interboundary final order ruling was unauthorized by law and facts. see: Sup. Ct. Va. R. 5:1 (1) for manifest error. U.S. Const. 14th Amend. Due process right to be heard violation is reversible error. see: Keon v. United States, 518 U.S. 18, 116 S. Ct. 2035, 2047 (1996) for abuse of discretion. The Va. Sup. Ct. also failed to answer my jurisdiction claim before answering the merits of my ineffective assistance of counsel claims. Void ab initio I ask for a reversal... In Whitten v. Clarke, CH 9-336 (April 25, 2019); Commonwealth v. Whitten, CR03-1070-00 & 01 (Oct. 27, 2005) & Fed. CIA, pg. 43A @ 1 & 2.

ERROR #14 Probable Cause -

Conflicts with other courts: Constitutional law > Bill of Rights > fundamental rights > Search & Seizure > Probable Cause. The existence of probable cause is analyzed based on the facts and circumstances within the arresting officers' knowledge. The U.S. Sup. Ct. and Fourth Circuit have frequently held that "the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner. Messerschmidt v. Millender, 132 S.Ct. 1235, 1245, 182 L. Ed. 2d 47 (2012); Torchinsky v. Siwinski, 942 F.2d at 362. However, given the high threshold, an officer making an arrest pursuant to a warrant is deemed to have acted in an objectively reasonable manner unless: (i) the warrant is facially defective; (ii) the magistrate so obviously erred that reasonable officers would have recognized the error, Messerschmidt, 132 S.Ct. at 1250; or (iii) the officer seeking the warrant "deliberately or with reckless disregard for the truth made material false statements in his testimony to the magistrate, or omitted from that testimony material facts with the intent to make, or with reckless disregard of whether they thereby made, the testimony misleading." Miller v. Prince George County, 475 F.3d 621, 627 (4th Cir. 2007). This exception applies here to (iii) above. The affiants, George Bond, Jr., & J. L. DeBord, Detectives of Stafford County made false statements to

the magistrate in order to secure arrest warrants for the offense of Capital Murder and Robbery. SEE: Pet. CIA, pg. 43A @ #4 and #7, 1/23/2019. And the warrant is totally defective (1) forementioned. This claim was raised in Pet. CIA, claim #2, pg. 19, and the U.S. Const. 14th Amend. violation @ para. #25, in Whittier v. Clarke, record no. CH19-336. Also see: Pet. CIA, pg. 21 @ para. #31, which shows that Affidavit in support of search warrant filed by Affiant's Bond & DeBolt is reckless and intentional material false statements to the magistrate, when it stated on pg. 2 of their Affidavit that "Earl's true Value Hardware store, that is located at 300 Clatham Heights Road, Fredericksburg, Virginia, in the County of Stafford, Virginia." The City of Fredericksburg is an independent City and is not in Stafford County. SEE: Pet. CIA, pg. 43A, @8, for the false statement in the Affidavit. SEE: Assignments of error ex. #2, in Whittier v. Clarke, record no. 190683 (Sup. Ct. Va. 11-25-19), pg. 4 @ #6, for U.S. Const. 14th Amend. due process of law violation raised.

The trial court in Whittier v. Clarke, case no. CH19-336, ruling of April 25, 2019 was erroneous and unreasonable as the claim of probable cause @ Pet. CIA, pg. 8, went unanswered by the Court. SEE: pg. 8 @ #9 for claim & 14th Amend violation raised.

Prejudice occurred as I am unlawfully detained in violation of the constitution pursuant to a judgment of a state court.

The trial court violated Sup. Ct. Va. R. 3A:24, when it failed to identify the substance of my claim and specify their reason for the denial of my claim. Due process denied, failure to be heard.

ERROR
#5 - Sup. Ct. R. 3A:24

The Sup. Ct. Va. makes clear the policy and procedure of special rule applicable to post-conviction proceedings: Circuit Court orders denying petitions for writ of habeas corpus...

Any order of a circuit denying a petition for a writ of habeas corpus shall include findings of facts and conclusions of law as required by code of Va. § 8.01-654 (B)(5).

The order shall identify the substance of the claims asserted in the petition, and state the specific reason for the denial of each claim. Any such order may adopt a trial court's written opinion explaining its decision or a transcribed explanation of the court's ruling from the bench; however an order shall not deny the petition without explanation, or rely upon incorporation by reference of a pleading filed in the case. The habeas trial court's ruling was manifest error of law and Prejudicial Whitten, prose, as my right to be heard.

under the U.S. Const. 14th Amend Due process was denied. Substantial rights were affected as the U.S. Const. safeguards guaranteed under said due Process of law are essential to liberty in a government dedicated to justice under its laws. Thus, the habeas trial court's ruling of April 25, 2019, failed to adhere to this legal and ethical court precedent in

Whitten v. Clarke, case no. CL19-336, when it did not make a ruling on the probable cause claim asserted in Pet. CIA, Pg. 8P#9, and Amended Pet. 5A, Pg. 4A & 5. See: Motion To Dismiss filed by respondent, Clarke, Ppg. 2, 10, 3/18/19, and Final order of 4/25/19, failure to respond. The Sup. Ct. of Va. in case no. 190683-Whitten v. Clarke, also does not adhere to their own precedent by failing to hold the trial court responsible for their egregious conduct in violating my U.S. Const. 14th Amend. due process of law, right to be heard, thus, was prejudice. The trial court's ruling in denying the writ of habeas corpus was erroneous and unreasonable and, Whitten, pro se, remains injured as I am being held in custody illegally pursuant to a judgment of a state court in violation of the constitution, and laws or treaties of the United States.

Furthermore, the state of Virginia provides for an appeal to the State's Supreme Court and on that appeal considers questions raised under the federal constitution, the proceedings in that court are a part of the process of law under which the petitioners' conviction must stand or fall. Frank v. Mangum, 237 U.S. 309, 327, 35 S.Ct. 582, 587, 59 L.Ed. 696 (1915); Maoney v. Holohan, 294 U.S. 103, 113, 55 S.Ct. 340, 342, 79 L.Ed. 791, 98 A.L.R. 406 (U.S. Cal. 1935).

To conform to the U.S. Const. Due process of law 14th Amend., Whitter, pro se, was entitled to have the validity of his convictions appraised on consideration of the case as it was tried and as the issues were determined in the trial court. Whitter, pro se, was denied his liberty interest of being unknowingly convicted and sentenced as the error of law was prejudice and an abuse of discretion from the trial court's and Sup. Ct. Va. ruling. Shoottz v. Shoottz, 27 Va. App. 264 (April 28, 1998); Koon v. United States, 518 U.S. 81, 116 S. Ct. 2035, 2047 (1996). Whitter, pro se, ask this court in the interest of justice to reverse the decisions in Whitter v. Clarke, CL19-336, (April 25, 2019) and Whitter v. Clarke, record no. 190683, Sup. Ct. Va. (3/20/2020), as the decisions were inconsistent with established modes and procedure. This failure to rule on this claim was mandatory not discretionary from the trial court. Plain error has occurred. Prejudice resulted as it led to a reasonable likelihood that a different result would have been reached had the error of law not been made. The merit(s) of my argument was not adjudicated by the Sup. Ct. Va. mandate of R. 3A:24 and U.S. Const. 14th Amend. Due process of law, right to be heard. Also, see: Sup. Ct. Va., Whitter v. Clarke, record no. 190683, Decl. B6 @ ECF. no. 52, pp. 2, para. 3 & pp. 3 @ 4-5, for prejudice.

Whitten, please, ask that Commonwealth v. Whitten, C003-1070-00 and 01 be reversed and the writ awarded as the evidence before this court presents claims of essential constitutional federal question/violations, and deemed deserving of relief for an immediate and redressable injury. Hohn v. United States, 524 U.S. 236, 241 (1998). This Whitten v. Clarke, C19-336 (April 25, 2019) judgment was erroneous and void, no estoppel arises, as the error of law is attributed to the state. SEE: 28 U.S.C. § 2254(d)(1); and Va. Code § 8.01-654(2)(5).

A6 - Sup. Ct. Va. R. 5:1(11)

Whether this court violated its own law when the final order non-judicial authority ruling by the Clerk of Court on Whitten's, Va. Code § 8.01-655 habeas Corpus petition was handed down contrary to their Sup. Ct. R. 5:1(11)?

The Sup. Ct. of Virginia Clerk has no constitutional power as a judicial officer in final order Habeas rulings.

The results of this ruling created prejudice and denied me my right to be heard under the U.S. Const, 14th Amend. Due process of law. The ruling was erroneous and an Abuse of discretion as it has no legal effect.

The Clerk of Court in case. Whitten v. Clarke, 190683 Sup. Ct. Va. (Mar. 20, 2020) does not present evidence that judges authorized this decision, It's manifest error of law.

Whitter, pro se, presents to this court his petition for a writ of habeas corpus and his writ of certiorari dated: April 18, 2020 to the U.S. Sup. Ct., to bring up the record of the inferior court(s), that I might be discharged from unlawful custody, overruling that the findings of the charging instruments, lack of judicial notice, lack of total want of jurisdiction, lack of probable cause to arrest, fraud upon the Court, Sup. Ct. Va. R. 1:1 asserted, and ineffective assistance of counsel, plus the Sup. Ct. Va. Final order ruling by the Clerk of Court, thereunder are ~~just~~ unwarranted by the Const. of the U.S., in violation of my rights and the rights of Virginia under the Va. Const. Art. 1, 11, as it is applicable to the U.S. Const. 14th Amend. Due process of law. To show that the inferior court had no jurisdiction to proceed against me. It's stated in Ex parte, Commonwealth of Virginia, 100 U.S. 339, 25 L. Ed. 676 (Mar. 1, 1880) that (1) The writ of habeas corpus cannot generally be made to subvert the purposes of a writ of error; yet when a prisoner is held without lawful authority and by an order beyond the jurisdiction of an inferior court to take, this court will, in favor of liberty, grant the writ, not to review the whole case, but to examine the authority of the court below to act at all. Thus, the Final order handed down by the Clerk on (Mar 20, 2020) in Whitter v. Commonwealth, record no. 190683, Sup. Ct. Va. is void.

A void judgment is to be distinguished from an erroneous one, in that the latter is subject only to direct attack.

Whitten, pro se, has provided the court(s) direct proof that this judgment in Commonwealth v. Whitten, case no. CR03-1070-00 and 01, was void from its inception, thus is a complete nullity and without legal effect. In the interest of finality, the concept of void judgments is narrowly construed.

While absence of subject matter jurisdiction may make a judgment void, such total want of jurisdiction must be distinguished from an error in the exercise of jurisdiction.

A court has the power to determine its own jurisdiction, an error in that determination will not render the judgment void. Only in the rare instances of a clear usurpation of power will a judgment be rendered void. This kind of egregious conduct from the clerk of court is such a clear usurpation of power. Watkins v. Watkins, 220 Va. 1051, 265 S.E.2d 750, 752-53 (1980); Orner v. Shalaby, 30 F.3d 1307 (10th Cir. 1994); Anthony v. Carey, 83 Va. 338, 5 S.E. 176, 177 (1887); U.S. Const. 14th Amend. Due process of law, right to be heard.

See: Whitten v. Clarke, record no. 190683 (Sup. Ct. Va. Mar. 20, 2020) for suppression of judicial & jurisdictional deficiency in the proceedings resulting from the clerk's unauthorized interlocutory order. Thus, this final judgment is subject to collateral attack for subject matter jurisdiction in the Sup. Ct. Va. Prejudice resulted as I was denied my right to be heard 14th U.S. Const. due process.

ERROR #81, FRAUD UPON THE COURT

where relief is sought from a judgment on fraud upon the court by way of improper influence with its court rulings and decisions by officers of the court and said rulings/decisions affected Whittier's substantial and due process rights, it's an assault on the integrity of the court's judicial process itself; the fraud must be established by clear and convincing evidence. Petitioner must set forth grounds which are conclusive. Attorney's seek to mislead, "In Lockwood v. Bowles, 46 F.R.D. 625, 632 (D.D.C. 1969), Hazel-Atlas is cited as an illustration of the involvement of an attorney (an officer of the court) in the perpetration of fraud. In Lockwood the court also cited for the same proposition in Suther v. Easterly, 354 Mo. 282, 189 S.W. 2d 284 (1945). In that case the state court, relying on the Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 246, 64 S. Ct. 997 (1944) decision, held that it is a fraud upon the court for a lawyer to engage in a conspiracy to produce fabricated evidence. An attorney's loyalty to the court, as an officer of the court, demands integrity and honest dealings with the court, and when he departs from that standard, he perpetrates a "fraud upon the court." No lack of

this cause, for the law favors discovery and corruption
corrections for the judicial process even more than it
requires an end to lawsuits, etc. Hazel-Atlas Glass Co.

V. Hartford-Empire Co., 332 U.S. 338, 346, 44 S.Ct. 997 (1944).
Lockwood v. Bowles, 46 F.R.D. 635, 634 (D.C. 1969). The

conduct of the officers of the court must be egregious
and their actions shown to be an unconscionable plan
and scheme to deceive the court, public, and maintain
without due process of law. Whitten, press, brings
into focus such egregious conduct by the following
officers of the court in Commonwealth v. Whitten, 1983-
1070-08 and 1983-1070-01 (Oct. 25, 2005 Va.) Claims and Const.

violations raised @ Fed. Cir., pg. 12 @ 16 against, Haley, Judge, pg. 13 @ 17,
against, Peterson, Asst. Com. Atty., pg. 14 @ 18, Alderman, Judge, pg. 15 @ 20
against, Denike, Asst. Com. Atty. and pg. 17 @ 23, pg. 19 @ 25, against,
Haley, Judge, Alderman, Judge, Trial attorneys, Barabard & Maslowski,
Bond & DeBord, Detritives of Stafford County. See: Trial Tran.
for fraud upon the court by these individuals aforementioned.

Haley, Judge, Trial Tran. pg. 6 @ 3-21 Motion hearing at (May 17, 2004).
Peterson, Asst. Com. Atty. Trial Tran. pg. 395 @ 19-21, 5/23/05, pg. 396 @ 1-21,
5/23/05, Alderman, Judge, throughout the trial did not present
this fraud upon the court as it was apparent from the record.
Denike, Asst. Com. Atty., Trial Tran. pg. 239 @ 12-21 and pg. 240 @
1-7, again @ 16-21, 5/23/05, Bond & DeBord, Detritives, see: Aff. in
support of search warrant in Fed. Cir., pg. 439, 408, EXD - where

they both, as affiants swore under oath to the magistrate that Earl's True Value Hardware Store is located in Stafford County, but, uses the Address of 300 Clatham Heights Road, Fredericksburg, Virginia as the location of the crime scene. This was the first stage of the fraud upon the court, as The City of Fredericksburg is an independent city and thus, not in Stafford County, Virginia. See: Whitten v. Clarke, CA19-336 Habeas Tr. Ct. 1-22-2019 - Feb CIA, pg. 43 A, @ 8. See: index, pg. 43 A, @

11 & 12 for history of both places. Also see: Va. Code §§ 17.1-500, 17.1-505 for jurisdiction of courts in Virginia. This means if the crimes did take place in Fredericksburg, Va. as ex. #75 p#13 of Feb. CIA States as well, Stafford County would not been able to try these cases before this court. See: EX#6 Attached for further proof of these officer's of the Court's fraud upon the Court. There is not a dispute as to the actual address/physical address in the withheld/ concealed documents listed above. See: Whitten v. Clarke, CA19-336, pg. 19 p#

#25 and U.S. Const. 14th Amend violation of due process, prejudice, thus, the opportunity to raise this claim pre-verdict was never available, as I was misled to my injury, as I was led to believe the judicial process was valid. This kept me from raising the claim earlier in petitions/applications, etc. These documents were clearly available in the possession of all the mentioned officer's of the Court in this claim. They obviously planned and schemed to deceive the Court itself, thus, they are estopped from asserting any time bar, as was the case in the respondent (Clarke's) Mot. To. Dis. pg. 6 p#5-6, and pg. 10 p#16 and see: Final order: Whitten v. Clarke, CA19-336, pg. 6 p#5, and pg. 10 p#15 (April 25, 2019). Mot. To. Dis @ Whitten v. Clarke, CA19-336 (April 25, 2019).

See: Whitten v. Clarke, 190683 (Sup. Ct. Va. Mar. 20, 2020) Final order, interlocutory order by Clerk of Court - thus, the merits of my claims p Assignments of error, Ex. 2, Claim B2, pg. 4, @ 6, 7, pg. 5 p# 8, 9, and pg. 6 p# 10, 11, ECF no. 138, 11-25-2019, const. violations raised in those pleadings. No prejudice to the state as their actions caused the delay in these filings. Sup. Ct. E. Va. 5:25 is invoked as Fraud upon the Court by officers of the Court meets the ends of justice exception. I exercised my reasonable diligence. See: Feb. CIA, pg. 43 A, @ 18-19, 1-22-19.

This court has clear and convincing evidence that these officers of the court induced witnesses to lie on the stand at trial as to the jurisdiction of the crime scene. They never revealed the address of the crime scene, the submitted a map @ Fed. CIA, pg. 43A, p#10, which does not even show the street Chatham Heights Road, nor did they take judicial notice of the business. No information in the copies, Fed. CIA, pg. 43A, p#6; the Capital Murder warrant @ pg. 43A p#7, does not purport to name a location. Whitten, pro se, has also submitted exhibits @ Fed. CIA, pg. 43A, p#11, 12, 13, 14, and 15, which proves the intentional deceit. At pg. 20, #18, Fed. CIA, Whitten v. Clarke, CL19-336, I made my Const. violations known, the court decided @ Their final order April 25, 2019, that no fraud upon the court took place, and are claiming the crime scene to be in Stafford, and proven from the record. This is in dispute and Defense Attorney Barclay's "Aff." ex. #4, pg. 2 p#3, Mar. 18, 2019. How can Whitten, be confusing a mailing address with physical location, if no address or location is referenced in the accusatory instruments? All exhibits place the crime scene in the Independent City of Fredericksburg, so why am I wrong? SEE: Evans v. Smyth-Wythe Airport Comm'n, 255 Va. 69 (1998) which shows how it jurisdiction of the subject matter of the litigation and also over the parties thereto. If either is wanting, the resulting judgment is void. Once these aforementioned officers of the court chose to conceal the location of the offenses, they committed Fraud upon the court. They denied me the

U.S. least 14th amend due process right to be heard, 6th amend
U.S. least right to a fair trial in the proper tribunal, and
my 1st Amend U.S. Const. right to access to the court.
The ruling in Commonwealth v. Whitten, CE03-1070-00 and 01
(Oct. 27, 2005), Whitten v. Clarke, CL19,336 (April 25, 2019) and
Whitten v. Clarke, 190683 MA Sup. Ct. (Mar. 20, 2020) are all
void ab initio for fraud upon the court, and U.S. Const.
Due process of law, 14th Amend. Liberty interest, "right to
be heard and fair trial denied. Also, in Whitten v. Clarke,
190683 (MA Sup. Ct. Mar. 20, 2020) this claim was not addressed
before passing judgment, see: Jurisdiction claim, 19 Sup. Ct. U.S. 11(1)
asserted. The rulings are erroneous and an abuse of discretion.
Koon v. United States, 518 U.S. 81, 116 S. Ct. 2035, 2047 (1996); Shadler
v. Shadler, 27 Va. App. 264 (April 28, 1998). This decision(s) also
affects the integrity of the judicial proceedings. United States
v. Olano, 507 U.S. 725, 731, 113 S. Ct. 1790 (1993); United States v.
Olano, 500 U.S. at 467, 117 S. Ct. 1544 (1993). Sup. Ct. Va. E. 5, 15
is inapplicable as no objection could be made provided
due to the fraud upon the court claim which assets in his
pleading before these courts. see: Due diligence in seeking
justice, 19 Fed. Cl. H. 88, 434, P. 18-19, (April 25, 2019) (r. 6).
The prejudice from this egregious conduct from this officers
of the court continues to keep me in unlawful detention without
the fundamental due process of law observances. I ask for
reversal of the prior rulings.

ERROR #C3 INEFFECTIVE ASSISTANCE OF COUNSEL

Whitten, pro se, presents allegations against both his trial attorneys, Paul A. Maszkowski and, Allen Barabard in Commonwealth v. Whitten, CRO3-1070-00 & 01 (Oct. 27, 2005) I am asserting that their trial performance and unethical conduct undermined the confidence in the status ability to adequately adjudicate fairly. The evidence will show that their actions affected the outcome of the proceedings. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052 (1984). U.S. Const. 6th Amend. violation, U.S. Const. 14th Amend. Due process of law, right to be heard violation, Va. Sup. Ct. R. 8.4-misconduct and Va. Sup. Ct. R. 1.1-Knowledge and skill of competence. This claim and const. violations were raised (p) Fed. CIA, pg. 23 (p) 33, pg. 25 (p) 35, pg. 26 (p) 36, pg. 27 (p) 38, pg. 28 (p) 39 and, Whitten v. Clarke, 190683 (Va. Sup. Ct. 11-25-2019) ECF. no. 135. The Strickland test... (p) Strickland v. Washington, 466 U.S. 668 (1984) is satisfied as, my trial attorney's conduct was deficient and (2) Whitten, was actually prejudice by their representation. See: Morse v. Hinkle, 259 Va. 479, 527 S.E. 2d 423 (2000) citing Strickland, 466 U.S. 688 (1984) Whitten's trial attorney's and performance fell below the objective standard of reasonableness. Claims: They both knew the charging accusatory instruments were totally

defective but did not request amendments, or dismissal of
of the charges for lack of subject matter jurisdiction. SEE:
Final order pg. 6, para. #7, for this claim as well, in the Motion
To Dismiss @ pg. 6, para. 7 in, Whitten v. Clarke, CN 9-336 (April 25, 2019).
See: Pet. CIA, pg. 43A, @ #4, 5, 6, and 7, for proof that Bareford
and Maslakowski, knew the accusatory instruments were totally
defective and at no stage in the proceedings did they move
to correct them. SEE: pet. CIA, pg. 43A, @ 8, 10, 11, 12 and 13, to show
deceit in trial attorney's conduct towards their client at trial.
This knowledge at Ex. #8, 13, was in their possession but not
shared with Whitten at any stage of the proceedings. Bareford's
"Aff." @ #4, attached to the Mot to Dis. dated. (Mar 12, 2019) in Whitten
v. Clarke, CN 9-336, is further proof of his failed and unethical
conduct. pg. 6 @ #7 Motion to Dis., Bareford's, statement @ Ex. #4, pg. 2, @ #3,
3/18/2019. Bareford and Maslakowski, also are/were aware that
Va. Code § 18.2-31(d) is the Capital Murder Statute, not § 18.2-31.
No Robbery was stated/proved in the accusatory instruments which
defines Va. Code § 18.2-58 Robbery. which states: Robbery is at common
law defined as the taking, with the intent to steal, of the
personal property of another, from his person or in his presence,
against his will, by violence or intimidation. Thus, when
the accusatory instruments failed to meet Va. Code § 19.2-220
@ #2 Describe the offense charged, and identify the county, city
or town in which the accused committed the offense, Bareford
and Maslakowski, denied me due process of law U.S. Const.
14th Amend. right to be heard and U.S. Const. 6th Amend. right to a
fair trial and ineffective Asst. of Counsel. Strickland v. Washington,

466 U.S. 668, 104 S. Ct. 2052 (1984). Va. Disciplinary Rule 5-107(B)
of the ABA code of professional responsibility was violated
by both Barford & Maslakowski at trial and, their conduct
was unacceptable from officer's of the court. Whittier, pro se,
was prejudiced by this conduct and I never received my day
in a court of competent jurisdiction due to their unethical
and unprofessional performance. The issues were not contested
nor was the opportunity to do so available as the silence on
these issues were mooted by trial counsel. No claim preclusion
under res judicata attaches. The trial court lost jurisdiction
for the allegations alleged aforementioned. The trial court
ruling in Commonwealth v. Whittier, CR03-1070-00 and 01 (Oct.
27, 2005); Whittier v. Clarke, CL19-336 (April 25, 2019); Whittier
v. Clarke, 190683 (Sup. Ct. Va. Mar. 20, 2020) are all void for
lack of jurisdiction, as the rulings were erroneous and against
Sup. Ct. U.S. precedent of clearly established law. Strickland v.
Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Frank v. Mangum,
237 U.S. 369, 35 S. Ct. 582, 59 L. Ed. 969 (1915). The court lacked
jurisdiction.

Barford and Maslakowski, failed to request Va. Sup. Ct. R.
3A:11 Discovery and inspection, when they accepted the states
claim of DNA extract evidence vs. a true crime scene sample.
This was not trial court sound strategy or ethical conduct
in a Capital murder case. Then they (Barford & Maslakowski)

excluded defense DNA expert McClintock from testifying at trial and, claimed it would have hurt me more that it would have helped me. See Aff. @ Ex # 4, pg. 2 @ 2, in Whitten v. Clarke, CL19-336 (Mar. 18, 2019). This statement proves how poor of a performance Barabard gave at trial. His actions to only accept the extract gave the case to the state. If sound trial strategy was observed that would mean, accepting DNA Extract is the norm. Observing, Adams v. United States ex rel McLann, 317 U.S. 269, 275, 276 (1942) would have safeguarded Whitten's const. rights to confrontation of Mr. McClintock to inquire as to his professional judgment in DNA evidence and its probative value. Defense expert McClintock could challenge the extract as in Gardner v. Florida, 430 U.S. 349, 97 S. Ct. 1197, 51 L. Ed. 2d 393 (1977). Va. R. Evid. 2:402; Va. Code § 8.01-3; Va. Const. Art. III, sec. 5; and 6th Amend. U.S. Const. right to confrontation. The errors by defense counsel's was a miscarriage of justice. Howard v. Commonwealth, 281 Va. 455, 462, 706, S.E.2d 885, 889-89 (2011) (quoting Georgiun v. Commonwealth, 280 Va. 678, 701, S.E. 2d 407, 413-14 (2010)). I never waived my rights to call Mr. McClintock, the states DNA expert Brian Covington, went unchallenged, thus, it was a unilateral contest in favor of the state. Leaving Whitten, with no opportunity to dispute/ challenge the accuracy of materiality. The extract DNA claim is not reliable, trial attorney's are therefore ineffective for depriving me the opportunity to defend against the states claim. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984) is implicated. Whitten, raised those claims in Pet. CA, pg. 25 @ 35,

Whitten v. Clarke, CL19-336 Habeas Tr. Ct. Va. (April 25, 2019) SEE: pg. 27 @ 38,
pg. 27 @ 37, Fed. Cir. Const. violations raised 6th and 14th amend as well.
Reasonable jurist could all agree that the conduct of Defense Attorney's
Maslakowski and Basford was unreasonable and a violation of the
Strickland two prong test. I was denied a fair trial and ineffective
attorney assistance as well due process of law under the U.S. Const. 14th
Amend. I was deprived of life, liberty and property, and a right to be
heard. SEE: Whitten v. Clarke, CL19-336 (Febr. 13, 2019 Filed Habeas Tr. Ct. Va.) At
Amended Fed. 5A, pg. 4A of Amend pg. of Decl., Issues raised in Whitten v. Clarke
190683 (Sup. Ct. Va. Nov. 25, 2019 ECF no. 138) @ Assignments of error EX. 2, pg. 8 @ 14,
15; pg. 9 @ 16-17. Va. Sup. Ct. R. 5:25 is invoked for good cause
shown and ends of justice exception, for after discovered fraud upon
the Court, Ineffective Assistance of Counsel, as the prejudice is over-
whelming. The Trial court in Commonwealth v. Whitten, CR03-1070-00 & 01
(Feb. 27, 2005) loss its jurisdiction due to the aforementioned claims.
The mode and procedure used in its service was illegal. Anthony v.
Kasey, 83 Va. 338, 5 S.E. 176, 1887 Va. Lexis (May 19, 1887). The Final order
in, Whitten v. Clarke, CL19-336 (Va. April 25, 2019); Commonwealth v. Whitten,
CR03-1070-00 and 01; Whitten v. Clarke, 190683 (Sup. Ct. Va. March 29, 2020)
are all erroneous and void ab initio as the Trial court was without
Total want of jurisdiction, the Ineffective assistance of Counsel claim
was the key prejudice suffered by Whitten, pro se, as these aforementioned
defense attorney had the knowledge of what to do to prevent this injustice
but, failed to act. The FOIA request gave me the necessary prob
needed to make this claim plausible. SEE: Whitten v. Clarke, CL19-336
(1-22-2019) Fed. Cir. 43A @ 18-19. The, Whitten v. Clarke, 190683 Sup. Ct. Va.
(March 20, 2020) ruling is reversible error due to the unauthorized
interlocutory final order from the Clerk of Court without and judges
authorization. SEE: see Final order attached in table of content under
exhibits. Sup. Ct. Va. R. 5:1(1) dictates this illegal ruling. I ask this
Court for a reversal and grant the writ.

EXCEPTIONAL QUESTIONS OF IMPORTANCE

1.) Can a pleading error validate a void ab initio judgment when proven from the record at any stage of the judicial process? This was done at the Sup. Ct. Va. appellate level. It was also done without any judges input per the final order ruling, it was only ruled on by the clerk of court, which is an interlocutory order, not authorized in final order decisions. Fundamental due process rights require decisions of final orders be by judges. If Sup. Ct. Va. R. 5:1(11) is allowed to be violated by their very court, then it's a clear abuse of discretion and plain error which affects the integrity of the judicial proceedings. Innocent substantial rights are to be honored by the courts as the U.S. Constitution demands. Plain error occurs when U.S. Const. due process of law is denied. United States v. Olano, 507 U.S. 725, 731, 113 S.Ct. 1770 (1993)?

2.) Jurisdiction disputes must be decided before the merits of the claims are adjudicate, this was not done at Whitten v. Clarke, 190683 (Sup. Ct. Va. Mar. 20, 2020). There's was no indication as to why the claim was not addressed. Can this jurisdiction dispute be overlooked without giving movant an opportunity at an evidentiary hearing, when the jurisdiction challenge is inconclusive based on the competing affidavits and the record as a whole?

3) When shown that the defects in the charging instruments are so ~~fatally~~ defective that it deprives a court of jurisdiction, the issue can be raised on habeas corpus? The exceptional circumstances create constitutional questions for review by an appellate court's de novo review? Under Va. law, Va. Code § 19.2-230 requires accusatory indictments to be written charge(s) against the accused for a specific crime that informs the accused of the nature and the cause/character of the offense against him. The proof must correspond with the particular charge. "Va. Crim. Law and Procedure" showed a fatal variance in the allegations. Yet, the court, Commonwealth, nor my defense trial attorney's suggest/move for amendments of said fatal errors in order to correct such defect as location of the offense and character of offense charges. SEE: Va. Code § 19.2-231 which permits such by law. The evidence at trial in Commonwealth v. Whitten, CP03-1070-00 and 01 did not prove the charge(s). SEE: Etheridge v. Commonwealth, 210 Va. 328, 329, 171 S.E.2d 190, 191 (1969). A court's decision to convict a defendant on such evidence should be reversed?

4) Whether a court can make a constructive amendment to indictments during trial per its attempt to take judicial notice when the fatal variance cannot be cured? SEE: Dikson v. Commonwealth, record no. 1410-02-2 (1st of App. Va. Oct. 21, 2003) SEE: Whitten v. Clarke, CH19-336 (Tr. Ct. filed 1-22-19 Va.) @ Fed. C/A, pg. 43A, @ 4, 5, 6, and 7, and issue overlooked by Sup. Ct. Va. in, Whitten v. Clarke, 190683 (Sup. Ct. Va. Mar. 20, 2020)? Whether the error of law was repugnant of the state and federal constitutions?

CONCLUSION

Petitioner, Anthony Gairrio Whitten, pro se, do hereby declare that exceptional circumstances exist for tolling in this case which deserves de novo review and, to show my challenge of being held in custody illegally pursuant to a judgment of a state court in violation of the constitution and laws, or treaties of the United States is validly stated herein and this court should review as well as all appellate courts the circumstances and laws as they were adjudicated in state court for errors of law. A genuine disputed material fact exist and I remain injured/prejudiced so long as this void ab initio judgment stands. I ask for reversal and the granting of this writ. An evidentiary hearing is requested.

Respectfully submitted,

Anthony Gairrio Whitten

Anthony Gairrio Whitten, pro se, 1138537
Red Onion State Prison
10800 H. Jack Rose Highway
P.O. Box 970
Pound, Virginia 24279-0970

Dated: June , 2020