No. 20-5256 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Abdul-Mu'min – PETITIONER

VS.

COMMONWEALTH OF VIRGINIA – RESPONDENT(S)

ON PETITION FOR A 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)

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[X] is unpublished.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[X] is unpublished.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[X] is unpublished.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 March 22, 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 18, 2019.
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

5th Amendment

7th Amendment

14th Amendment

STATEMENT OF THE CASE

Comes now, Abdul-Mu'min, (F/k/a Travis-Jackson:Marron), petitioner 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, the court's order, spread upon its "*Order Book*", must show such compliance or jurisdiction is NOT obtained. The appellant brings this appeal because the Chesapeake Circuit Court and Virginia Supreme Courts' ruling is not in accordance with the settled law of this United States Supreme Court.

REASONS FOR GRANTING THE PETITION

As to the Question 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 whether the trial record contains evidence providing proof that the Chesapeake Circuit Court had subject matter jurisdiction over appellant. See, *Dobson v, Commonwealth*, No, 0733-96-2. Feb 18, (`1997). The Virginia Supreme Court 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 because no Judge, Clerk nor any other officer of the court ever provided evidence indicating that an order was actually entered in an Order Book that showed that the defendant had, in fact, been indicted by a Grand Jury. As stated in, *Cunningham v. Smith*, 135 S.E. 2d 770, 205 Va. (1964): 'A court speaks only through its orders. In those cases where 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'. *Simmons v. Commonwealth*, 89 Va. 156, 159, 15 S.E. 386; *Price v. Commonwealth*, 62 Va. 1044, 21 Gratt. 846, 858, 859; *Commonwealth v.*

Cawood, supra, 2 va. Cas., at p. 542. 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). Even though the petitioner, at first, pleaded not guilty; 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's authorities in the trial of the petitioner 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 Court based upon a precedent case set forth by this U.S. Supreme Court, because the Circuit Court and Virginia Supreme Court misapplied several rulings as well since their legal reasoning of *Hanson* which has been shown to be erroneous by subsequent binding U. S. Supreme Court cases. In *Hanson*, the Virginia Supreme Court and the Chesapeake Circuit Court relied upon what is now an incorrect legal premise (emphasis added): '*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, 484, 189 S.E. 321, 325; *Pine v. Commonwealth*, 121 Va. 812, 835, 93 S.E. 652; *Guynn v. Commonwealth*, 163 Va. 1042m 1046, 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, the

United States 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.

Accordingly, In *James L. Waller v. Commonwealth*, (*Waller v. Comm.*, 685 S.E. 2d 48, 278 Va. (731 (Va. 2009), quoting: *McMillan v. Commonwealth*, 277 Va. 11, 671 S.E. 2d 396 (2009); "When the fact of a prior conviction is an element of a charged offense the burden is on the Commonwealth to prove that prior conviction beyond a reasonable doubt. Id. at 24, 671 S.E. 2d at 402." Also Code 17.1-123 (A): All orders that make up each day's proceedings of every Circuit Court shall be recorded by the clerk in a book known as the "*Order Book*"! Orders that have been recorded in the "*Order Book*" shall be deemed "*Authenticated*" when **(1)**. The judge's Signature is shown in the order, **(2)**. The Judge's signature is shown in the "*Order Book*", or **(3)**. An order is recorded in the "*Order Book*" on the last day of each term showing the signature of each Judge presiding during the Term!!!

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 and 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 and 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! Appellant was under the influence of illicit drugs & alcohol during the night of the offenses in which he had "Black-Outs" yet he didn't know nor did his lawyers want to believe him! *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 <u>given</u>, than to usurp that which is <u>not given</u>. 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!

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

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, 557 S.E.2d 233, 233 (2002); *Commonwealth v. Southerly*, 262 Va. 294, 299, 551 S.E.2d 650 (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, 51-52, 541 S.E.2d 549, 551 (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).

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)