"APPENDIX A"

FILED: June 9, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6031
(1:19-cv-00910-TSE-MSN)

ABDUL MU'MIN, f/k/a Travis Jackson Marron

Petitioner - Appellant

v.

HAROLD CLARKE, Director of Va. Dept. of Corrections

Respondent - Appellee

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

"APPENDIX B"

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6031

ABDUL MU'MIN, f/k/a Travis Jackson Marron,

Petitioner - Appellant,

v.

HAROLD CLARKE, Director of Va. Dept. of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T.S. Ellis, III, Senior District Judge. (1:19-cv-00910-TSE-MSN)

Submitted: April 14, 2020 Decided: April 22, 2020

Before GREGORY, Chief Judge, QUATTLEBAUM, and RUSHING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Abdul Mu'Min, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Abdul Mu'Min seeks to appeal the district court's order dismissing his unauthorized successive 28 U.S.C. § 2254 (2018) petition for lack of jurisdiction. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

In civil cases, parties have 30 days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

The district court entered its order on October 28, 2019. Mu'Min filed the notice of appeal on December 4, 2019.* Because Mu'Min failed to file a timely notice of appeal or obtain an extension or reopening of the appeal period, we dismiss the appeal.

We deny Mu'Min's motion for bail or release pending appeal and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

* For the purpose of this appeal, we assume that the date appearing on the notice of appeal is the earliest date Mu'Min could have delivered the notice to prison officials for mailing to the court. Fed. R. App. P. 4(c)(1); *Houston v. Lack*, 487 U.S. 266, 276 (1988).

"APPENDIX C"

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Travis Jackson Marron a/k/a Abdul Mu'min,
Petitioner,

v.

Harold Clarke,
Respondent.

1:19cv400 (TSE/IDD)
1:19cv910 (TSE/IDD)

ORDER

Proceeding pro se, Virginia inmate Travis Jackson Marron a/k/a Abdul Mu'min has filed two identical petitions for writs of habeas corpus pursuant to 28 U.S.C. § 2254, see [-400 Case Dkt. No. 1; -910 Case Dkt. No. 1], and paid the filing fees, see [-400 Case Dkt. No. 6; -910 Case Dkt. No. 4]. Because Marron has paid the filing fees, his applications for permission to proceed in forma pauperis, see [-400 Case Dkt. No. 7; -910 Case Dkt. No. 5], are moot.

Marron seeks to challenge his 1998 convictions in Chesapeake Circuit Court for murder and related crimes. See [-400 Case Dkt. No. 1; -900 Case Dkt. No. 1]. Marron previously challenged these convictions in a § 2254 petition filed in 2001; this Court denied that petition; and the United States Court of Appeals for the Fourth Circuit dismissed Marron's appeal. See Marron v. Angelone, No. 1:01cv1106 (E.D. Va. 2001), app. dism., No. 01-7836 (4th Cir. 2002) (available on www.pacer.gov). In 2003, the Fourth Circuit denied Marron's application for authorization to file a second or successive § 2254 petition. See In re Marron, No. 03-294 (4th Cir. 2003) (available on www.pacer.gov). And, in 2017, the Fourth Circuit denied Marron's second application for permission to file a second or successive § 2254 petition. See In re Marron, No. 17-432 (4th Cir. 2017) (available www.pacer.gov).

"APPENDIX D"

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 18th day of March, 2019.

Abdul-Mu'min Marron,
f/k/a Travis Jackson Marron, Appellant,

against Record No. 180279
Circuit Court No. CL17-4298

Commonwealth of Virginia, Appellee.

From the Circuit Court of the City of Chesapeake

Upon consideration of the record and the pleadings filed in this case, the Court finds that assignment of error no. 1 is insufficient as it does not address any ruling of the circuit court in *Travis J. Marron v. Commonwealth of Virginia*, Circuit Court No. CL17-4298, from which an appeal is sought. Accordingly, the petition for appeal is dismissed as to that assignment of error. Rule 5:17(c)(1)(iii).

Upon further consideration whereof, the Court refuses assignment of error no. 2.

Justice McCullough took no part in the resolution of the petition.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By: SSNQ

Deputy Clerk

"APPENDIX E"

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

TRAVIS J. MARRON, No. 1091504

Petitioner

v. Civil No. CL17-4298

COMMONWEALTH OF VIRGINIA,

Respondent

FINAL ORDER

Upon mature consideration of Travis Jackson Marron's "Motion to Vacate" (Motion), the motion of the Attorney General, and the authorities cited therein, a review of the records in Case Nos. 97-3158 through 97-3161 and Case No. CL00-896, which are hereby made a part of the record in this matter, this Court finds as follows:

Travis Jackson Marron (the Petitioner) was charged with capital murder, robbery and two related firearm charges. He pled guilty to first-degree murder, robbery and the related firearm charges, Case Nos. 97-3158 through 97-3161. On November 2, 1998, he was sentenced to 75 years on the murder charge (28 years suspended), 25 years for the robbery (25 years suspended), 3 years for the use of a firearm in the commission of murder charge and 5 years for the use of a firearm in the commission of robbery charge. This Court entered judgment on December 7, 1998 imposing those sentences. The Petitioner did not appeal.

Procedural History

On December 16, 1999, the Petitioner, proceeding *pro se*, executed a habeas petition, in which he alleged: he was entitled to a new trial because both of his parents had not been notified of

The Petitioner asserts that his indictments were void *ab initito* because the indictment was not returned in open court and duly recorded in the order book. His Motion is untimely under Rule 1:1, and it is also without merit.[2]

The Petitioner Waived any Error Regarding Indictment by the Grand Jury

The Petitioner waived any claim he might have had concerning the adequacy of the indictments by not raising it at trial and pursuing it on appeal. The Petitioner correctly notes the Virginia Supreme Court in Simmons v. Commonwealth, 89 Va. 156, 15 S.E. 386 (1892) vacated the defendant's conviction in that appeal because the record did not affirmatively demonstrate, by an entry in the order book, that the indictment had been returned by the grand jury into open court. Id. at 158, 15 S.E. at 387. (Motion at 7). The Petitioner, however, fails to appreciate that the defendant in Simmons had objected at trial and pursued relief by direct appeal – whereas the Petitioner waited more than 18 years and sought relief by motion to vacate, which is a collateral challenge rather than a direct remedy. Significantly, subsequent to Simmons, the Virginia Supreme Court limited the holding in Simmons to assertions of error raised on direct appeal. See Hanson v. Smyth, 183 Va. 384, 390, 32 S.E.2d 142, 144 (1944) (alleged failure to return an indictment in open court and have it recorded in the order book "may be attacked only directly by an appeal from the judgment of conviction" and not collaterally).

The prisoner in Hanson asserted the same argument as the Petitioner – that his sentence was void because "the record fail[ed] to show that the indictment upon which he was tried, convicted and sentenced . . . was returned by the grand jury into open court and their finding properly

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[2] Marron has also file another Motion to Vacate in this Court challenging his convictions on a different ground. Case No. CL17-4297.

recorded." 183 Va. at 389, 32 S.E.2d at 144 (citations omitted). Nevertheless, the Virginia Supreme Court distinguished its prior cases and rejected Hanson's assertion that his conviction was void.

> In the first place ... in the absence of a constitutional provision that a felony may be prosecuted only by indictment, ***a judgment of conviction is not amenable to a collateral attack in a habeas corpus proceeding on the ground that there is no proper record of the fact that the grand jury found an indictment against the accused. Such irregularity or defect may be attacked only directly by an appeal from the judgment of conviction.***
>
> ....
>
> 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.

183 Va. at 390-91, 32 S.E.2d at 144 (citations omitted, emphasis added). See Council v. Smyth, 201 Va. 135, 139, 109 S.E.2d 116, 119 (1959) ("Since a person charged with a felony may waive indictment by a grand jury and elect to be tried on a warrant or information, the requirement of an indictment is not jurisdictional."); see also Thornhill v. Smyth, 185 Va. 986, 989-90, 41 S.E.2d 11, 13 (1947) (violations of statutory rights will not be noticed in collateral attacks). Accordingly, assuming the Petitioner's allegation that the indictments were not properly returned in open court and recorded as "true bills" is true, he waived the alleged error by not raising it at trial and pursuing it on appeal. See Epps v. Commonwealth, 66 Va. App. 393, 400, 785 S.E.2d 792, 795 (2016) ("because an indictment may be waived, it is not jurisdictional.... [and] '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.'") (quoting Hanson, 183 Va. at 390-91, 32 S.E.2d at 144), aff'd, 293 Va. 403, 799 S.E.2d 516 (2017) (holding failure to object until after conviction waives defects to manner in which indictment was returned).

Yeatts v. Murray, 249 Va. 285, 455 S.E.2d 18 (1995); Arey v. Peyton, 209 Va. 370, 164 S.E.2d 691 (1968).

For the reasons stated, it is **ADJUDGED** and **ORDERED** that Marron's Motion is hereby **DENIED** and **DISMISSED** as untimely under Rule 1:1. Pursuant to Rule 1:13, the Court dispenses with the endorsement of the Petitioner, and this matter is stricken from the docket of this Court.

The Clerk is directed to forward a certified copy of this Final Order dismissing Marron's Motion to the Petitioner and Michael T. Judge, Senior Assistant Attorney General.

Entered this 14th day of Feb., 2018

By: _____
Judge

I ask for this:

_____
MICHAEL T. JUDGE – VSB No. 30456
Senior Assistant Attorney General
Office of the Attorney General
202 N. Ninth Street
Richmond, Virginia 23219
(804) 786-2071; FAX (804) 371-0151
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Counsel for Respondent

CERTIFIED TO BE A TRUE COPY
OF THE RECORD IN MY CUSTODY
ALAN P. KRASNOFF, CLERK
CIRCUIT COURT, CHESAPEAKE, VA
BY: _____
DEPUTY CLERK

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