

No. 20-6112
(1:19-cv-01633-LO-TCB)

IN THE SUPREME COURT OF THE UNITED STATES

DARRIS ALTONY NEWSOME - PETITIONER

v.

HAROLD CLARKE - RESPONDENT(S)

CASE NUMBER:

(To be supplied by CLERK)

ON PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DARRIS ALTONY NEWSOME
LAWRENCEVILLE CORRECTIONAL CENTER
1607 PLANTERS ROAD
LAWRENCEVILLE, VIRGINIA 23868

REQUEST FOR ORAL ARGUMENT

PETITIONER REQUEST TO PRESENT ORAL ARGUMENT ON THE MOTIONS PENDING BEFORE THIS HONORABLE COURT, DUE TO NO PARTY SHALL BE DEPRIVED OF THE OPPORTUNITY TO PRESENT ITS POSITION ON THE MERITS OF A MOTION TO ASSURE FAIRNESS TO ALL PARTIES.

THIS APPEAL CONCERNS THE ISSUES OF BEING CONVICTED OF CRIMINAL CHARGES, BUT WAS IN THE VIRGINIA DEPARTMENT OF CORRECTIONS. INEFFECTIVE ASSISTANCE OF COUNSEL, DUE TO TRIAL COUNSEL ENGAGE IN CONDUCT INVOLVING DISHONESTY THAT TAINTED THE WHOLE TRIAL PROCESS, COUNSEL FAILED TO INTERVIEW AND CALL WITNESS MS. JOYCE TIEDGE WHO WOULD HAVE DISCREDITED ALLEGED VICTIM'S TESTIMONY. PETITIONER'S FIFTH AMENDMENT WAS VIOLATED, DUE TO DOUBLE JEOPARDY, FOURTH AMENDMENT VIOLATED, DUE TO LACK OF PROBABLE CAUSE TO INITIATE CRIMINAL PROCEEDING, UNREASONABLE SEIZURES AND ARREST. THE ALLEGED VICTIM TESTIMONY CHANGE, BUT PETITIONER CLAIM NOT GUILTY OF CHARGES. ORAL ARGUMENT WOULD ASSIST THE COURT IN DETERMINING THE MERITS OF THE ISSUES.

Table of Contents	PAGE(S)
REQUEST FOR ORAL ARGUMENT	i
Table of Authorities	ii, iii
JURISDICTIONAL STATEMENT	20
STATEMENT OF THE CASE	21, 22
QUESTION PRESENTED	iii, iv, v
ARGUMENT AND AUTHORITIES NUMBER ONE	1, 2
ARGUMENT AND AUTHORITIES NUMBER TWO	3, 4
ARGUMENT AND AUTHORITIES NUMBER THREE	4, 5
ARGUMENT AND AUTHORITIES NUMBER FOUR	5-8
ARGUMENT AND AUTHORITIES NUMBER FIVE	9, 10
ARGUMENT AND AUTHORITIES NUMBER SIX	11
ARGUMENT AND AUTHORITIES NUMBER SEVEN	12, 13
ARGUMENT AND AUTHORITIES NUMBER EIGHT	13, 14
ARGUMENT AND AUTHORITIES NUMBER NINE	14, 15

Table of Contents

PAGE(S)

Argument and Authorities Number TEN 15, 17

Argument and Authorities Number ELEVEN 17-19

Conclusion 22

Certificate of Compliance 28

Certificate of Service 27

Reasons for Granting the Petition 23, 24

Index To Appendices iiiii

Opinions Below 20

Reasons for Granting the Petition 23, 24

Table of Authorities

PAGE(S)

CASES

CLINEBELL V. COMMONWEALTH, 3 VA. App. 382 S.E. 2d 676

(1986) 11

United States Constitution V 11

Code of Virginia 53.1-202.2 14

Code of Virginia 53.1-40.01 14

Code of Virginia 53.1-165.1 14

Code of Virginia 8.01-229(D) 1

Code of Virginia 8.01-390 12, 13

Code of Virginia 18.2-61 16

Code of Virginia 18.2-67.2 2, 4, 11, 16

Code of Virginia 18.2-370.1 2, 4, 11, 16

Code of Virginia 18.2-461 8

Rules

RULE 5A:18 5, 19

Table of Authorities

PAGE(S)

RULE(S)

Rule 5:25

2

Statute

28 U.S.C. 2254

1

INDEX TO APPENDICES

Appendix A - United States Court of Appeals For The Fourth Circuit

Appendix B - United States Court of Appeals For The Fourth Circuit

Appendix C - United States Court of Appeals For The Fourth Circuit

Appendix D - United States District Court For The Eastern District of VA.

Appendix E - United States District Court For The Eastern District of Virginia

Appendix F - United States Court of Appeals For The Fourth Circuit

Appendix G - United States District Court For The Eastern District of Virginia

Appendix H - United States Court of Appeals For The Fourth Circuit

Appendix I - United States Court of Appeal For The Fourth Circuit

Appendix J - United States District Court For The Eastern District of Virginia

Appendix K - United States Court of Appeals For The Fourth Circuit

Appendix L - United States Court of Appeals For The Fourth Circuit

Appendix M - United States Court of Appeals For The Fourth Circuit

Appendix N - PER CURIAM

Appendix O - SUPREME COURT OF VIRGINIA

Appendix P - COURT OF APPEALS OF VIRGINIA

QUESTIONS PRESENTED

1. Did the Courts ERRED in the opinion that petitioner's petition was dismissed as untimely, unauthorized and successive, and denied relief on procedural grounds, and dismissed without prejudice?
2. Did the Courts proceedings resulted in a decision that was based on an UNREASONABLE DETERMINATION OF FACTS, that involves a set of facts different from those of the case in which the principle was ANNOUNCED?
3. Can Trial Court maintain a convictions where petitioner was in the Department of Corrections in the time in question?
4. Did trial counsel render ineffective assistance of counsel, when he engage in conduct that was prejudicial to the administration of justice involving misrepresentation, dishonesty, concealment of material fact involving a corruption of the truth seeking function of the trial process?
5. Did trial counsel denied petitioner's his right to call all of his witnesses at trial for evidence in his favor?
6. Did Trial Court ERRED in violating petitioner's Fifth Amendment, due to double jeopardy of multiple offenses within one time period?
7. Did the Circuit Court for the City of Hampton ERRED by refusing petitioner to introduce into evidence a document, that verify all incarceration dates that shows petitioner was incarcerated when alleged offense occurred?

8. Did the Courts ERRED when Courts) determination of Facts Factual Finding WERE UNREASONABLE when the Court made the Findings without holding an EVIDENTIARY HEARING?
9. Did TRIAL Court in petitioner NON-CAPITAL FELONY TRIAL ERRED IN REFUSING to instruct the JURY that PAROLE WAS ABOLISHED?
10. CAN petitioner's CONVICTIONS AND SENTENCES BE VOID, BECAUSE the INDICTMENTS FAILED to CHARGE AN OFFENSE?
11. CAN the Court initiate CRIMINAL PROCEEDINGS AGAINST petitioner with LACK OF PROBABLE CAUSE?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

1. Did the Courts ERRED in the opinion that PETITIONER'S petition WAS DISMISSED AS UNTIMELY, UNAUTHORIZED AND SUCCESSIVE, AND DENIED RELIEF ON PROCEDURAL GROUNDS, AND DISMISSED WITHOUT PREJUDICE?

PETITIONER ARGUE his 28 U.S.C. 2254 petition WAS TIMELY FILED CHALLENGING his CONVICTIONS THAT WAS DISMISSED AS UNTIMELY, WITHOUT PREJUDICE. PETITIONER USE his FIRST 2254 WRIT OF HABEAS CORPUS CLAIM SOLELY TO REINSTATE his RIGHT TO DIRECT APPEAL ALLEGES, SUCH AS INEFFECTIVE ASSISTANCE OF COUNSEL, TIME BAR, AND STATUTE OF LIMITATION.

PETITIONER ARGUE his petition WAS TIMELY FILED, DUE TO MS. CAROL JENKINS AND MS. MYRTLE MARTIN WHO INVESTIGATED AND RESEARCH MY CASE AND ON OR SEPTEMBER 20 AND 21 2018, I RECEIVED DOCUMENTS AND THE ONE YEAR FOR FILING his petition FOR WRIT OF HABEAS CORPUS BEGAN TO RUN FROM THE DATE HE LEARNED DEFENDANT'S ACTIONS OF OBSTRUCTION THE FILING OF his ACTIONS, AND DID NOT APPLY THE LIMITATION PERIOD FOR FILING PETITIONS FOR HABEAS CORPUS RELIEF. EXHIBIT 1, 2, 3, 4. EVIDENCE SUPPORTING MS. CAROL JENKINS, MS. MYRTLE MARTIN, AND DETECTIVE RANDY MAYER WAS OBTAINED FROM THE INTERNET. THE VIRGINIA DEPARTMENT OF CORRECTIONS DOES NOT PROVIDE ANY PRISONER WITH ACCESS TO THE INTERNET. THE VIRGINIA FREEDOM OF INFORMATION ACT EXCLUDES ANYONE WHO IS INCARCERATED IN LOCAL, STATE OR FEDERAL INSTITUTION FROM UTILIZING THE ACT TO OBTAIN MY INFORMATION. THE UNITED STATES SUPREME COURT NOTED THAT WHILE CONFINED TO PRISON, THE PRISONER IS IN NO POSITION TO DEVELOP THE EVIDENTIARY BASIS FOR A CLAIM OF INEFFECTIVE ASSISTANCE, WHICH OFTEN TURN ON EVIDENCE OUTSIDE TRIAL RECORD.

PETITIONER ALSO ARGUE THAT his petition WAS TIMELY FILED UNDER CODE OF VIRGINIA 8.01-229(2) AND IS NOT A SUCCESSIVE HABEAS. OBSTRUCTION OF FILING BY DEFENDANTS - USING ANY OTHER DIRECT OR INDIRECT MEANS TO OBSTRUCT THE FILING OF AN ACTION, THEN THE TIME THAT SUCH OBSTRUCTION HAS CONTINUED SHALL NOT BE COUNTED AS ANY PART OF THE PERIOD WITHIN WHICH THE ACTION

must be brought. The Commonwealth as the responding party knowingly used perjured testimony at trial, and failed to correct it, which affected the judgment of the jury. When at jury trial on July 12, 2011 A.H.'s testimony under oath; Question: Okay. And did something unusual happen in your relation with your father between the ages of nine and a half and ten? Answer: Yes I was raped by my father. Question: Tell me your date of birth? Answer: 10-11-85. Trial Transcript pg. 84 exhibit 5 Commonwealth knew petitioner was incarcerated in the Virginia Department of Corrections at the time of the alleged offenses, and yet stood mute as petitioner was wrongfully convicted of criminal offenses, which is said to have occurred when he was incarcerated. This fact constitutes obstruction. On November 1, 2010 Grand Jury Return a True Bill Finding; indictment number: 1011-061 charges that on or between April 1, 1995 through October 11, 1995; indictment number: 1011-065 charges that on or between April 1, 1995 through October 11, 1995. Exhibit 6, 7 Petitioner's certified and authenticated transfer history document from the Virginia Department of Corrections clearly shows petitioner was specifically incarcerated between April 14, 1993 through December 28, 1995, which is the time period in question. Exhibit 8 which is obstruction by the Commonwealth. On July 12, 2011 petitioner was tried and convicted by a jury. Petitioner was found guilty of offenses where the evidence demonstrated he could not be convicted. Petitioner argue a miscarriage of justice has occurred, and ask this Honorable Court to invoke the exceptions of Rule 5A:18 to meet the ends of justice, because the evidence established that no element of the crime occurred and the Commonwealth cannot sustain a conviction under Code of Virginia 18.2-370.1 and Code of Virginia 18.2-67.2. Exhibit 6, 7 Rule 5:25 Allows consider matters not presented/preserved for appeal to attain the ends of justice. Failure to apply the ends of justice provision would result in a grave injustice.

2

Did the Courts proceedings resulted in a decision that was based on an UNREASONABLE DETERMINATION OF FACTS, that involves a set of facts different from those of the case in which the principle was ANNOUNCED? STATE COURT FACT FINDING PROCEDURE did not ADEQUATELY PROVIDE A FULL AND FAIR PROCEEDING. This HONORABLE COURT is NOT REQUIRED to believe the testimony of A.H., which WAS RIFE with CONTRADICTIONS AND INCONSISTENCIES, AND NO REASONABLE FINDER OF FACT would HAVE FOUND PETITIONER guilty based on the EVIDENCE. It is VERY improbable that ANY OFFENSE was COMMITTED AGAINST A.H.

ON OCTOBER 18, 2010 PRELIMINARY HEARING: A.H. TESTIMONY UNDER OATH: QUESTION:

OKAY. And this first incident you talked about, do you know what year that was? ANSWER: I DON'T KNOW THE YEAR OFF HAND, but I KNOW that I WAS NINE

AND A HALF. QUESTION: OKAY. NOW how do you REMEMBER that you WERE NINE

AND A HALF? ANSWER: TEN, BECAUSE I REMEMBER I WAS going to HAVE A birthday.

THE birthday CAME AFTERWARDS. QUESTION: HOW do you REMEMBER it WAS your

TENTH birthday? ANSWER: I STARTED my cycle like AROUND ABOUT that TIME. QUESTION:

WHAT do you MEAN? ANSWER: I STARTED my MENSTRUAL cycle. QUESTION: WHEN?

ANSWER: RIGHT BEFORE my TENTH birthday. PRELIMINARY HEARING pg. 24; 25. Exhibit

9, 10, 19? PETITIONER'S transfer history document clearly shows he WAS INCARCERATED

SPECIFICALLY BETWEEN April 14, 1993 THROUGH DECEMBER 28, 1995. THE transfer RECORD FROM THE DEPARTMENT OF CORRECTIONS is CERTIFIED AND AUTHENTICATED. Exhibit

8 This HONORABLE COURT should NOT BE COMPELLED to ACCEPT AS TRUE what in the NATURE OF things could NOT HAVE OCCURRED in the MANNER AND UNDER the

CIRCUMSTANCE A.H. TESTIFY. QUESTION: And you didn't know, I think you said MR.

NEWSOME WAS YOUR-- OR didn't believe he WAS your FATHER until you WERE how old?

ANSWER: I didn't know FOR SURE he WAS my dad until I WAS like MAYBE ELEVEN

I GUESS TWELVE. QUESTION: WHAT'S your GRANDFATHER'S NAME? ANSWER: FRANK

NEAL NEWSOME. PRELIMINARY HEARING AT 28, 29 Exhibit 11, 12, 13 A.H. GRANDDADDY

NAME is MR. FERDINAND LAVEL NEWSOME who WAS called AS A witness FOR the

DEFENSE. CROSS EXAMINATION OF A.H. TESTIMONY: QUESTION: NOW YOUR DATE OF BIRTH IS 10-11-85 CORRECT? ANSWER: Uh-huh. QUESTION: ELEVEN OR TWELVE SO IT WOULD BE LIKE '96, '97 WHEN YOU WERE ELEVEN OR TWELVE? ANSWER: I DON'T KNOW, I KNOW I WAS ELEVEN OR TWELVE WHEN ME AND MY MOTHER AND HIM WENT TO DO A DNA TEST. QUESTION: WOULD IT SURPRISE YOU IF I WERE TO TELL YOU THAT THE DATE THAT ACTUALLY OCCURRED THAT DNA TEST WAS SOME TIME SHORTLY BEFORE MARCH 27, 2003. ANSWER: I DON'T KNOW 2003? QUESTION: 2003. LET ME SHOW COUNSEL? EXHIBIT 14, 15. THIS DOCUMENT CLEARLY SHOWS THE DNA TEST WAS DONE WHEN A.H. WAS 18 YEARS OLD NOT TWELVE, A.H. MOTHER'S BOYFRIEND RISE HER WITH HIS SON, AND THIS DOCUMENT WOULD HAVE CREATED A REASONABLE PROBABILITY OF A DIFFERENT OUTCOME HAD THE EVIDENCE BEEN RECEIVED. COMMONWEALTH WAS WELL AWARE OF THE TRANSFER HISTORY DOCUMENT, ALLEGED VICTIM TESTIMONY, BUT FAILED TO CORRECT IT, THE COMMONWEALTH FAILED TO RECALL THE EVIDENCE, WHICH ESTABLISHES BOTH THAT THE EVIDENCE WAS AVAILABLE PRIOR TO JUDGMENT, AND THAT THE COMMONWEALTH FAILED TO ACT WITH DILIGENCE. PETITIONER WAS CONVICTED OF A CRIME OF WHICH UNDER THE EVIDENCE HE COULD NOT PROPERLY BE FOUND GUILTY. THE JURY SHOULD HAVE BEEN GIVEN THE TRUE FACTS, AND THE OPPORTUNITY TO CONSIDER ALL FACTORS CONCERNING PETITIONER ON THE 12TH OF JULY 2011 IN RENDERING THEIR DECISION. COUNSEL PRECLUDE PETITIONER THE OPPORTUNITY TO PRESENT THIS INFORMATION TO THE JURY, WHICH CAUSE AN UNJUST AND UNFAIR TRIAL.

3. CAN TRIAL COURT MAINTAIN A CONVICTION WHERE PETITIONER WAS IN THE DEPARTMENT OF CORRECTIONS IN THE TIME IN QUESTION? THE VERDICT OF THE JURY SHOULD BE SET ASIDE, BECAUSE IT IS CONTRARY TO HUMAN EXPERIENCE, LAW OF NATURE AND UNSUPPORTED IN LAW AND FACTS. ON THE 12TH DAY OF JULY, 2011, PETITIONER WAS TRIED BY A JURY ON CODE OF VIRGINIA 18.2-370.1 BETWEEN THE DATES OF APRIL 1, 1995 THROUGH OCTOBER 11, 1995; AND CODE OF VIRGINIA 18.2-67.2 BETWEEN THE DATES OF APRIL 1, 1995 THROUGH OCTOBER 11, 1995. PETITIONER PLEADED "NOT GUILTY". A.H. DESCRIBED IN DETAIL WHAT SHE

alleged to happened, but evidence shows petitioner's certified and authenticated transfer history document from the Virginia Department of Corrections, clearly shows petitioner was incarcerated in the Department of Corrections from April 14, 1993 through December 28, 1995. Therefore petitioner could not have committed the charged offenses against A.H. exhibit 8. The evidence is insufficient to sustain the verdict. Petitioner argue he is being illegal detain, and a miscarriage of justice has occurred and argue that this Honorable Court should invoke the exceptions to Rule 5A:18 to meet the ends of justice.

4. Did trial counsel render ineffective assistance of counsel, when he engage in conduct that was prejudicial to the administration of justice involving misrepresentation, dishonesty, concealment of material fact involving a corruption of the truth seeking function of the trial process? Petitioner admits he was not incarcerated when A.H. alleged the next incidents two years later. A.H. was eighteen years old when I found out she was my daughter, and her mother's boyfriend raised her with his son by her mother. A.H. was twenty-six (26) years old at time of trial. Commonwealth improperly treated the alleged victim A.H. testimony as truth rather than A.H. version of disputed events. On July 12, 2011 during jury trial cross examination of A.H.'s testimony under oath;
- Question: you mentioned that you didn't realize that petitioner was your father until you were about eight and that you knew through DNA test that he was your father for sure when you were about twelve is that correct? Answer: eleven or twelve it was one of them. Question: Now your date of birth is 10-11-85 correct? Answer: Uh-huh. Question: and eleven or twelve that would make it about 1997 is that correct? Answer: I don't know. Question: eleven or twelve so it would be like '96, '97 when you were eleven or twelve? Answer: I don't know. I know I was eleven or twelve when me and my mom and him went to do a DNA test.

Question: Would it surprise you if I were to tell you that the date that actually occurred that DNA test was some time shortly before March 27th of 2003? Answer: I don't know 2003? Question: 2003. Let me show counsel? Ms. MAW: Judge, I would ask for the jury to be excused, and to have a matter brought up before the court. The Court: All fourteen members of the jury have left the courtroom. Ms. MAW: Judge the Commonwealth's position is there is a mutual discovery order in place and now the defense has given me some type of summons to Mr. Newsome regarding a DNA test, which you know I don't know who this is in relation to. The Court: May I see it? Mr. Allen: And your Honor that from JDR Court, they actually don't have his file. They've lost it. That was something that I was able to pick up through my own efforts, and it's certainly not any effort to. The Court: How do I know it applies to this person? Mr. Allen: I believe it has her name on it, if I'm not mistaken. The Court: I didn't see it. Mr. Allen: I could be mistaken in that regard. I thought it had at least the mother's name on there. The Court: Because there is evidence that he has more than one child. Mr. Allen: That is a good point your Honor absolutely. Ms. MAW: I would move to strike. The Court: Anything else Mr. Allen? Mr. Allen: Nothing on this. The Court: Alright, motion to strike is granted. Ms. MAW: Judge, excuse me I would ask the court to strike for the jury all statements regarding some alleged DNA test that is not coming into evidence. The Court: That is correct ladies and gentlemen, the evidence about an alleged DNA test taken in 2003 will not come into evidence Mr. Allen you may proceed. TRIAL TRANSCRIPT pg. 118-119 exhibit 16, 17 DARRIS ALTONY NEWSOME REDIRECT EXAMINATION; Question: Mr. Newsome just very briefly, when you went back to court in 2003 for child support or not back to court, when you went to court in 2003 for child support were you ordered to pay any child support? Answer: Yes I was. Question: For how long? Answer: For about eight months and pay dental and pay for DNA test. TRIAL TRANSCRIPT pg. 192 exhibit 18 A.H.'s mother testified she knew the defendant was A.H. father, but she also knew a DNA test would be needed to prove it to him; she did not recall when the test was done. (App. 149-150). A.H. testified she was 11 or 12 years

old when she her mother and Newsome had the test done. (App.123). The Trial Court did not allow into evidence a document that purportedly showed the DNA test was done in March of 2003, because it contained no information identifying A.H. or her mother and there was other evidence Newsome had more than one child. (App.123-125).

Counsel had access to all court documents from the JDR Court pertaining to petitioner for Order Determining Parentage (DNA test) that clearly shows that the test was order in 2003 and not order in 1997 as the alleged victim A.H. testified it was done for sure when she was eleven or twelve years old. Order for Discovery and Inspection pursuant to Rule 3A:11 of the Rules of the Supreme Court of Virginia was entered 8th day of July, 2011. Exhibit 20 ORDER DETERMINING PARENTAGE DNA test was in the order for discovery, which was available prior to judgment, but counsel failed to introduce it into evidence, and correct A.H. testimony, which cause

an unjust and unfair trial for petitioner. Exhibit 15 During trial defense counsel engage in conduct involving dishonesty, misrepresentation, concealment of material facts, and misconduct prejudicial to the administration of justice, when Mr. Allen stated to the court, "And your honor, that from JDR Court, they actually don't have his file. They've lost it." Trial Transcript pg. 118 Exhibit 16 Trial counsel was well

aware of the ORDER DETERMINING PARENTAGE DNA test, but told the court, "your honor that from JDR Court, they actually don't have his file. They've lost it, which place his representation below the standard as required of counsel, and lack of desire to tell the truth is deficient performance. Trial counsel is an officer of the legal system and should conform to the requirement of the law. Every lawyer is

responsible for observance of the rules of professional conduct. Mr. Allen failed to follow the rules of professional conduct, which prejudice petitioner. Document was material and there was a reasonable probability that had the document been presented at trial to the jury, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine the confidence in the outcome as in this case. Trial counsel intentionally and knowingly

CONCEAL THIS INFORMATION AT TRIAL TO KEEP THE JURY FROM LEARNING THE TRUE FACTS THAT FULLY CORROBORATED PETITIONER'S STATEMENT THAT HE DID NOT KNOW A.H. WAS HIS DAUGHTER UNTIL 2003 WHEN HE BECAME A PART OF HER LIFE AT 18 YEARS OLD NOT 11 OR 12 YEARS OLD AS A.H. TESTIFIED AT TRIAL. A.H. MOTHER'S BOYFRIEND RISE HER ALONG WITH HIS SON, BECAUSE HE WAS TOLD BY A.H. MOTHER SHE WAS HIS DAUGHTER NOT MINE ALL THESE YEARS.

IN ADDITION TO TRIAL COUNSEL COMMITTED PERJURY TO THE COURT, AND CONCEALMENT OF A MATERIAL FACT, WHEN MR. ALLEN TOLD THE COURT "YOUR HONOR THEY ACTUALLY DON'T HAVE HIS FILE. THEY'VE LOST IT. EXHIBIT 16 ALLEGED VICTIM A.H. TESTIFIED THAT HER GRANDDADDY NAME IS FRANK NEAL NEWSOME PRELIMINARY HEARING pg. 29 EXHIBIT 12 A.H. GRANDDADDY NAME IS MR. FERDINAND LAVEL NEWSOME WHO WAS CALLED AS A WITNESS FOR THE DEFENSE TRIAL COUNSEL KNEW THIS, BUT FAILED TO CORRECT IT. EXHIBIT 14 TRIAL TRANSCRIPT pg. 169.

A.H. WAS CHARGE WITH DID UNLAWFULLY IN VIOLATION OF SECTION 18.2-461 CODE OF VIRGINIA KNOWINGLY GIVE A FALSE REPORT AS TO THE COMMISSION OF A CRIME TO A LAW ENFORCEMENT OFFICIAL WITH THE INTENT TO MISLEAD. EXHIBIT 3 A.H. TESTIMONY AT TRIAL; QUESTION: OKAY. AND DID SOMETHING UNUSAL HAPPEN IN YOUR RELATIONSHIP WITH YOUR FATHER BETWEEN THE AGES OF NINE AND A HALF AND TEN? ANSWER: YES. I WAS RAPED BY MY FATHER. QUESTION: TELL ME YOUR DATE OF BIRTH? ANSWER: 10-11-85. TRIAL TRANSCRIPT pg. 84 EXHIBIT 5, BUT THE EVIDENCE PROVE IT WAS IMPOSSIBLE, DUE TO PETITIONER WAS INCARCERATED IN THE VIRGINIA DEPARTMENT OF CORRECTIONS BETWEEN APRIL 14, 1993 THROUGH DECEMBER 28, 1995, WHICH IS THE TIME IN QUESTION, THEREFORE PETITIONER COULD NOT HAVE COMMITTED THE CHARGE OFFENSE, BUT TO THE PRESENT DAY IS ILLEGAL DETAIN IN THE VIRGINIA DEPARTMENT OF CORRECTIONS. EXHIBIT 8 TRIAL COUNSEL WAS AWARE OF THE DOCUMENT, AND A.H. PERJURY TESTIMONY AND FAILED TO CORRECT IT, WHICH CAUSE A CORRUPTION OF THE TRUTH SEEKING FUNCTION OF THE TRIAL PROCESS, THAT MADE IT IMPOSSIBLE FOR PETITIONER TO RECEIVE A FAIR TRIAL, BECAUSE TRIAL COUNSEL STATEMENT AFFECTED THE JUDGMENT OF THE JURY.

5. Did trial counsel denied petitioner's his right to call all of his witnesses at trial for evidence in his favor? Petitioner is entitled to have trial counsel interview and call available witnesses for the defense. The right to offer the testimony of witnesses and compel their attendance if necessary is in plain terms the right to present a defense, and is a fundamental element of due process. Petitioner was denied that right. The right to present the defendant's version of the facts as well as the Commonwealth's to the jury, so it may decide where the truth lies. Just as an accused have a right to confront the prosecution's witnesses for the purpose of challenging their testimony. In the present matter on the 12th of July, 2011 during jury trial direct examination of A.H. testimony under oath, Question: Okay. And did something unusual happen in your relationship with your father between the ages of nine and a half and ten? Answer: Yes. I was raped by my father. Question: Tell me your date of birth? Answer: 10-11-1985. Trial Transcript pg. 84 exhibit 5 Cross examination of A.H. testimony under oath, Question: Ms. Haynes Worth do you recall the first -- let me back up start again. you mentioned that this first incident occurred when you were nine and a half to ten years old is that correct? Answer: Yes. Question: And again with your birthday being October 11th of 1985, that would put the date range of somewhere between April 1st of 1993 and October 11, 1995 is that correct? Answer: I don't know. I know I was nine and a half or ten. Question: So ten years from 1985 would be that same date in 1995 correct? Answer: Uh-huh. Question: And then take away six months that would be about April 1st of 1995 correct. Answer: Uh-huh. Question: Okay. so between April 1, 1985 and October 11, 1995 when you describe this incident occurred you recall didn't have a lot of significant contact with your father Darris Newsome did you? Answer: you say when it occurred? Question: During that time frame that we're talking about you didn't have a lot of contact with him did you? Answer: I would see him like I said

HE WOULD COME BY MY AUNT HOUSE OR I WOULD GO TO HIM AND HIS GIRLFRIEND HOUSE. TRIAL TRANSCRIPT pg. 118-121 exhibit 16, 17, 21. TRIAL COUNSEL FAILED TO SEEK A CONTINUANCE IN ORDER TO PRESENCE WITNESS MS. JOYCE TIEDE, WHO WOULD HAVE REBUTTED THE STATE'S WITNESS A.H. AT TRIAL WHERE EVIDENCE AGAINST PETITIONER WAS INCONSISTENT AND AMBIGUOUS. TRIAL COUNSEL DID NOT INTERVIEW OR CALL AS AN KNOWN WITNESS MS. JOYCE TIEDE FROM THE VIRGINIA DEPARTMENT OF CORRECTIONS, WHO WAS REQUESTED BY PETITIONER. EXHIBIT 22, 23 HAD MS. JOYCE TIEDE BEEN CALLED AS A WITNESS, MS. JOYCE TIEDE WOULD HAVE EXERCISED HER RIGHT TO TESTIFY. MS. JOYCE TIEDE WOULD HAVE COME TO COURT AND INTRODUCE INTO EVIDENCE PETITIONER'S CERTIFY AND AUTHENTICATED TRANSFER HISTORY DOCUMENT FROM THE VIRGINIA DEPARTMENT OF CORRECTIONS TO CONFIRM ALL OF DARRIS ALTONY NEWSOME INCARCERATION DATES. TRANSFER HISTORY DOCUMENT CLEARLY SHOWS PETITIONER WAS IN THE DEPARTMENT OF CORRECTIONS BETWEEN APRIL 14, 1993 THROUGH DECEMBER 28, 1995, WHICH IS THE TIME PERIOD IN QUESTION. EXHIBIT 8 HAD MS. JOYCE TIEDE BEEN CALLED AS A WITNESS MS. JOYCE TIEDE'S TESTIMONY WOULD BE THAT PETITIONER WAS IN THE DEPARTMENT OF CORRECTIONS FROM APRIL 14, 1993 THROUGH DECEMBER 28, 1995, WHICH WAS THE TIME PERIOD IN QUESTION. MS. JOYCE TIEDE TESTIMONY WOULD HAVE SHOWN THE ALLEGED VICTIM A.H. TESTIMONY TO BE INHERENTLY INCREDIBLE, EVIDENCE TO BE A PHYSICAL IMPOSSIBILITY, WHAT IN THE NATURE OF THINGS COULD NOT HAVE OCCURRED, AND CONTRARY TO HUMAN EXPERIENCE. MS. JOYCE TIEDE WOULD HAVE COMPLETE ELIMINATED THE VICTIM A.H.'S TESTIMONY THAT SHE WAS RAPED BY HER FATHER BETWEEN THE AGES OF NINE AND A HALF TO TEN YEARS OLD, DUE TO PETITIONER WAS INCARCERATED IN THE DEPARTMENT OF CORRECTIONS. HAD MS. JOYCE TIEDE BEEN CALLED AS A WITNESS MS. JOYCE TIEDE'S TESTIMONY WOULD HAVE CREATED A REASONABLE PROBABILITY OF A DIFFERENT OUTCOME, HAD MS. JOYCE TIEDE TESTIMONY AND TRANSFER HISTORY DOCUMENT BEEN PRESENTED TO THE JURY, WHICH CAUSE AN UNJUST AND UNFAIR TRIAL FOR PETITIONER, BECAUSE IT HAD AN EFFECT ON THE JUDGMENT OF THE COURT, DUE TO IT INVOLVED A CORRUPTION OF THE TRUTH SEEKING FUNCTION OF THE TRIAL PROCESS. BY IMPENDING PETITIONER FROM BEING ABLE TO CALL MS. JOYCE TIEDE PETITIONER'S DUE PROCESS WAS VIOLATED, AND HIS ABILITY TO HAVE A FAIR TRIAL BEFORE A TRIER OF FACTS.

6. Did Trial Court ERRED in violating petitioner's Fifth Amendment, due to double jeopardy of multiple offenses within one time period? Double jeopardy bars successive prosecution for greater and lesser included offenses. Lesser included offense is one that does not require proof of elements beyond those required by the greater offense. According to the Court of Appeals ruling in Clinebell, the Commonwealth in the case was allowed to amend the range of dates during which the offenses of statutory rape were alleged to have occurred to avoid a double jeopardy problem so that Mr. Clinebell could be tried and convicted of no more than one offense committed within the period covered by any one indictment, regardless of whether there was proof of a number of similar incidents within a particular period. In the present matter on July 12th 2011 petitioner was tried and convicted by a jury with the date range charged in CR10-1010-061 (in violation of 18.2-370.1) date range of April 1, 1995 through October 11, 1995; date range charged in CR10-1010-065 (in violation of 18.2-67.2) date range of April 1, 1995 through October 11, 1995, which violates the Court of Appeals ruling in Clinebell. Exhibit 6, 7 Date range charged in CR10-1010-062 (in violation of 18.2-61) date range of April 1, 1997 through September 1, 1997; date range charged CR10-1010-066 (in violation of 18.2-67.2) date range of April 1, 1997 through September 1, 1997, which violates the Court of Appeals ruling in Clinebell. Exhibit 24, 25 Date range charged in CR10-1010-063 (in violation of 18.2-370.1) date range of August 15, 1997 through October 1, 1997; date range in CR10-1010-064 (in violation of 18.2-61) date range of August 15, 1997 through October 1, 1997, which violates the Court of Appeals in Clinebell. Exhibit 26, 27 Petitioner argue that double jeopardy protection applies to every indictment, and the United States Constitution Amendment V applies not only to life or limb, but also imprisonment. Petitioner hereby moves this Honorable Court to dismiss three of the six charges alleged to have occurred within a particular period, per the rule articulated by the Virginia Court of Appeals in Clinebell v. Commonwealth, 3 Va. App. 362, S.E. 2d 676 (1986), pertaining to double jeopardy.

7. Did the Circuit Court for the City of Hampton ERRED by REFUSING PETITIONER to introduce into EVIDENCE a document, that VERIFY all INCARCERATION dates that shows PETITIONER WAS INCARCERATED WHEN ALLEGED OFFENSE OCCURRED? The VERDICT of the JURY should be SET ASIDE, BECAUSE it is CONTRARY to the LAW AND the EVIDENCE AND WITHOUT SUFFICIENT EVIDENCE to support it. Code of Virginia 8.01-390 reads: (A) COPIES of RECORDS of the COMMONWEALTH of ANOTHER STATE of the UNITED STATES of ANOTHER COUNTRY OR of ANY political subdivision OR AGENCY of the SAME OTHER THAN THOSE located in a CLERK's OFFICE of a COURT shall be RECEIVED AS PRIM FACIE EVIDENCE provided that such COPIES ARE AUTHENTICATED to be TRUE COPIES EITHER by the CUSTODIAN thereof OR by the PERSON to whom the CUSTODIAN REPORTS if they ARE different. IN the PRESENT MATTER ON July 12, 2011 during JURY trial PETITIONER through COUNSEL attempted to introduce into EVIDENCE a document that purported to be a CERTIFIED AND AUTHENTICATED TRANSFER history document of PETITIONER FROM the VIRGINIA DEPARTMENT of CORRECTIONS. TRIAL TRANSCRIPT July 12 at 121-123. Exhibit 21, 28, 29 The document was prepared by Ms. JOYCE TIEDE, RESEARCH SPECIALIST, CENTRAL CRIMINAL RECORDS VIRGINIA DEPARTMENT of CORRECTIONS; WAS CERTIFIED by Ms. LULA V. JAMES, CUSTODIAN of RECORDS; AND NOTARIZED by Ms. CAROLYN W. MATHIAS, A NOTARY public FOR the COMMONWEALTH of VIRGINIA. TRIAL TRANSCRIPT at 123. PETITIONER ARGUE to this HONORABLE COURT that this document WAS IN COMPLIANCE with all of the provisions of 8.01-390 of the CODE of VIRGINIA, in that the DEPARTMENT of CORRECTIONS is AN AGENCY of the COMMONWEALTH of VIRGINIA, AND that its RECORDS ARE THEREFORE, A RECORD of the COMMONWEALTH. The document WAS ACCOMPANIED by an AFFIDAVIT which WAS sign by AN OFFICER deemed to HAVE CUSTODY of such AN OFFICIAL RECORD, which CONFIRMED that the ATTACHED RECORD WERE TRUE AND ACCURATE COPIES of all INCARCERATION AND TRANSFER RECORDS that ARE KEPT UNDER HER CUSTODY AND PERTAINED to PETITIONER. (CERTIFIED AND AUTHENTICATED). The COMMONWEALTH ACKNOWLEDGED the FACT the PREVIOUS DEFENSE COUNSEL had MADE the COMMONWEALTH AWARE of the FACT that ALIBI EVIDENCE WAS

going to be used (first in open court at the motion for continuance on January 11, 2011). Motion Transcript, January 11, 2011 at 3; At that the Commonwealth had received a copy of the transfer history document from previous defense counsel. Considering the compliance of the transfer history document with all of the provisions of 8.01-390 of the Code of Virginia, its consistence with the Supreme Court's rulings in Williams of 2001. The refusal of the Court to admit the document into evidence prohibited petitioner from adequately presenting alibi evidence, and prevented him from receiving a fair trial and was therefore, an abuse of the trial's court discretion, and a new trial should be granted. Exhibit 8

8. Did the Courts err when the court(s) determination of facts factual finding were unreasonable when the court made the findings without holding an evidentiary hearing? Petitioner requested an evidentiary hearing to be conducted whereas I could be given a chance to clarify the evidence and events that led to ineffective assistance of counsel, wrongful probable cause, time bar, wrongful convictions and sentences. However my request was not addressed by the courts. The denial made it virtually impossible to obtain relief as an incarcerated petitioner, because I am pro-se. In the present matter an
- evidentiary hearing is necessary to give petitioner an opportunity to establish the merits of the claims and resolve any and all disputes of material facts. Courts in habeas proceeding must hold an evidentiary hearing when petitioner alleges facts which if true would entitle him to relief holding that the record does not conclusively demonstrate that petitioner was entitled to no relief and remanding the case. Petitioner disputes the representation of trial counsel by definition, therefore there is a dispute involving material facts in the case, and this court cannot arbitrarily pick one affidavit over another or one version of events over another. Instead the disputed material facts must be presented

to the Court in the form of an evidentiary hearing before the Court can determine the material facts in the case. Thus, petitioner's request for an evidentiary hearing should be granted to provide petitioner an opportunity to develop the claims and litigate the factual disputes in this case.

9. Did Trial Court in petitioner non-capital felony trial erred in refusing to instruct the jury that parole was abolished? Parole was abolished in Virginia pursuant to Virginia Code ANN. 53.1-165.1. Petitioner sentence should be vacated and a new sentencing hearing should be granted. Juries shall be instructed as a matter of law on the abolition of parole for non-capital felony offenses committed on or after January 1, 1995 pursuant to Virginia Code ANN. 53.1-165.1. A jury is required to determine a specific term of confinement that it considers to be an appropriate punishment under all the circumstances revealed by the evidence in a case. A jury should not be required to perform this critical and difficult responsibility without the benefit of all significant and appropriate information that would avoid the necessity that it speculate or act upon misconceptions concerning the effect of its decision. For every person convicted of a non-capital felony offense committed on or after January 1, 1995, the provisions of VA. Code ANN. 53.1-40.01, 53.1-202.2 et. seq., are implicated and conditionally provide for forms of early release and sentence reduction which required to establish the criteria upon which a person shall be deemed to have earned or forfeited sentence credit. In the present matter on the 12th day of July, 2011 petitioner was tried by a jury and convicted on indictment number: 101-061 the Grand Jury charges that on or between April 1, 1995 through October 11, 1995; indictment number: 101-062 the Grand Jury charges that on or between April 1, 1997 through September 1, 1997; indictment number: 101-063 the Grand Jury charges that on or between August 15, 1997 through

OCTOBER 1, 1997; INDICTMENT NUMBER: 1011-064 THE GRAND JURY CHARGES THAT ON OR BETWEEN AUGUST 15, 1997 THROUGH OCTOBER 1, 1997; INDICTMENT NUMBER: 1011-065 THE GRAND JURY CHARGES THAT ON OR BETWEEN APRIL 1, 1995 THROUGH OCTOBER 11, 1995; INDICTMENT NUMBER: 1011-066 THE GRAND JURY CHARGES THAT ON OR BETWEEN APRIL 1, 1997 THROUGH SEPTEMBER 1, 1997. EXHIBIT 6, 7, 24-27 THE ALLEGED VICTIM A.H. WAS TWENTY-SIX (26) YEARS OLD AT THE TIME OF PETITIONER'S TRIAL. A FORM OF EARLY RELEASE, GOOD BEHAVIOR CREDIT, AND A FORM OF SENTENCE REDUCTION WAS AVAILABLE TO A PRISONER UNDER THE ADMINISTRATION OF THE EXECUTIVE BRANCH OF GOVERNMENT. THERE CAN BE NO GUARANTEE THAT A DIFFERENT DEFENDANT WILL EARN SOME FORM OF STATUTORILY PERMITTED EARLY RELEASE FROM THE PUNISHMENT FIXED BY THE JURY AND YET THE JURY MAY ATTEMPT TO FACTOR SOME FORM OF ANTICIPATED EARLY RELEASE INTO ITS DETERMINATION OF PUNISHMENT. TRIAL COURT FAILED TO INSTRUCT THE JURY ON THE ABOLITION OF PAROLE. IT IS AXIOMATIC THAT IT BELONGS TO THE TRIAL COURT TO INSTRUCT THE JURY AS TO THE LAW. WHENEVER THEY REQUIRE INSTRUCTION, OR EITHER REQUIRE IT TO BE GIVEN. JURORS OF REASON WOULD AGREE THAT THEY CONVICTED PETITIONER, BUT MR. NEWSOME IS NOT ELIGIBLE FOR PAROLE. THE JURORS DID NOT CONSIDER THAT IN 1995 TO POSSIBLE 1997 PETITIONER COULD RECEIVE A FORM OF EARLY PAROLE THROUGH GOOD TIME, BUT THE JURORS WAS NOT INFORMED PAROLE WAS ABOLISHED. WHEREFORE, FOR THE FOREGOING REASONS, PETITIONER RESPECTFULLY REQUESTS THAT THIS HONORABLE COURT GRANT A WRIT OF HABEAS CORPUS, VACATE THE PETITIONER'S CONVICTIONS AND ORDER A NEW TRIAL AND SENTENCING.

10. CAN PETITIONER'S CONVICTIONS AND SENTENCES BE VOID, BECAUSE THE INDICTMENTS FAILED TO CHARGE AN OFFENSE? NONE OF THE ELEMENTS THAT DEFINE THE CRIME ARE SET FORTH IN THE INDICTMENT THAT PETITIONER WAS TRIED AND CONVICTED UPON. ELEMENT MEANING ONE OF THE CONSTITUENT PARTS OF A CRIME AS DEFINED BY STATUTE THAT THE PROSECUTION MUST PROVE TO WIN A CONVICTION. THE VERDICT OF THE JURY SHOULD BE SET ASIDE, BECAUSE IT IS CONTRARY TO THE LAW. PURPOSE OF AN

indictment is to give an accused notice of the nature and character of the accusations against him so that he can adequately prepare to defend against his accuser. On November 1, 2010 Grand Jury return a true bill finding: indictment number: 1011-061 (Virginia Code 18.2-370.1) exhibit 6 failed to charge an offense. None of the elements that define the crime are set forth in the indictment. But evidence prove petitioner was incarcerated in the Virginia Department of Corrections between April 14, 1993 through December 28, 1995, due in indictment number: 1011-061 charges that: on or between April 1, 1995 through October 11, 1995. exhibit 8 and no probable cause. Indictment number: 1011-062 (Virginia Code 18.2-61) exhibit 24 failed to charge an offense. None of the elements that define the crime are set forth in the indictment. Indictment number: 1011-063 (Virginia Code 18.2-61) exhibit 26 failed to charge an offense. None of the elements that define the crime are set forth in the indictment. Indictment number: 1011-064 (Virginia Code 18.2-370.1) exhibit 27 failed to charge an offense. None of the elements that define the crime are set forth in the indictment. Indictment number: 1011-065 (Virginia Code 18.67.2) exhibit 7 failed to charge an offense. None of the elements that define the crime are set forth in the indictment. But evidence prove petitioner was incarcerated in the Virginia Department of Corrections between April 14, 1993 through December 28, 1995, due to indictment number: 1011-065 charges that on or between April 1, 1995 through October 11, 1995. exhibit 8. Indictment number: 1011-066 (Virginia Code 18.2-67.2) exhibit 25 failed to charge an offense. None of the elements that define the crime are set forth in the indictment. Petitioner argue that his convictions and sentences are void, because the indictments failed to charge an offense. None of the elements that define the crime are set forth in the indictment that petitioner was tried and convicted upon. If properly informed petitioner could have presented a defense to one of the

ELEMENTS THAT CONSTITUTES THE CHARGE. THE ABSENCE OF THE NATURE, CHARACTER, AND FAILED TO CHARGE AN OFFENSE FROM THE INDICTMENTS PREVENTED PETITIONER FROM UNDERSTANDING THE NATURE AND CHARACTER OF THE CHARGES AGAINST HIM. SINCE THE INDICTMENTS FAILED TO APPRISE PETITIONER OF THE ELEMENTS OF THE CRIME, THE COURT DID NOT LEGALLY ACQUIRE JURISDICTION. A COURT ACQUIRES NO JURISDICTION OVER THE PERSON OF A DEFENDANT UNTIL PROCESS IS SERVED IN THE MANNER PROVIDED BY STATUTE. THE COURT COMMITTED AN ULTRA VIRES ACT WHEN IT TRIED, CONVICTED, AND SENTENCED PETITIONER ON THE ALLEGATIONS IN THE VOID INDICTMENTS. PETITIONER RESPECTFULLY REQUEST THAT THIS HONORABLE COURT GRANT A WRIT OF HABEAS, VACATE THE PETITIONER'S CONVICTIONS AND ORDER A NEW TRIAL, AND SENTENCE ORDER

11. CAN THE COURT INITIATE CRIMINAL PROCEEDINGS AGAINST PETITIONER WITH LACK OF PROBABLE CAUSE? THE VERDICT OF THE JURY SHOULD BE SET ASIDE, BECAUSE IT IS CONTRARY TO THE LAW AND THE EVIDENCE AND WITHOUT SUFFICIENT EVIDENCE TO SUPPORT IT. THIS HONORABLE COURT IS NOT REQUIRED TO BELIEVE THE TESTIMONY OF A.H. IT IS VERY IMPROBABLE THAT ANY OFFENSE WAS COMMITTED AGAINST A.H., DUE TO THE EVIDENCE PRESENTED. UNDER THE DUE PROCESS CLAUSE OF THE FOURTEEN AMENDMENT PETITIONER CHALLENGE THE SUFFICIENCY OF THE EVIDENCE TO SUPPORT BOTH THE CONVICTIONS AND ENSUING INCARCERATION. IN THE PRESENT MATTER ON OCTOBER 18, 2010 PRELIMINARY HEARING A.H. TESTIMONY UNDER OATH DIRECT EXAMINATION: QUESTION: OKAY. AND THIS FIRST INCIDENT YOU TALKED ABOUT DO YOU KNOW WHAT YEAR THAT WAS? ANSWER: I DON'T KNOW THE YEAR OFFHAND, BUT I KNOW THAT I WAS NINE AND A HALF. QUESTION: OKAY NOW HOW DO YOU REMEMBER THAT YOU WERE NINE AND A HALF? ANSWER: TEN, BECAUSE I REMEMBER I WAS GOING TO HAVE A BIRTHDAY. THE BIRTHDAY CAME AFTERWARDS. QUESTION: HOW DO YOU REMEMBER IT WAS YOUR TENTH BIRTHDAY? I STARTED MY CYCLE LIKE AROUND ABOUT THAT TIME. QUESTION: AROUND ABOUT THAT TIME? ANSWER: Uh-huh. QUESTION: WHAT DO YOU MEAN? ANSWER: I STARTED

MY MENSTRUAL CYCLE. QUESTION: WHEN? ANSWER: RIGHT BEFORE MY TENTH
BIRTHDAY. PRELIMINARY HEARING pg. 24-25 EXHIBIT 9, 10 AFTER DIRECT
EXAMINATION AND CROSS EXAMINATION OF ALLEGED VICTIM A.H. TESTIMONY THE
COMMONWEALTH MOTION THE COURT IN REGARD TO THE YEAR. THE COURT: WHAT
CHANGES DO YOU WANT? COMMONWEALTH: THE JULY 1, 1998 TO SEPTEMBER 1, 1998
SHOULD BE APRIL 1, 1995 TO OCTOBER 1, 1995. THE COURT: LET'S SEE. ALL MATTERS
INVOLVING A.H. INVOLVE DATES IN 1998, AMEND THEM TO 1995. SAME SPECIFIC DATES
OTHER THAN JUST CHANGING 1998 TO 1995? COMMONWEALTH: YES SIR. THE COURT:
I'M AMENDING ALL THE 1998 OFFENSE DATES TO 1995. COMMONWEALTH: THAT WOULD
BE THE COMMONWEALTH'S CASE ON PROBABLE CAUSE. EXHIBIT 30 COMMONWEALTH
CANNOT MAINTAIN A CHARGE UNSUPPORTED BY PROBABLE CAUSE. A.H. DATE OF BIRTH IS
10-11-85 EXHIBIT 5 PETITIONER'S TRANSFER HISTORY DOCUMENT FROM THE VIRGINIA
DEPARTMENT OF CORRECTIONS CLEARLY SHOWS PETITIONER WAS INCARCERATED SPECIFICALLY
BETWEEN APRIL 14, 1993 THROUGH DECEMBER 28, 1995, EXHIBIT 8 PETITIONER ARGUE
HE IS CONVICTED OF A CRIME OF WHICH UNDER THE EVIDENCE HE COULD NOT PROPERLY
BE FOUND GUILTY. THE COMMONWEALTH KNOWING USE OF FALSE EVIDENCE FATALLY TAINTS
THE WHOLE TRIAL PROCESS, AND PETITIONER RESPECTFULLY REQUEST THIS HONORABLE
COURT TO DISMISS CHARGES, BECAUSE FALSE STATEMENTS WERE INDUCED BY PROSECUTORIAL
MISCONDUCT WHICH AMOUNTS TO DENIAL OF DUE PROCESS, COMMONWEALTH LACKED PROBABLE
CAUSE TO INITIATE CRIMINAL PROCEEDING AND ACTING AS AN OFFICER OF THE COURT IN
FAILING TO WITHDRAW ARREST WARRANTS AFTER LEARNING THAT NO CRIME HAD BEEN
COMMITTED BY PETITIONER, WHICH CONSTITUTE AN UNCONSTITUTIONAL ARREST, AND
DEPRIVING PETITIONER OF HIS RIGHT GUARANTEED UNDER THE DUE PROCESS CLAUSE OF
THE CONSTITUTION. THE FOURTH AMENDMENT AGAINST UNREASONABLE SEIZURES AND
ARREST. FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION STIPULATES THAT
"NO WARRANT SHALL ISSUE, BUT UPON PROBABLE CAUSE. PETITIONER ARGUE THAT HE IS
BEING ILLEGALLY DETAINED, DUE TO NO REASONABLE FACT FINDER WOULD HAVE FOUND PETITIONER
GUILTY OF THE UNDERLYING OFFENSE ABSENT OF PERJURED TESTIMONY BY THE

COMMONWEALTH WITNESS A.H. THAT SHE WAS RAPED BY PETITIONER WHEN SHE WAS NINE AND A HALF TO TEN YEARS OLD. THE COMMONWEALTH KNEW OR SHOULD HAVE KNOWN OF THE FALSITY, AND FAILED TO CORRECT IT, AND MUST BE SET ASIDE, BECAUSE IT'S A REASONABLE LIKELIHOOD THAT THE FALSE TESTIMONY AFFECTED THE JUDGMENT OF THE JURY. PETITIONER ARGUE THAT A MISARRIAGE OF JUSTICE HAS OCCURRED. THEREFORE I RESPECTFULLY REQUEST THIS HONORABLE COURT TO INVOKE THE EXCEPTIONS TO RULE 5A:18 TO MEET THE ENDS OF JUSTICE.

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] THE OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT APPEARS AT APPENDIX B TO THE PETITION AND IS UNPUBLISHED.

[X] THE OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA ALEXANDRIA DIVISION APPEARS AT APPENDIX D, E, TO THE PETITION AND IS UNPUBLISHED.

THE OPINION OF THE HIGHEST STATE COURT TO REVIEW THE MERITS APPEARS AT APPENDIX O TO THE PETITION AND IS UNPUBLISHED

THE OPINION OF THE COURT OF APPEALS OF VIRGINIA APPEARS AT APPENDIX ? TO THE PETITION AND IS UNPUBLISHED.

JURISDICTION

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DECIDED MY CASE WAS AUGUST 6, 2020 AND IS UNPUBLISHED. A TIMELY PETITION FOR REHEARING WAS DENIED BY THE UNITED STATES COURT OF APPEALS ON OCTOBER 14, 2020 AND A COPY OF THE ORDER DENYING REHEARING APPEARS AT APPENDIX A. JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. 1254 (1).

STATEMENT OF THE CASE

ON the 12th day of July 2011, PETITIONER, JARRIS ALTONY NEWSOME WAS TRIED by a jury BEFORE the HONORABLE BONNIE L JONES, Judge of the Circuit Court FOR the City of HAMPTON, ON ONE COUNT OF KNOWINGLY AND INTENTIONALLY AND WITH LASCIVIOUS INTENT SEXUALLY ABUSING A child UNDER the AGE of 18 YEARS OF AGE to WHOM he WAS NOT legally MARRIED, WHILE MAINTAINING A CUSTODIAL OR SUPERVISORY RELATIONSHIP OVER such A child, IN VIOLATION of 18.2-307.1 of the CODE of VIRGINIA BETWEEN the dates of April 1, 1995 through October 11, 1995; ON ONE COUNT OF UNLAWFULLY AND FELONIOUSLY PENETRATING the LABIA MAJORA OR ANUS OF A child UNDER the AGE of THIRTEEN YEARS with AN object OTHER than FOR A bona fide MEDICAL purpose, IN VIOLATION of 18.2-67.2 of the CODE of VIRGINIA BETWEEN the dates of April 1, 1995 through October 11, 1995; ON ONE COUNT OF RAPE OF A child LESS than THIRTEEN YEARS OF AGE IN VIOLATION of 18.2-61 of the CODE of VIRGINIA ON OR BETWEEN the dates of April 1, 1997 through SEPTEMBER 1, 1997; ON ONE COUNT OF UNLAWFULLY AND FELONIOUSLY PENETRATING the LABIA MAJORA OR ANUS OF A child UNDER the AGE of THIRTEEN YEARS with AN object OTHER than FOR A bona fide MEDICAL purpose, IN VIOLATION of 18.2-67.2 of the CODE of VIRGINIA BETWEEN the dates of April 1, 1997 through SEPTEMBER 1, 1997; ON ONE COUNT OF RAPE OF A child LESS than THIRTEEN YEARS OF AGE, IN VIOLATION of 18.2-61 of the CODE of VIRGINIA ON OR BETWEEN the dates of August 15, 1997 through October 1, 1997; AND ON ONE COUNT OF KNOWINGLY AND INTENTIONALLY AND WITH LASCIVIOUS INTENT SEXUALLY ABUSING A child UNDER the AGE of 18 YEARS OF AGE to WHOM he WAS NOT legally MARRIED, WHILE MAINTAINING A CUSTODIAL OR SUPERVISORY RELATIONSHIP OVER such A child IN VIOLATION of 18.2-370.1 of the CODE of

Virginia between the dates of August 15, 1997 and October 1, 1997.

The victim was petitioner's daughter. The series of incidents occurred when the victim was between the ages of nine and twelve years old. The prosecution's case rested on the testimony of the victim. No physical evidence was introduced. Petitioner at trial denied that he ever had sexual contact with his daughter. The victim waited a number of years to report the incidents to police. Petitioner further testified that he was incarcerated in the Department of Corrections from April 1, 1995 to October 11, 1995 during the time interval the victim said the first incident occurred.

The petitioner pleaded "Not Guilty" to these charges was tried by a jury, and was found guilty of all counts in the presented indictments. The jury recommended a sentence of five years on each of the rape and object penetration convictions and six months on each of the two convictions of 18.2-370.1 for a total recommended sentence of twenty years and twelve months. All of these sentences were imposed by the Honorable Judge Jones at the sentencing hearing held on the 31st day of October, 2011.

Conclusion

This petition for a writ of certiorari should be granted for the foregoing reasons. Petitioner respectfully requests that this Honorable Court grant a writ of certiorari, vacate the petitioner's convictions, and order a new trial, if Harold Clarke be so advised.

Respectfully submitted,
22 Savin attorney Newsome

REASONS FOR GRANTING THE PETITION

FAILURE TO CONSIDER PETITION WOULD RESULT IN A GRAVE INJUSTICE. *Sheorghiu v. Commonwealth*, 280 VA. AT 689, 701 S.E. 2d. AT 413 (CITATION OMITTED). PETITIONER IS ASKING THIS HONORABLE COURT TO APPLY THE GRAVE INJUSTICE EXCEPTIONS IN RULE 5:25 TO VIRGINIA CODE 8.01-654 (A)(2). PETITIONER HAS VIEHEMENTLY OBJECTED TO THE NUMEROUS VIOLATIONS OF HIS CONSTITUTIONAL RIGHTS FROM THE INCEPTION OF THE COMMONWEALTH AGAINST HIM, PETITIONER HAS ALLEGED WITH SPECIFICITY, THAT HE DID NOT RECEIVE A FAIR TRIAL. FOR EXAMPLE: 1) COMMONWEALTH AND TRIAL COUNSEL WAS WELL AWARE OF THE ALLEGED VICTIM POLICE REPORT IN 2010, 2) ALLEGED VICTIM TESTIMONY AT PRELIMINARY HEARING AND TRIAL, 3) KNEW THE COMMONWEALTH KNOWINGLY USED PERJURED TESTIMONY AT TRIAL; 4) KNEW THAT PETITIONER TRANSFER HISTORY DOCUMENT FROM THE VIRGINIA DEPARTMENT OF CORRECTIONS EXISTENCE; 5) DUE TO ON MARCH 8th 2011 THE COMMONWEALTH WAS NOTIFIED WITH A COPY OF THE TRANSFER HISTORY DOCUMENT; 6) A.H. DESCRIBED IN DETAIL WHAT SHE ALLEGED TO HAVE HAPPEN, BUT PETITIONER WAS INCARCERATED IN THE DEPARTMENT OF CORRECTIONS; 7) THE COMMONWEALTH FAILED TO RECALL THE EVIDENCE, WHICH ESTABLISHES BOTH THAT THE EVIDENCE WAS AVAILABLE PRIOR TO JUDGMENT; 8) EVIDENCE IN THE HANDS OF THE PROSECUTOR MAY BE INNOCENTLY INCORRECT, EVEN IF THE PROSECUTOR DID NOT KNOW OF THE FALSITY AT THE TIME EVIDENCE WAS INTRODUCED THE FAILURE TO CORRECT IT UPON AWARENESS THEREAFTER IS AN ERROR EQUAL TO DELIBERATE USE; 9) KNOWING USE OF FALSE EVIDENCE BY THE COMMONWEALTH FATALLY TAINTS THE WHOLE TRIAL PROCESS FOR PETITIONER; 10) IT IS CLEAR THAT THE PERJURED TESTIMONY PROFFERED BY THE ALLEGED VICTIM A.H. UNDERMINED CONFIDENCE IN THE OUTCOME OF THE TRIAL. PETITION SHOULD BE GRANTED, DUE TO BEING DENIED RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL: TRIAL COUNSEL FAILED TO GIVE NOTICE OF ALIBI TO THE COMMONWEALTH, FAILED TO CORRECT ALLEGED VICTIM A.H. TESTIMONY WITH PETITIONER TRANSFER HISTORY DOCUMENT WHEN SHE TESTIFIED SHE WAS RAPED BY HER FATHER BETWEEN AGES OF NINE AND HALF TO TEN YEARS OLD. AT TRIAL COUNSEL STATED YOUR HONOR THAT FROM JDR COURT, THEY

Actually don't have his file. They've lost it. Trial counsel had access to all court documents from JDR court pertaining to petitioner prior to trial and engage in conduct involving dishonesty, misrepresentation, and failed to follow the rules of professional conduct when counsel failed to introduce document into evidence, which cause unfair trial for petitioner because it involve a corruption of the truth seeking function of the trial process, and trial counsel failed to call all of petitioner witnesses at trial to confirm all petitioner's incarcerations dates. Ineffective assistance of counsel effect entire proceeding for petitioner and is never harmless error, because it cast to much doubt on the trial process. The alleged factual errors and omissions were of such a magnitude that a fundamental miscarriage of justice would result were the court not to entertain the constitutional claim on it merit of this petition. Petitioner has been represented by the same attorney from trial through appeal and post-convictions pleading and that it would be unrealistic to expect the lawyer to advocate his own ineffectiveness. Petitioner should be granted petition, due to the jury reliance of false testimony of alleged victim A.H. and trial counsel failure to introduce court document into evidence after stating to the judge they've lost his file. Commonwealth was aware of petitioner's transfer history document from the Virginia Department of Corrections, court document existence and contents, but allowed alleged victim A.H. to testify falsely, that she was raped by her father when she was nine and a half ten. Alleged victim A.H. testify she was eleven or twelve when me and my mother and him went to do a DNA test, but evidence show the victim was eighteen when petitioner knew A.H. as his daughter not 12 years old. Trial counsel intentionally within this information from the jury. The jury should have been given the opportunity to consider all factors concerning petitioner at trial in rendering their decisions, thus the jury was left to decide without the benefit of supporting or corroborative evidence, whether petitioner's alibi evidence was truthful and accurate which had an affect on the judgment of the court.

STANDARD OF REVIEW REGARDING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL:

IN THE CRIMINAL LAW CONTEXT, THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IS AMONG THOSE IMMUTABLE PRINCIPLES OF JUSTICE WHICH INHERE IN THE VERY IDEA OF FREE GOVERNMENT. THE UNITED STATES SUPREME COURT HELD THAT THE SIXTH AMENDMENT RIGHT TO COUNSEL WAS SO FUNDAMENTAL AND ESSENTIAL TO A FAIR TRIAL, AND SO TO DUE PROCESS OF LAW, THAT IT IS MADE OBLIGATORY UPON THE STATES BY THE FOURTEENTH AMENDMENT. PETITIONER RESTED ON THE OBVIOUS TRUTH THAT LAWYERS ARE NECESSITIES NOT LUXURIES IN OUR ADVERSARIAL SYSTEM OF CRIMINAL JUSTICE. THE VERY PREMISE OF OUR ADVERSARY SYSTEM OF CRIMINAL JUSTICE IS THAT PARTISAN ADVOCACY ON BOTH SIDES OF A CASE WILL BEST PROMOTE THE ULTIMATE OBJECTIVE THAT THE GUILTY BE CONVICTED AND THE INNOCENT GO FREE. PETITIONER'S LIBERTY DEPENDS ON HIS ABILITY TO PRESENT HIS CASE IN THE FACE OF THE INTRICACIES OF THE LAW AND THE ADVOCACY OF THE PUBLIC PROSECUTOR. A CRIMINAL TRIAL IS THUS NOT CONDUCTED IN ACCORD WITH DUE PROCESS OF LAW UNLESS THE PETITIONER HAS COUNSEL TO REPRESENT HIM. THE SUPREME COURT ANNOUNCED A TWO-PART TEST TO DETERMINE IF COUNSEL'S ASSISTANCE WAS INEFFECTIVE. FIRST, THE DEFENDANT MUST SHOW THAT COUNSEL'S PERFORMANCE WAS DEFICIENT. THIS REQUIRES SHOWING THAT COUNSEL MADE ERRORS SO SERIOUS THAT COUNSEL WAS NOT FUNCTIONING AS THE "COUNSEL" GUARANTEED THE PETITIONER BY THE SIXTH AMENDMENT. THIS PERFORMANCE IS TO BE JUDGED BY AN OBJECTIVE STANDARD OF REASONABLENESS. SECOND THE PETITIONER MUST SHOW PREJUDICE FROM COUNSEL'S PERFORMANCE. THE QUESTION IS WHETHER THERE IS A REASONABLE PROBABILITY THAT, ABSENT THE ERRORS THE FACT FINDER WOULD HAVE HAD A REASONABLE DOUBT RESPECTING GUILT. PUT ANOTHER WAY THE PETITIONER MUST SHOW THAT THERE IS A REASONABLE PROBABILITY THAT, BUT FOR

COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT. A REASONABLE PROBABILITY IS A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME. THE PHRASE "REASONABLE PROBABILITY" DESPITE ITS LANGUAGE SHOULD NOT BE CONFUSED WITH "PROBABLE" OR "MORE LIKELY THAN NOT". IN FACT THE PHRASE REASONABLE PROBABILITY SEEMS TO DESCRIBE A FAIRLY LOW STANDARD OF PROBABILITY, AS STATED BY THE UNITED STATES SUPREME COURT IN STRICKLAND AND OTHER CASES. THE RESULT OF A PROCEEDING CAN BE RENDERED UNRELIABLE, AND HENCE THE PROCEEDING ITSELF UNFAIR, EVEN IF THE ERRORS OF COUNSEL CANNOT BE SHOWN BY A PREPONDERANCE OF THE EVIDENCE TO HAVE DETERMINED THE OUTCOME. A PETITIONER NEED NOT ESTABLISH THAT THE ATTORNEY'S DEFICIENT PERFORMANCE MORE LIKELY THAN NOT ALTERED THE OUTCOME IN ORDER TO ESTABLISH PREJUDICE UNDER STRICKLAND. FURTHERMORE, THE SUPREME COURT HAS COUNSELED THAT THESE PRINCIPLES DO NOT ESTABLISH MECHANICAL RULES. THE FOCUS OF THE INQUIRY SHOULD BE ON THE FUNDAMENTAL FAIRNESS OF THE TRIAL AND WHETHER, DESPITE THE STRONG PRESUMPTION OF RELIABILITY, THE RESULT IS UNRELIABLE BECAUSE OF A BREAKDOWN OF THE ADVERSARIAL PROCESS. IN THE PRESENT MATTER THE PETITIONER IS ENTITLED TO A WRIT OF HABEAS CORPUS BASED ON THE FOLLOWING GROUNDS FOR RELIEF: COUNSEL VIOLATED PETITIONER 5TH, 6TH, AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE 1 SECTION 8 OF THE VIRGINIA CONSTITUTION. PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS FOLLOWS: COUNSEL FAILED TO CALL AND INTERVIEW KNOWN WITNESS MS. JOYCE TIEDE, FAILED TO PRESENT DOCUMENT FROM IDR COURT ORDER DETERMINING PARENTAGE DNA TEST, AND ENGAGE IN CONDUCT INVOLVING DISHONESTY WHEN TRIAL COUNSEL TOLD THE COURT THEY'VE LOST HIS FILE WHICH RESULTING IMPACT ON OUTCOME OF THE TRIAL PROCESS.