

In The
United States Supreme Court

Ernest D. Washington
Petitioner

v. Docket No. 20-7691
Tammy B. Williams, Warden DECC
Harold W. Clarke, Director, DOC
Respondent

On Petition For Writ OF Certiorari To
The Fourth Circuit Court OF Appeals

Petition For Rehearing

By: Ernest D. Washington
Deerfield Correctional Center
21360 Deerfield Drive
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Petition For Rehearing and suggestions In Support

Comes Now Petitioner, Ernest D. Washington (EDW),
Pro Se, and prays this Court to grant Rehearing
pursuant to Rule 44, and thereafter, grant EDW
a Writ of Certiorari to review the opinion of the
Fourth Circuit Court of Appeals. In support of
petition, EDW states the following.

Statement of Facts

At trial, EDW was convicted by a jury of "use
communication system to solicit a minor" and
sentenced to a "Numerical Lifer" sentence.

According to the State's Key witness, EDW
contacted him on October 5, 2008 in a Yahoo!
adult chat room showing his genitals which
was a Sunday morning. EDW was at church
at time posted on the chat message. No one
investigated to verify his location at the time.

Although the Commonwealth (Com.) offered or
presented no evidence regarding the actual
employment use communication system to
solicit a minor by EDW the trial judge allow
the evidence. See 19.2-70.3

The Com. offered evidence from the police
database only and no evidence from EDW
place of residence. Evidence under case law
was hearsay. *Hooker v. Com.*, 14 Va. App. 454 (1992)

The Key witness (Det. Darryl Wells of Stafford County Sheriff's Department) stated he could not verify that EDW received a picture "Not short of getting his computer no, sir" (Tr. 183 9-8-10).

Without EDW computer, confession or some first hand knowledge of the messages the Com. did not prove the "Corpus delicti." No computer was connected to EDW to show ownership, control or dominion at the times on the video tape or chat messages. The Com. must prove that a crime has been committed. In the Com. of Va., *Allen v. Com.*, 287 Va. 68, 74 (2014) (quoting *Smith*, 62 Va. 809 (1871)).

EDW made no statement admitting or acknowledging any facts necessary for conviction of the crimes charged. Va. Sup. Ct. R. 2:901

The record did not show that trial court took judicial notice of location of EDW property. (Tr. 207) (*Keesee, Jr.*, 217 S.E. 2d 868 (1975)). Va. Sup. Ct. R. 2:201

Failing to Interview and call witnesses

Det. Wells did not interview EDW at anytime (Tr. 201). EDW had a alibi but Wells never contacted EDW.

Trial counsel (Vernon Keeve, Jr.) did no investigating to prove EDW innocences. Trial counsel told EDW to take a plea because he was going to found guilty. EDW asked counsel to contact his place of employment and the church he attend and he did not.

By no computer, no IP address and no confession introduce as evidence, then there was not sufficient evidence to convict. Garnett, 2016 Va. App. Lexis 361. Va. Sup. Ct. R. 2:901

Reasons Meriting Rehearing

1. The Fourth Circuit's decision is clearly in conflict with *Williams v. Taylor*, 529 U.S. 362 (2001) Justice Stevens, concluding that Williams was denied his constitutionally guaranteed right to the effective assistance of counsel, as defined in *Strickland*, when his trial lawyer failed to investigate and to present substantial mitigating evidence to the sentence jury. The Fourth Circuit completely ignored the fact that no evidence came from EDW computer hard drive. The Fourth Circuit further ignored the fact that EDW substantial legal right to the Due Process Rights of Law were violated his Sixth and Fourteenth Amendment of the U.S. Constitution and the Va. Constitution Article I, Section 8, 9 & 10. The most the evidence established that the police did not do a complete investigation.

2. The Fourth Circuit's decision is clearly in direct conflict with *Garnett v. Com.*, 2016 Va. App. Lexis 361 (the defendant cell phone did not come into evidence, then there was not sufficient evidence to convict defendant). This Court "MUST" grant Rehearing and

Issue a Writ of Certiorari because the failure to do so would allow the Fourth Circuit to continue to apply the wrong standard in deciding the prejudice prong of ineffective assistance claims, subject matter jurisdiction and deny justice to those it is entitled to. Subject matter jurisdiction Pollard v. Com., 220 Va. 723, 261 S.E. 2d 328 (1980); Keese v. Com., 216 Va. 174, 217 S.E. 2d 808 (1975); Thomas v. Com., 36 Va. App. 326, 549 S.E. 2d 648, 651 (2001); Owusu v. Com., 11 Va. App. 671, 401 S.E. 2d 431 (1991)

3. This Court has an ethical duty by the United States Constitution to establish the law of the land and to assure the Citizens of the United States of America that the lower courts apply that law. When they do not, it is this Court's obligation to hold that Court accountable and see to it that justice is administered fairly. This Court "MUST" hear this case and hold the Fourth Circuit accountable for failing to properly apply the law of this Court and relief where relief is due. No computer seized no crime. Va. Sup. Ct. R. 2:901

Suggestions In Support of Rehearing
The Fourth Circuit Court of Appeals' decision that the statute of limitation had run out. The Court overlooked the truth for a technicality. But the U.S. Constitution has no limitation time along with Va. Constitution. This court must

examine both the trial testimony and the postconviction evidence to determine whether, had the omitted evidence been presented, there is a reasonable probability of a different outcome. No search warrant, No court order, No chain of custody, No forensic report, No discovery, No computer introduce as evidence, No confession to guilt, and most of all, all the evidence is hearsay.

Trial counsel called no witness to show EDW had a alibi to prove his innocence.

EDW never made any admissions to the police. The closest thing to direct evidence connecting EDW to the so called crime was Det. Wells. Had trial counsel had contacted my place of employment. The unit I drove had a computer in it which would tell where EDW was. The church I attend would have also would have given EDW a alibi.

No judicial notice was taken for the geographical facts which establish venue. (Tr 205-207)

The main reason to grant the motion is without EDW computer the evidence is insufficient to convict. To resolve the unequal and inconsistent application of law according to Thomas, Owusu and Garnett. Com. never prove the "use" prong. The Com. did not show that EDW actively employed the computer during and in relation to the predicate crime. Va. Sup. Ct. R. 2:901

The integrity of the judicial system requires that some consistency be imposed on the chaotic manner in which courts are applying the use ruling. Motion should be granted to resolve the uncertainty and provide guidance to judges, attorneys and district and circuit courts on this important issue. No electronic device introduce means no crime. Va. Sup. Ct. R. 2:901

Conclusion

For the reasons stated, this Court "Must" grant Rehearing of its judgment entered on June 14, 2021, and issue a Writ of Certiorari to hold the Fourth Circuit accountable for failing to properly apply the law of this Court and grant EDW relief. Should EDW's cry for justice not be heard and denied relief; may this Court also cry and not be heard "For whoever shut their ears to the cry of the poor will also cry themselves and not be heard."

Respectfully submitted,

By: Ernest D. Washington (1437496)

Certificate of Service

I hereby certify that a true copy of the foregoing Petition was mailed to: Attorney General Office, 202 North 9th St., Richmond, Va. 23219.

By: Ernest D. Washington

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