

ORIGINAL

21-5061

No. 21-

IN THE

SUPREME COURT OF THE UNITED STATES

HENRY J. LUCAS, JR.,

PETITIONER,

v.

VIRGINIA,

RESPONDENT.

ON a PETITION FOR a WRIT OF CERTIORARI
to the VIRGINIA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. THE QUESTION PRESENTED IS WHETHER THE VA. SUPREME COURT VIOLATED PETITIONER'S DUE PROCESS OF LAW IN VIOLATION OF AMEND. 14 OF THE UNITED STATES CONSTITUTION WHEN THE COURT DENIED THE APPEAL BASED ON RULE 5:17(c)(iii) OF THE RULES OF THE S. COURT.

II. THE QUESTION PRESENTED IS WHETHER THE VA. SUPREME COURT VIOLATED PETITIONER'S DUE PROCESS OF LAW IN VIOLATION OF AMEND. 14 OF THE UNITED STATES CONSTITUTION WHEN THE COURT GRANTED PETITIONER'S EXTENSION OF TIME TO FILE REPLY BRIEF AND TO FILE REPLY BRIEF ACCEPTED AS FILED JULY 10TH, 2020 AND DID NOT DENY THAT THE INSUFFICIENCY WAS CURED UNDER RULE 5:17(c)(iii) IN THE JANUARY 29, 2021 RULING. HOWEVER DISMISSED THE APPEAL.

III. THE QUESTION PRESENTED IS WHETHER PETITIONER WAS DENIED DUE PROCESS IN THE COURT'S DENIAL TO AMEND PETITIONER'S

ADDITIONAL FILINGS UNDER RULE 1:8 OF
THE RULES OF THE SUPREME COURT OF VA.
AND VIRGINIA LAW UNDER AMEND. 14 OF
THE UNITED STATES CONSTITUTION. PETIT-
IONER MOVED THE COURT BASED ON
SEVERAL OBSTRUCTIONS BY THE SOVERIGN.

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OPINIONS BELOW

THE VIRGINIA SUPREME COURT'S DISMISSAL OF THE PETITIONER'S APPEAL IS AT (APPENDIX O 299A). THE CIRCUIT COURT OF CUPEPAL COUNTY'S

JURISDICTION

THE VIRGINIA SUPREME COURT'S DISMISSAL OF PETITIONER'S APPEAL WAS ENTERED ON JANUARY 29, 2021, AND DENIED REHEARING ON MARCH 25, 2021 (APPX 306A). U.S.C. §1254(1).

PROVISIONS INVOLVED

RELATIVE STATUTORY PROVISIONS ARE ON PAGES 7, 8, 9, OF THIS DOCUMENT. RELATIVE CONSTITUTIONAL PROVISIONS ARE ON PAGES 3, 58.

STATEMENT

HENRY J. LUCAS, JR., IS AN INMATE IN THE VIRGINIA DEPARTMENT OF CORRECTIONS, WHO WAS CONVICTED ON RAPE (OF SPOUSE), SODOMY (ORAL SEX), ABDUCTION, GRAND LARCENY, CREDIT CARD THEFT, FELONY COURT ORDER VIOLATION. A MOTION FOR A NEW TRIAL WAS FILED THE REASONING THE IMPOSITION OF A VOID SENTENCE DOES NOT TERMINATE THE JURISDICTION OF THE COURT. ON NOVEMBER 7, 2019, A MOTION FOR ORDER VOID AB INITIO, MEMORANDUM (FN) LUCAS WAS CONVICTED FEBRUARY 12, 2007.

OF LAW IN SUPPORT OF ORDER VOID AB INITIO, WAS FILED IN THE CIRCUIT COURT OF CULPEPER COUNTY, VIRGINIA. PETITIONER'S REASONING AT THE MOTION FOR A NEW TRIAL FILED JUNE 27, 2018 (MAIL BOX RULE) THE COMMONWEALTH ATTORNEY FAILED TO DENY ANY AND ALL ALLEGATIONS IN ALL CLAIMS PRESENTED TO THE COURT. THE COMMONWEALTH ATTORNEY CULPEPER COUNTY, VA. RELIED SOLELY ON RULE 1:1 OF THE RULES OF THE SUPREME COURT OF VIRGINIA. IN VIRGINIA ALLEGATIONS NOT DENIED MUST BE ACCEPTED AS TRUE. IN VIRGINIA AND THIS COURT AFFIDAVITS ARE TESTIMONIAL IN NATURE. THE COMMONWEALTH FAILED TO MOVE FOR A PLEADY HEARING. THUS FORFEITING THE RIGHT OF CONFRONTATION. THE IMPOSITION OF A VOID SENTENCE IN VIRGINIA DOES NOT TERMINATE THE JURISDICTION OF THE COURT.

THE STATEMENT HEREIN ON THIS PAGE WAS THE BASIS FOR PETITIONER TO FILE THE MOTION TO VACATE ORDER VOID AB INITIO.

ON JANUARY 29, 2020, THE VIRGINIA SUPREME COURT ENTERED AN ORDER TO DISMISS PETITIONER'S APPEAL ON PROCEDURAL GROUNDS RULE 5:17(c)(iii). FINDING THAT PETITIONER'S ASSIGNMENTS OF ERROR IN NOS. 1-10 WERE INSUFFICIENT. IN THAT THEY DID NOT ADDRESS ANY FINDINGS OR RULING OF THE CIRCUIT COURT ON THE FAILURE OF THE CIRCUIT COURT TO RULE. PETITIONER FILED SEVERAL MOTIONS AT THE COURT ON JULY 10, 2021. ONE OF WHICH WAS GRANTED MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF AND TO FILE ^{CORRECTED} REPLY BRIEF. PETITIONER'S POSITION IS THAT THE CORRECTED

REPLY BRIEF CURED THE INSUFFICIENCY OF PETITIONER'S APPEAL FILED APRIL 15, 2020. THE VIRGINIA SUPREME COURT'S ORDER ENTERED THE 25TH DAY OF AUGUST, 2020 GRANTED THE MOTION FOR EXTENSION OF TIME AND THE CORRECTED REPLY BRIEF WAS CONSIDERED FILED.

ON PAGE 2 OF THE CORRECTED REPLY BRIEF THIS PETITIONER ADDRESSED THE CIRCUIT COURT'S ORDER ENTERED DECEMBER 13, 2019 THUS TO CURE THE DEFECT IN THE APPEAL FILED APRIL 15, 2020. SEE (APPX. I 130A-131A).

THE VIRGINIA SUPREME COURT AND THE RULING ON JANUARY 29, 2021 DID NOT RULE THAT PETITIONER'S CORRECTED REPLY BRIEF WAS INSUFFICIENT TO CURE THE DEFECT IN THE APPEAL FILED APRIL 15, 2020. (SEE APPX. P 306A).

PETITIONER WAS DENIED DUE PROCESS UNDER THE FOURTEENTH AMENDMENT IN THE FAILURE OF THE COURT TO GRANT THE APPEAL. VIRGINIA HAS RULED THAT ALLEGATIONS NOT DENIED MUST BE ACCEPTED AS TRUE. THE COURT FAILED TO DENY THAT THE CORRECTED REPLY BRIEF PAGE 2 CURED ANY INSUFFICIENCY IN PETITIONER'S APPEAL FILED APRIL 15, 2020.

PETITIONER WAS DENIED DUE PROCESS UNDER AMEND. 14 OF THE UNITED STATES CONSTITUTION WHEN THE VA. SUPREME COURT DENIED THE RIGHT TO AMEND THE PLEADINGS FILED BASED ON RULE 1:8 OF THE RULES OF THE VA. SUPREME COURT AND ESTABLISHED LAW OF THE SUPREME CT. VA.

THE COURT ALLOWED THE CORRECTED REPLY BRIEF INTO THE RECORD AND FAILED TO RULE ON THE SUFFICIENCY OF THE CORRECTIONS (SEE APPX. P 306A). THERE WAS NO RULING ON THE MERITS OF THE CORRECTIONS.

REASONS FOR GRANTING THE PETITION

PETITIONER WAS GRANTED LEAVE OF COURT TO FILE A CORRECTED REPLY BRIEF AND TO FILE BRIEF. SEE APPX. 118A. SEE THE CORRECTED REPLY BRIEF AT APPX. 127A-144A. PETITIONER FILED THE CORRECTED REPLY BRIEF JULY 10, 2020. PETITIONER REVIEWED RULE 5:17(C) 1(iii) AND ANSWERED ACCORDINGLY. ON PAGE (2) OF THE CORRECTED REPLY BRIEF PARAGRAPH (4) FOUR PETITIONER ADDRESSED THE CIRCUIT COURT OF CUPEPER COUNTY AND THE DECEMBER 13, 2019 ORDER. THIS IN ORDER TO CURE THE RULE 5:17(C) 1(iii) DEFECTIVE PLEADING. SEE APPX. 130 AA. PETITIONER CURED THE DEFECT IN THE PLEADING AT PAGE 2, PARAGRAPH (4) FOUR AT APPX. 131 A. RULE 5:17(C) 1(iii) IS UNCONSTITUTIONAL AS APPLIED UNDER AMENDMENT 14 OF THE UNITED STATES CONSTITUTION.

TO THE BEST OF PETITIONER'S KNOWLEDGE THIS COURT HAS NOT RULED WITH SPECIFICITY ON RULE 5:17(C) 1(iii) OF THE RULES OF THE SUPREME COURT ON THE MERITS IN A DECISION. THEREFORE IT SHOULD BE SETTLED BY THIS COURT.

THE VIRGINIA SUPREME COURT AND ITS DECISION CONFLICTS WITH THIS COURT'S DECISION IN MCQUIGGIN, WARDEN V. PERKINS, 569 U.S. 383 (2013) (CITING COLEMAN, 501 U.S. AT 750, 111 S. CT. 2546 [569 U.S. 394] [FN2]). THAT IS TO SAY IF A PROCEDURAL DEFAULT EXIST IN PETITIONER'S CORRECTED REPLY BRIEF. THE VIRGINIA S. COURT'S DECISION IS IN DIRECT CONFLICT WITH AMENDMENT 14 AND THE RELEVANT DECISION ABOVE. THIS COURT SHOULD GRANT THIS PETITION TO CORRECT THE FUNDAMENTAL MISARRIAGE OF JUSTICE AS IS OUTLINED IN THE PETITION BEFORE THIS HONORABLE COURT. PETITIONER'S CASE SHOULD BE REMANDED TO THE VA. SUPREME COURT FOR A RULING ON THE MERITS.

I. THE VIRGINIA SUPREME COURT'S APPLICATION OF RULE 5:17(C)(iii) MERITS THIS COURT'S REVIEW.

PETITIONER IS OF THE BELIEF THAT THE INSUFFICIENCY WAS CURED AT THE JULY 10, 2020 CORRECTED REPLY BRIEF PAGE 2. THE COURT DID NOT DENY THAT THE ABOVE FILING DID CURE THE INSUFFICIENCY OF THE APRIL 15, 2020 FILING IN THE DISMISSAL OF THE APPEAL, JANUARY 29, 2021. (APP. I 131A)

PETITIONER ASSUMES WITH OUT KNOWING THAT THE RULE OF THE SUPREME COURT OF VA. WAS APPLIED TO GRANT THE CORRECTED REPLY BRIEF'S FILING RULE 1:8... LEAVE TO AMEND SHALL BE LIBERALLY GRANTED IN FURTHERANCE OF THE ENDS OF JUSTICE. ...

THE VA. SUPREME COURT'S JANUARY 29, 2021 RULING SHOULD NOT STAND IN ORDER TO CORRECT A MISCARRIAGE OF JUSTICE AND TO ATTAIN THE ENDS OF JUSTICE.

MCQUIGGIN, WARDEN V. PERKINS 569 U.S. 383 (2013)
AS JUST NOTED, SEE SUPRA, 392, 185 L. ED. 2d AT 1031
[7] WE HAVE HELD THAT THE MISCARRIAGE OF JUSTICE EXCEPTION APPLIES TO STATE PROCEDURAL RULES INCLUDING FILING DEADLINES. COLEMAN, 501 U.S. AT 750, 111 S. CT. 2546, [569 U.S. 394]

[FN2] NOTABLY WE SAID IN COLEMAN V. THOMPSON, 501 U.S. 722 (1991) "... THAT A PETITIONER... COULD... PLEAD HER CLAIMS ON THE MERITS IN FEDERAL

court if she could show that "Failure to consider the claims [would] result in a fundamental miscarriage of justice." *Id.*, at 750, 111 S. Ct. 2546.

Petitioner was denied due process under Amendment 14 of the U.S. Constitution.

II. The Virginia Supreme Court and the application of Rule 5:17(c)(iii) is unconstitutional as applied. In that the court allowed petitioners motion of extension of time to file reply brief and to file reply brief. wherein the court's January 29, 2021 order did not deny the sufficiency to have cured the insufficiency of appellant/petitioner's appeal.

In *Zemene v. Clarke*, 768 S.E.2d 684 (Va. 2015) ("It is well settled that where, as here the well pleaded allegations of the petition are not denied they must be accepted as true.") *Morris v. Smyth*, 202 Va. 832, 833 (1961) (per curiam).

The Virginia Supreme Court did not deny that petitioner's reply brief page 2 was sufficient to meet the demands of Rule 5:17(c)(iii). Therefore, the court must rule on the merits of the appeal.

AND THE CORRECTED REPLY BRIEF FILED JULY 10, 2021. THE FILING OF THE REPLY BRIEF WAS GRANTED AUGUST 25, 2020. THE COURT MUST BE REVERSED. (APPX-P306A).

THE VIRGINIA SUPREME COURT AND ITS FAILURE TO DENY THAT THE INSUFFICIENCY WAS CURED OR NOT IN THE DISMISSAL, IS A SHARP BREAK FROM THE PAST. IT IS A BREAK FROM ZEMENE V. CLARK 768 S.E. 2d 684 (VA. 2015). IF THE RULING IS APPLICABLE TO LITIGANT'S IT MUST BE APPLICABLE TO THE HONORABLE VIRGINIA SUPREME COURT. THE RULING IN ZEMENE HAS NOT BEEN OVERRULED BY THE VIRGINIA SUPREME COURT THEREFORE IT MUST BE ENFORCED BY THE U.S. SUPREME COURT PRECEDENT.

IN U.S. V. JOHNSON, 457 U.S. 537 (1982) (CIPRIANO [457 U.S. 552] V. CITY OF HOUMA, 395 U.S. 701, (1969), MILTON V. WAINWRIGHT, 407 US, AT 381-382, 92 S. CT. 2174 (STEWART, J., DISSSENTING) "SHARP BREAK" OCCURS WHEN "DECISION OVERRULES CLEAR PAST PRECEDENT... OR DISRUPTS A PRACTICE LONG ACCEPTED AND WIDELY RELIED UPON".

THIS HONORABLE COURT HAS AN OPPORTUNITY TO REVERSE AND REMAND THIS CASE FOR A RULING ON THE MERITS OF THE APPEAL BASED ON THE FAILURE TO DENY THAT PETITIONER'S CORRECTED REPLY BRIEF PAGE 2. IN THAT PETITIONER'S REPLY BRIEF WAS SUFFICIENT TO MOVE THE COURT TO RULE ON THE MERITS.

III. PETITIONER WAS DENIED DUE PROCESS UNDER THE U.S. CONSTITUTIONAL AMENDMENT FOURTEEN WHEN THE COURT DID NOT ALLOW PETITIONER TO AMEND PLEADINGS FILED UNDER RULE 1:8 OF THE RULES OF THE SUPREME COURT AND VIRGINIA LAW, BASED ON SEVERAL OBSTRUCTIONS BY THE SOVERIGN.

ON OCTOBER 22, 2020 PETITIONER FILED A MOTION FOR LEAVE OF COURT TO AMEND A LETTER TO THE COMMONWEALTH ATTORNEY. NEXT, PETITIONER FILED ON NOVEMBER 25, 2020 MOTION FOR LEAVE OF COURT TO AMEND THREE LETTERS TO THE COMMONWEALTH ATTORNEY, ETC. BOTH OF THE ABOVE MOTIONS WERE DENIED. THE RULE 1:8 OF THE RULES OF THE SUPREME COURT ALLOWS FOR LIBERAL LEAVE TO AMEND TO ATTAIN THE ENDS OF JUSTICE. THE MOTION FOR LEAVE TO AMEND A LETTER TO THE COMMONWEALTH ATTORNEY WITH EXHIBITS, AND TO AMEND VARIOUS MAIL ROOM DOCUMENTS INTO THE RECORD WERE BASED ON SEVERAL OBSTRUCTIONS BY THE SOVERIGN. AS OUTLINED AT APPENDIX J (59A-175A). *HICKS V. DIRECTOR* 289 VA 298 (2015) (OBSTRUCTION BY DEFENDANT)

THE LETTER OUTLINED DOUBLE JEOPARDY UNDER UNITED STATES CONSTITUTIONAL AMENDMENT 5, U.S. CONST. AMENDMENT 8 CRUEL AND UNUSUAL PUNISHMENT, U.S. (SEE ALSO 8.01-229(D) UNCONSTITUTIONAL AS IT WAS NOT APPLIED)

CONSTITUTIONAL AMEND. 14 DUE PROCESS.

ON NOVEMBER 25, 2020 PETITIONER MOVED THE COURT TO AMEND (3) THREE LETTERS TO THE COMMONWEALTH ATTORNEY INTO THE RECORD. PETITIONER'S MOTION WAS DENIED. THE "LETTERS" ARE IN REFERENCE TO VOID CONVICTIONS. THE CULPEPER COUNTY, VA. CIRCUIT COURT CASE CRO6-174-04 CREDIT CARD THEFT. THE CULPEPER COURT FAILED TO AMEND TO THE CORRECT CREDIT CARD NUMBER. IN VIRGINIA A COURT SPEAKS ONLY THRU ITS WRITTEN ORDERS. THE LETTER DATED NOVEMBER 18, 2020 IN REFERENCE TO CULPEPER COUNTY, VA. CIRCUIT COURT CASE CRO6-174-01 IS IN REFERENCE TO A VOID CONVICTION ON GRAND LARCENY. THERE WAS A FATAL VARIANCE IN THE INDICTMENT IT CHARGED THE WRONG VICTIM. PETITIONER WAS TRIED, CONVICTED AND SENTENCED WHEN THE WRONG VICTIM WAS NAMED IN THE INDICTMENT. THE FUNDS ON DEPOSIT BELONGED TO WACHOVIA BANK NOT PETITIONER'S WIFE. A CLEAR BREAK FROM OVER 100 YEARS OF PRECEDENT IN VIRGINIA. SEE APPENDIX L235A-N298A).

IN KOLE ET AL V. CITY OF CHESAPEAKE, ET AL, 247 VA. 51 (1994) (9) "... RULE 1:8 PROVIDES THAT LEAVE TO AMEND "SHALL BE LIBERALLY GRANTED IN FURTHERANCE OF THE ENDS OF JUSTICE." ... PETITIONER IS HEREIN UTILIZING ALL DOCUMENTS HEREIN.

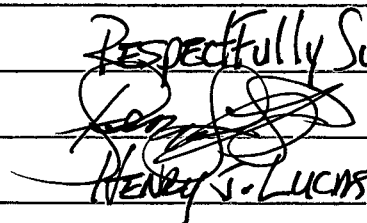
THE RULES OF THE SUPREME COURT SHALL NOT BE IN CONFLICT WITH THE GENERAL LAW IN VIRGINIA. VA. CONST. ART. VI, JUDICIARY § 5. RULE 1:8 IS IN CONFLICT WITH CODE OF VIRGINIA § 8.01-229(d). THE OBSTRUCTION BY THE DEFENDANT HAS BEEN CONTINUOUS FROM THE DATE EXPRIME SIEGOLD (100 U.S. 376) (1880) (AN UNCONSTITUTIONAL LAW IS VOID, AND IS AS NO LAW. AN OFFENSE CREATED BY IT IS NOT A CRIME. A CONVICTION UNDER IT IS NOT MERELY ERRONEOUS BUT IS ILLEGAL AND VOID (100 U.S. 376) AND CANNOT BE A LEGAL CAUSE FOR IMPRISONMENT.

OF THE INDICTMENT, CONVICTION, SENTENCING OF PETITIONER THIS IN THE CONVICTION ON CREDIT CARD THEFT, GRAND LARCENY. THE RULE 1:8 OF THE RULES OF THE SUPREME COURT OF VA. AND CODE OF VA. §8.01-229(D) ARE UNCONSTITUTIONAL AS APPLIED TO THIS PETITIONER. LEAVE TO AMEND SHOULD HAVE BEEN GRANTED IN ORDER FOR THE COURT TO HAVE RULED ON THE MERITS OF PETITIONER'S CASE. SEE APPENDIX G(15A-118A).

THE ISSUES PRESENTED HEREIN ARE IMPORTANT AND WORTH OF THIS COURT'S REVIEW. PETITIONER'S RIGHT TO BE HEARD AND A RULING ON THE MERITS IS OF HIGH IMPORTANCE TO THIS PETITIONER AND ALL LITIGANTS. THE VA. SUPREME COURT'S FAILURE TO DENY THAT PETITIONER CURED THE SHORTCOMING OF RULE 5:17(c)(iii) ON JULY 10, 2020 IN THE CORRECTED REPLY BRIEF PAGE 2 SHOULD REVERSE THE JANUARY 29, 2021 ORDER. THE COURT WOULD HAVE TO RULE ON THE MERITS OF PETITIONER'S CASE. PETITIONER WAS DENIED DUE PROCESS.

CONCLUSION

THE PETITION SHOULD BE GRANTED.

Respectfully Submitted,

 HENRY S. LUCAS, JR.