

OCT 20 2021

OFFICE OF THE CLERK

No. _____

21-6104

IN THE

SUPREME COURT OF THE UNITED STATES

Christopher M. Hitt PETITIONER, Pro Se
(Your Name)

vs.

Commonwealth of Virginia RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals of Virginia
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher M. Hitt, pro se
(Your Name)

1607 Planters Road
(Address)

Lawrenceville, VA 23868
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTIONS PRESENTED

1. Was Commonwealth of Virginia in conflict with a decision of this Court when evidence was lost also violating Petitioners XIV Amendment of the U.S. Constitution Due Process clause?

2. Was the Petitioners XIV Amendment Due Process right violated when the judge did not recuse herself after Petitioner withdrew his plea?

LIST OF PARTIES AND RELATED CASES

In compliance with Rule 12.6 of this Court all parties that are represented are and appear in the caption of the case.

Cases directly related to the case in this Court:

Commonwealth V. Hitt, No. CR 18000850-00 - CR 18000850-02, Circuit Court of Stafford County; Judgement entered March 22, 2019

Hitt V. Commonwealth, No. 0564-19-4, Court of Appeals of Virginia, Judgement entered January 2, 2020

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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

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Court of Appeals of Virginia court appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals 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. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was June 14, 2021.
A copy of that decision appears at Appendix C.

☐ 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. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitutional Amendment XIV

Section 1 All persons born or naturalized in the United States, and subject to the jurisdiction thereof and citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of Virginia

Section 11. Due Process of Law

That person shall not be deprived of his life liberty, or property without due process of law.

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19.2-298.01 Use of discretionary Sentencing guidelines (App.G) 19.2-296 withdrawal of guilty plea (App.G) 19.2-254 ... rejection of plea agreement recusal (App.G) 19.2-299 Investigation and reports by probation officers in certain cases (App.G) 16.1-277.2 Rejection of Plea agreement

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STATEMENT OF THE CASE

On or about May 12, 2018, petitioner Christopher M. Hitt (hereafter petitioner, Hitt, or Mr. Hitt) seen an old friend, Michael Wallace on Snap Chat. Hitt called him after getting his number, and Hitt called him after getting his number, and Mike invited Hitt out to Funtland or a movie to hang out with some mutual friends, including the complaining witness.

They all, including Mr. Hitt, went to Funtland played some games and then went to Buffalo Wild wings to have drinks and watch an UFC Fight (Transcript of the Records July 18, 2018 at 11-13, hereafter TR, Appendix B) and then decided to go to the sports bar Durangos to play pool and they all had more drinks (TR July 18, 2018 at 71, Appendix B). At the end of the night when the bars closed the gang all went to their friends house in Stafford County, Virginia to sober up until morning (TR July 18, 2018 at 14-15, 42-43, Appendix B). Everyone was drinking at Buffalo Wild Wings and Durangos.

Once arriving at their friend's house, at about 2 AM on May 13, 2018, Mr. Hitt after getting to friends house had one more beer sat on the couch and socialized with friends.

The complaining witness at the Preliminary Hearing testified that when she arrived at the Friends house she went to the kitchen and got a beer out of the fridge, took one sip and became tired. (TR July 18, 2018 at 15, Appendix B) laying her head on the table. Then Phaedra the friend that owned the house, walked the complaining witness upstairs and gave her some pajamas pants. She changed, threw up twice in a trash can and then she was out. (TR July 18, 2018 at 15-16) That was the last thing testified to remembering what happened. She was then awakened by everyone yelling. (TR July 18, 2018 at 17, Appendix B)

She further testified that when she woke she was laying in bed and only had on a tee shirt (TR July 18, 2018 at 17, App. B) She further testified that after waking she did not know what was happening and Phaedra had walked her downstairs and explained what happened. That Sherce, one of the friends there that night, had opened the door to the bedroom where the victim was sleeping and saw Mr. Hitt on top of her. (TR July 18, 2018 at 17-18, App. B)

Mike, one of the friends there on May 13, 2018, testified that the complaining the witness

Came to him when they were at Durango's and told him that Hitt was "freaking her out" (TR July 18, 2018 at 74) Yet when defense counsel questioned her and asked her, "Prior to the evening of the alleged rape did she form any opinion about Hitt, and she answered, "NO. I mean, I just thought of him as another person. Like no." (TR July 18, 2018 at 39-40) Not once did she mention anything about being "freaked out" by the petitioner. Not once even when asked again about her feelings towards Mr. Hitt. (TR July 18, 2018 at 40)

On May 13, 2018, the petitioner was arrested at his mom's residence without incident and questioned by Detective Covington, employed with the Stafford County Sheriff's Office. Hitt after being advised of his Constitutional rights agreed to speak with Detective Covington about an alleged rape. Hitt also gave a written statement to Detective Covington as to what happened. On May 12-13, 2018.

On August 6, 2018 a Grand Jury in Stafford County issued True Bills for the

Following indictments:

1. CR 18-000850-00 Rape Pursuant to Virginia Code 18.2-61~~2~~, and
2. CR 18-000850-01 Aggravated Sexual Battery Pursuant to Virginia Code 18.2-67-3, and
3. CR 18-000850-02 Object Sexual Penetration Pursuant to Virginia Code 18.2-67.2

May 13, 2018 the victim was taken to Mary Washington Hospital and a SANE and forensic nurse, Monika Kral-Dunning performed an exam and compiled a PERK kit (Appendix D) Blood was drawn by Kristie Shepard RN using an Ultra Sound machine. The blood draw was witnessed by the SANE nurse that performed the exam. The blood was labeled and packaged to protocol and chain of custody was maintained. (Appendix D at 2, 7) PERK kit was sealed by the forensic nurse that performed the exam and referred to Detective Covington (Appendix D at 10).

The PERK kit was sent to the Department of Forensic Sciences and tested and then

results was the spermatozoa were identified on victim's buttocks and Mr. Hitt could not be eliminated as a contributor of that DNA profile. Spermatozoa were identified on victim's thigh/external genitalia and Mr. Hitt could not be eliminated as a contributor of that DNA profile. (Appendix E at 2)

Defense Counsel filed a Motion to Dismiss all charges against the petitioner on November 29, 2018, due to the Commonwealth losing blood sample that was in the PERK kit. This took the ability from Hitt to test this evidence that was exculpatory in nature. (Appendix F) The Commonwealth answered this motion saying that the blood was never in the Commonwealth's possession and proper protocol was followed. (Appendix D+E)

On January 28, 2019, Hitt and his counsel discussed plea agreement that was a two part agreement. The original deal was ~~to~~ to nolle prosequi intimate object sexual penetration, animal rape to attempted rape and aggravated sexual battery and the guidelines on plea of guilty is low 2.1 years, mid 4 years 10 months and high 6 years 7 months. There will be no presentence report prepared or psychosexual

education. That the Commonwealth would not request the high end of the guidelines. Hitt rejected that offer and wished to go to trial. (Appendix ~~136~~^{M+N}) The Commonwealth then came back with the same offer but added if the Court found him guilty the Commonwealth would recommend to the Court that for Hitt's probation violation in Stafford County the Commonwealth would recommend revoke probation and re-suspend the sentence 12 month suspended sentence. Plead guilty to Aggravated Sexual Battery 20 years, Attempted Rape 10 years and nolle prosequi Inanimate object sexual penetration Guidelines 2.1 years low, 4 years 10 month mid, and 6 years 7 months high end. Hitt accepted this offer and signed on January 28, 2019 (Appendix Mat 2-3).

On January 31, 2019 at the sentencing hearing ~~and~~ the parties in this case appeared before the Court with the Disclosure of Plea Agreement (Appendix M) (Tr 1/31/2019 at 5, Appendix B). The agreement outlined that Hitt would plead guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970) (Hereafter Alford or Alford Plea) to

indictments CR-18000850-00 which was amended to Attempted Rape and CR-18000850-01. The Commonwealth agreed to ~~not~~ prosecute the other charge indictment number CR-18000850-02. The parties represented to the Court that they wished to waive the preparation of a presentence investigation report and proceed to sentencing that day, using guidelines prepared by the Commonwealth (Appendix ~~3~~) (TR 1/31/2019 at 38-39, 51) (Appendix B).

Initially, the Court seemingly agreed to a plea and simultaneous sentencing without a presentence investigation report, stating, "After we finish this,¹ I'm going to hear evidence from either Ms. Casey or Mr. Mell, all the evidence I need to, I'm going to consider the guidelines, and then I'm going to sentence you." (TR 1/31/2019 at 18; Appendix B) The Court made no reference to the preparation or review of a presentence investigation report.

Hitt pleaded guilty pursuant to Alford to the agreed upon charges (TR 1/31/2019 at 8-38) (Appendix B). The Court found him guilty, initially waived the presentence investigation.
¹ Presumably, "this" is the plea colloquy.

report, but this immediately pivoted to inquire if a presentence report was required (TR 1/31/2019 at 38 and 39). It was only then that the Court ruled that the matter could not proceed to sentencing without the presentencing report and guidelines. (TR 1/31/2019 at 39-52, Appendix B, Appendix ~~5~~)

After Hill's Counsel protested the use of sentencing guidelines other than those tendered with the plea agreement, the Court reversed the issues of which sentencing guidelines to use and the potential remedies if a dispute develops about the sentencing guidelines until the next hearing. (TR 1/31/2019 at 51-58, Appendix B)

The parties reconvened on March 22, 2019 (TR 3/22/2019 at 3, Appendix B). The Court began by addressing the sentencing guidelines (hereafter guidelines). First, the Court referred to the Commonwealth prepared guidelines (Appendix ~~3~~ ^I), which were prepared before the mandatory presentence investigation report. The Court articulated that the Commonwealth prepared guidelines had, "a range of two years one month, high of six years seven months"

with a mid point of four years ten months. But, it does not have an adjusted high end." (TR 3/22/2019 at 7; Appendix B) the Court then remarked that the guidelines prepared by probation have an adjusted high end (TR 3/22/2019 at 7; Appendix B) thus, the Court immediately rejected the Commonwealth's prepared guidelines presumably because they lacked an adjusted high end.

Hitt's Counsel tendered another set of guidelines that differed from those prepared by probation (Appendix ~~5~~^K) (TR 3/22/2019 at 8-11; Appendix B) Counsel outlined a number of adjusted or counsel's guidelines that would cause the Adjusted High End of the Sentencing guidelines recommended range on the probation's prepared guidelines (TR 3/22/2019 at 11-14; Appendix B) The adjusted high end of the probation prepared guidelines (Appendix ~~5~~^K) sentence range was Level 2: twelve (12) years, eight (8) months (TR 3/22/2019, at 14; Appendix B) The adjusted high end of the guidelines sentence range on Counsel's prepared guidelines was Level 3: nine (9) years, six (6) months (Appendix ~~5~~^K) (TR 3/22/2019 at 14; Appendix B) The Section

C Guidelines Recommended on both probation prepared guidelines and counsel's, both calculated a sentence range of two (2) years, two (2) months to six (6) years four (4) months. (Appendix ~~S~~^K and ~~L~~)

The Court listened to and evaluated Hitt's counsel's arguments about the proposed adjustments (TR 3/22/2019 at 11-21, Appendix B). After accepting some of the proposed adjustments and modifying others, the Court made its own determination regarding the number of points to attribute to the Adjusted High End of the recommended range (TR 3/22/2019 at 19-20, Appendix B). Even though the Court's point calculation different from Hitt's Counsel point calculation still fell within Level 3 Range as suggested by Hitt's counsel. (TR 3/22/2019 at 19-21, Appendix B). Therefore, with the Commonwealth's agreement, the Court declared the counsel's prepared guidelines under which any sentencing would proceed. (TR 3/22/2019 at 21, Appendix B).

The Court then engaged Hitt about the guidelines and whether he wished to withdraw his guilty plea or proceed to sentencing.

(TR 3/22/2019 at 21-22, Appendix B) The Court acknowledged that when Hitt initially tendered his guilty plea on January 31, 2019, the initial sentencing guidelines range Hitt was given at that time was different. (TR 3/22/2019 at 22, Appendix B) As a result the Court explained that Hitt would have an opportunity to withdraw his guilty plea because he "did not have the ~~correct~~ correct information on the front end." (TR 3/22/2019 at 22, Appendix B) Hitt answered affirmatively when asked if he had time to consider whether he wished to withdraw his guilty plea based on the Counsel's prepared guidelines. (TR 3/22/2019 at 22, Appendix B) The Court explicitly asked, "Do you wish to withdraw your plea or do you wish to proceed to sentencing today?" (TR 3/22/2019 at 23, Appendix B) Hitt indicated that he wanted "proceed to sentencing." (TR 3/22/2019 at 23, Appendix B)

On indictment CR 18-000850-00, the Court sentenced Hitt to ten (10) years in the Penitentiary with five (5) years suspended, leaving five (5) years active sentence incarceration (TR 3/22/2019 at 54) (Appendix B) The Court

Sentenced Hitt to twenty (20) years of incarceration with (20) twenty years suspended for indictment CR 18-000850-01 (TR 3/22/2019 at 54, Appendix B)

After the Court found Hitt guilty of the Attempted Rape and Agg. Sexual Battery, the Court moved on to the probation violation (TR 3/22/2019 at 55-56). The Commonwealth had a recommendation on the probation violation of revoke probation and resuspend all of the twelve (12) months, but six (6) months. (TR 3/22/2019 at 57-58) Mr. Hitt's counsel requested that the time given on the attempted rape and agg. Sexual battery run concurrent with the probation violation and the Commonwealth ~~reje~~ objected to that request. (TR 3/22/2019 at 58, ⁵⁹Appendix B) After the Court heard evidence on the probation violation, (TR 3/22/2019 at 59-61, Appendix B) the Court sentenced Hitt to six months on the probation violation and run three (3) months of it concurrent. (TR 3/22/2019 at 61-62, Appendix B)

REASON FOR GRANTING THE WRIT

A. Conflicts with Decision of this Court Question One

The holding of this Court opinions below state clearly that losing exculpatory evidence or intentionally destroying evidence violates the XIV Amendment Due Process of the U.S. Constitution. See California v. Trombetta, 467 U.S. 479, 485-91 (1984), see also Arizona v. Youngblood, 488 U.S. 51, 57-59 (1988)

B. Importance of Question Presented

This case presents a fundamental question of the interpretation of this Court's decision in Trombetta, 467 U.S. 479 and Youngblood, 488 U.S. 51, rehear 488 U.S. 1051. The question presented is of great public importance because it affects the democracy of this Country and it's Constitution. The Due Process of laws has to be fair; and not just Mitt will be prejudiced, but also the whole Country if this injustice is allowed to happen. Congress and the Founding Fathers of this Country, clearly showed that they did not want the government to be too powerful or unfair.

The issues importance is enhanced by the fact that the lower courts in this case

have seriously misinterpreted Trombetta and Youngblood. In Trombetta this Court opined, "Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. To safeguard that right, the Court has developed what might loosely be called the area of constitutionality guaranteed access to evidence."

California v. Trombetta, 467 U.S. 479, 485 (1984) (quoting United States v. Valenzuela-Bernal, 458 U.S. 858, 867, 73 L. Ed. 2d 1193, 102 S. Ct. 3440 (1982)) "Taken together this group of Constitutional privileges delivers exculpatory evidence into the hands of the accused thereby protecting the innocent from erroneous conviction and ensuring that integrity of our criminal justice system." California v. Trombetta, 467 U.S. 479, 485 (1984)

Question 2

A. Conflict with the Constitution of the United States

The Sentencing Court violated Hitt's XIV Amendment Due Process right when she did not recuse herself when Hitt withdrew his plea. See also (Appendix G and H) also (Appendix B March 22, 2019 Sentencing pg. 10)

B. Importance of Question Presented

This case presents a fundamental question to the public at large. This case clearly is a miscarriage of justice and this Honorable Court should invoke the miscarriage of justice rule to protect the public and Hitt from a serious error that the lower courts have made.

Due to the ineffective assistance of Hitt's counsel at sentencing and pretrial matters, Hitt believed that he had no choice, but plead guilty according to Alford to something that he did not do, and because counsel did not conduct proper pretrial investigations and file pretrial motions; evidence that was exculpatory did not get presented and other evidence was lost.

Pretrial motions in the lower court were

either done incorrectly or not done at all.
If this Honorable Court does not grant the writ
and remand for new trial a serious miscarriage
of justice will occur.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10-14-21