

No. **22-5248**

Supreme Court, U.S.
FILED

APR 21, 2022

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In the
Supreme Court of the United States

DOUGLAS A. HOGLAN --- Petitioner

v.

COMMONWEALTH OF VIRGINIA --- Respondent

On Petition for Writ of Certiorari to the Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

Douglas A. Hoglan #1393158
Green Rock Correctional Center
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Chatham, VA 24531

ORIGINAL

RECEIVED

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

A defendant in a criminal case, Larry D. Hooper, adamantly requested the recordings of his police interview for the purposes of assessing the severity of his actual statements in order to make strategic legal decisions, including whether or not to proceed to trial. Secondly, he required the recordings to use for a hearing in order to show that his Fifth Amendment rights against self-incrimination (*Miranda* rights) were clearly violated for the purposes to suppress the only evidence that the Commonwealth could possibly use against him. Hooper repeatedly asked his defense counsel for the recordings and for them to review them, but counsel repeatedly told him that the recordings were corrupt and that no viable copies existed. Defense counsel then advised that any suppression motion on the basis of *Miranda* violations would be a nonstarter as three police detectives would testify that there were no violations, and that their version would be believed.

Additionally, as there were supposedly no recordings, the detectives' narrative of what Hooper had said in the interrogation room would be construed as fact. Thus, faced with the possibility of spending the rest of his life in prison, and without all of the essential information to mount a meaningful defense, Hooper was constrained to accepting a plea bargain he would not have otherwise taken. Years later, upon finally getting the whole of his defense case file, he was able to have examined and transcribed, without problem, the contents of an included compact disc (CD). The CD contained recordings of the interview, thus, his defense counsel had not told him the truth about the existence of viable recordings. Subsequently, he moved the circuit court to have the Commonwealth, and its agents, to preserve any and all copies of the interview that they may possess. In response, the Commonwealth provided another CD to Hooper, however, Hooper found discrepancies between the contents in the recordings on the two CDs. Later at a subsequent, unrelated habeas corpus evidentiary hearing, Hooper's counsel did indeed admit, on the record, that she had not told her client the truth about the existence of viable recordings.

This information was conveyed to, and researched by the present petitioner, Douglas A. Hoglan, a Commonwealth of Virginia citizen and fellow prisoner. Hoglan was concerned about the absence of constitutional due process caused by the fraud that clearly occurred outside the scope of the intrinsic mechanisms of the circuit court. He filed a motion to intervene and set aside the conviction orders based upon precedent and law of the Commonwealth that allows orders obtained by extrinsic fraud to be impeached directly or collaterally by all persons, anywhere, at

any time, or in any manner. Hoglan supported his petition with evidence, yet without so much as an evidentiary hearing, nor awaiting a rebuttal from him to the Commonwealth's response, the circuit court issued its denial order. The order was bare without any written opinion, and neither stated one singular fact, nor cited a single phrase from extrinsic fraud doctrine. Instead, it said it made a determination wholly "upon a review of the [intrinsic] files and evidence during the trial and sentencing and the Commonwealth's response ... finding no basis to grant said 'Motion' ". Hoglan appealed to the Virginia Supreme Court, who in turn nakedly opined in a single sentence that "there is no reversible error in the judgment complained of".

The First Question presented is: Did the extrinsic fraud which deprived Hooper of knowing of the existence of, and effectively having access to, the recordings of his police interrogation, --- which were guaranteed to him by procedural rules --- deprived him of the opportunity to mount a meaningful defense under the right to due process?

The Second Question presented is: Was the restricted examination, limited to only to its (intrinsic) trial record, by the circuit court regarding Hoglan's claims of extrinsic fraud sufficient enough to make a factual determination on whether or not extrinsic fraud had occurred outside the intrinsic safeguard mechanisms of the court's proceedings and its record, and had it had tainted Hooper's due process?

The Third Question presented is: ? Does the extrinsic fraud in question nullify Hooper's commitment into a plea agreement because he did not voluntarily, knowingly, and intelligently waive his opportunity to continue on with the proceedings armed with the recordings?

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
THE OPINIONS BELOW	1
JURISDICTIONAL STATEMENT	1
CONSTITUTIONAL PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	7
REASONS FOR GRANTING THE PETITION	8
ARGUMENT	9
CONCLUSION	14
APPENDIX A: Opinion order of the Supreme Court of Virginia, filed July 20, 2021	
APPENDIX B: Opinion order of the Circuit Court of Henrico County, Virginia, filed November 2, 2020	
APPENDIX C: Order of the Supreme Court of Virginia denying Hoglan's petition for rehearing, filed November 24, 2021	
APPENDIX D: Supreme Court of the United States Chief Justice's extension of time to file petition for certiorari, filed March 7, 2022	

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Bradshaw v. Stumpf</i> , 545 U.S. 175, 183, 125 S. Ct. 2398, 2405, 162 L. Ed. 2d 143, 153, 2005 U.S. LEXIS 4841, *15 (U.S. June 13, 2005)	13
<i>Brady v. United States</i> , 397 U.S. 742, 748 (1970).	13
<i>Miranda v. Ariz.</i> , 384 U.S. 436, 86 S. Ct. 1602 (1966)	11

STATE CASES

<i>City of Virginia Beach v. Nala Corp.</i> , Va.Cir. 309 (2000)	10
<i>Juniper v. Commonwealth</i> , 271 Va. 362, 626 S.E.2d 383 (Va. March 3, 2006)	10
<i>Singh v. Mooney</i> , 261 Va. 48 (Va. January 12, 2001)	10
<i>State Farm Mut. Auto. Ins. Co. v. Remley</i> , 270 Va. 209 (2005)	10
<i>Vaughn v. Cherry</i> , 62 Va. Cir. 446 (Va. Cir. Ct. August 19, 2003)	10

STATE STATUTES AND COURT RULES

Code of Virginia § 8.01-428(D)	10
Virginia Supreme Court Rule 3A:11	10

CONSTITUTIONAL PROVISIONS

U.S. Const. Amendment V	1
U.S. Const. Amendment VI.	1
U.S. Const. Amendment XIV	2

THE OPINIONS BELOW

The November 2, 2020, opinion of the Circuit Court of Henrico County, Virginia, App.1, is unpublished.

The July 20, 2021, opinion of the Supreme Court of Virginia, App.2, is unpublished. The November 24, 2021, order of the Supreme Court of Virginia, App.3, denying Hoglan's petition for rehearing is unpublished.

JURISDICTION

The Supreme Court of Virginia, opined that there was no reversible error in the Henrico Court's judgment denying Hoglan's motion to intervene and set aside orders due to extrinsic fraud. App.2. Hoglan filed a timely petition for rehearing, which the Virginia Supreme Court denied on November 24, 2021, App.3. On March 7, 2022, the Chief Justice extended the time to file this petition and including April 23, 2022. App.4. This Court has jurisdiction under 28 U.S.C. Section 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The United States Constitution's Fifth Amendment provides, in relevant part that: "No person ... shall be compelled in any criminal case to be a witness against himself".

The United States Constitution's Sixth Amendment provides, in relevant part: In all criminal prosecutions, the accused shall enjoy the right to ... be confronted with the witnesses against him ...".

The United States Constitution's Fourteenth Amendment provides, in relevant part: No State shall ... deprive any person of life, liberty, or property, without due process of law ...".

STATEMENT OF THE CASE

Defendant Larry D. Hooper ("Hooper") was arrested after a bank robbery in Henrico County in the Commonwealth of Virginia. He was charged with multiple crimes regarding the bank robbery and several others as a result of an intense police interrogation in which he ultimately made damaging statements against his interests. The interrogation took place even though Hooper had unabiguously invoked his right to counsel prior to its actual start, had asked again for a lawyer during the interrogation, and had asked that it stop; yet the police pressed on anyways. Upon assignment of defense counsel, Shannon Dillon ("Dillon"), Hooper immediately, repeatedly, and adamantly requested that she get the recordings of the interrogation in order to mount a meaningful defense including using the recordings to show that his Fifth Amendment against self-incrimination (*Miranda* rights) were violated making the interrogation unlawful, and to subsequently move to suppress all of the statements and the evidence (*of the poisoned tree*) derived thereof. He also wanted to be aware of exactly how damaging his statements were in order to make other strategic decisions including on whether or not to go to trial or plea bargain. Hooper was entitled to the recordings under Virginia Supreme

Court Rule 3A:11. Dillon responded to his requests stating that the recordings of the interrogation had been corrupted, and that there were no other viable copies. She then stated that any attempt to suppress the interrogation was a non-starter because it could not be independently corroborated that the interrogation was unlawful, and that the word of three police detectives that would state no *Miranda* violations occurred would be taken as true over the defendant's. Moreover, the detectives' version of what Hooper said in the interrogation would also be taken as the only truth. Hooper believed his attorney about the purported corruption of the recordings, unconditionally. If convicted on just the majority of the charges, Hooper was faced with what was effectively the rest of his life in prison. Dillon then prodded him to accept a plea agreement from the Commonwealth's prosecutor. Constrained by the circumstances of a long prison term, and not having the recordings available to him, Hooper accepted a plea bargain that he would not have otherwise accepted had he had access to the recordings.

Hooper discovers the deception

Years later after finally getting the whole of his defense case file from Dillon after numerous requests, a CD was found within the file which contained a recording of the police interrogation. Hooper's father had the recording transcribed by the same outfit that regularly did the circuit court's transcriptions, and the outfit did so without any problems. Hooper reviewed the transcript and found that it

supported his claims of *Miranda* violations. He then realized that he had not been informed of the truth by his defense counsel, and subsequently filed habeas corpus petitions on the issues. Hooper's *pro se* petitions were convoluted and amateurish due in part from a traumatic brain injury that he suffered during military service, and his inexperience in legal matters. Somehow the (extrinsic fraud) pleadings were twisted into a nebulous and irrelevant discussion on whether or not Hooper had asked Dillon to make a direct appeal. In the evidentiary hearing ordered to address just that one specific question, newly appointed counsel for just that hearing put forth a question to Hooper's former counsel, Dillon, about the recordings. Dillon admitted, on the record, that she knew that the recordings were ultimately viable. Hooper then realized that this was deliberate because any narrative that this was accidental was negated, for arguendo, if she were to say that she found out about the existence of viable recordings only after the original criminal proceedings, realistically she would have performed her duty and directly informed and aided Hooper regarding the viable recordings at that later hypothetical time. However, no such events ever occurred. Hooper, as anyone would, reasonably concluded that there could only be two tenable reasons for the deception. First, because of the publicity of the case and the high probability that it would be dismissed if the *Miranda* violations by the police were pursued, a "backroom deal" was made between Dillon and the prosecutor to sacrifice Hooper in exchange for a later favor to Dillon. Or, in the alternative, Dillon did not want to put in the time and effort

necessary to properly defend Hooper, and instead only sought to help herself by lessening her case load by plea bargaining out the case. Either way, Dillon sold out her client. Yet, ultimately Hooper's habeas petitions were denied because the claims of extrinsic fraud had gotten lost in the process.

Hoglan's involvement and filings

This information was conveyed to, and researched by, Petitioner Douglas A. Hoglan ("Hoglan" or petitioner), a Commonwealth of Virginia citizen, a fellow veteran, and peer prisoner. Hoglan was concerned about the absence of constitutional due process caused by the fraud that occurred outside the scope of the intrinsic mechanisms of the circuit court. Hoglan urged Hooper to move the circuit court to have Commonwealth's attorney, and its agents, to preserve any and all copies of the interview that they may possess. In response, the Commonwealth provided a CD to Hooper. Upon examination, he found discrepancies between the recordings on that CD and the CD found in his defense case file. Hoglan, a computer professional, then did computer file-based comparisons of the two CDs and documented major differences. Hoglan after interviewing Hooper and reading his documentation filed, *pro se*, a motion to intervene and set aside the conviction orders based upon a precedent within the Commonwealth that allows orders obtained by extrinsic fraud to be impeached directly or collaterally by all persons, anywhere, at any time, or in any manner, and under the Code of Virginia §

8.01-428(D).

Hoglan's complaint presented clear and convincing evidence that fraud had occurred which would motivate a reasonable court to investigate its decision's integrity. Included in the evidence were Hooper's affidavit which laid out: 1.) how his *Miranda* rights had been violated in the police interrogation; 2.) how his defense lawyer had lied to him about the existence of viable recording after repeated attempts to have the recordings of the interrogation, guaranteed under Virginia Supreme Court Rule 3A:11, heard by her and himself; 3.) how he wanted to use the recordings in order to mount a meaningful defense --- to make strategic decisions, and to use to suppress the only evidence the Commonwealth could possibly use against him; and, 4.) his review of the recordings of the CDs, obtained years after his proceedings and how they differed in content. Second, Hoglan's affidavit outlined his inspection of Hooper's documentation as well as his own professional inspection of the computer files that showed disparities in the files. Lastly, but of most import, included was the transcript excerpt of the independant sworn testimony from Dillon, Hooper's defense counsel, recorded at an unrelated habeas hearing, where she admitted that she had not told him truth that there were viable recordings of the police interview.

Yet, without so much as an evidentiary hearing, nor awaiting Hoglan's rebuttal to the Commonwealth's response, the circuit court issued its denial order. (

(App.2). The order was bare without any written opinion, and neither stated one singular fact, nor uttered a single phrase of extrinsic fraud doctrine. Instead, it said it made a determination wholly "upon a review of the [intrinsic] files and evidence during the trial and sentencing and the Commonwealth's response ... finding no basis to grant said 'Motion' ". Hoglan appealed to the Virginia Supreme Court, who in turn nakedly opined that "there is no reversible error in the judgment complained of". (App.1)

SUMMARY OF ARGUMENT

Hooper's due process rights were violated when extrinsic fraud was committed upon the criminal court, and upon him, when his defense counsel did not tell him the truth about the existence of viable recordings of the police interrogation. These recordings were procedurally guaranteed to Hooper, they were material to the preparation of his defense, and they would have been critical in making a determination to carry on with his criminal proceedings instead of entering into a plea bargain that he would have not otherwise entered. Additionally, without the recordings Hooper was effectively deprived of his due process ability to suppress the only evidence that the Commonwealth could possibly use in their prosecution, and being able to do this Hooper, undoubtedly, would not have entered into a plea bargain. Petitioner Hoglan's pleas to the Henricio County

Circuit Court (Hooper's criminal court),and through review of the Virginia Supreme Court, under extrinsic fraud doctrine and Virginia law were not properly heard, nor examined, nor adjudicated.

REASONS FOR GRANTING THE PETITION

Typically, extrinsic fraud is more prevalently seen in civil cases such as divorce proceedings, or corporate business matters, and when a genuine extrinsic fraud claim is raised therein, civil courts are unabashedly quick to remedy them under extrinsic fraud doctrine. However, criminal courts historically appear less willing to entertain extrinsic fraud claims, yet alone set aside finalized convictions orders as the proper remedy for unlawfully obtained convictions. It is the belief of this petitioner, that this Honorable Court should encourage the lower courts that, when tenable claims of extrinsic fraud are raised which would mar the integrity of a court's judicial proceedings that, as a matter of sustaining the public's trust and confidence in our nation's justice system and to protect the rights of federal citizens, those courts are duty bound to hear out and vet those claims by all reasonable, available means. Secondly, although the extrinsic fraud at issue perpetrated by Hooper's defense counsel may be viewed as (one of the most egregious forms of) ineffective assistance of counsel, the Court should express, here, by its ruling, that the lower courts should also embrace vehicles other than the typical, and incredibly

precarious to navigate, petition for writ for habeas corpus. Such a ruling would bring even more significance to those citizens in states, like Virginia, which do not offer additional formalized post conviction relief. The Court should show that vehicles, such as the extrinsic fraud doctrine-based one employed here by Hoglan, are not only viable, but essential opportunities supported by this Court to remedy unlawful criminal conviction decisions, not just civil decisions.

ARGUMENT

Our judicial system operates on many premises with one being that a defendant's defense counsel will be truthful with him about the matters in his case. As such, defendants put their express trust into them, literally placing their lives in their hands. The courts alike work on that premise, and thus, there are no "catch all" intrinsic procedural mechanisms to test whether a lawyer has been truthful as to all matters with his client within a case. This is one of the reasons that the extrinsic fraud doctrine is not only so important, but necessary, especially when used to uphold the constitutional rights of a defendant in a criminal proceeding.

"[E]xtrinsic fraud consists of conduct which prevents a fair submission of the controversy to the court, and therefore renders the result of the proceedings null and void." *City of Virginia Beach v. Nala Corp.*, Va.Cir. 309, 2000 WL 33340689 *8 (internal cite and quotes omitted). "A controlling factor is 'whether the misconduct tampers with the judicial machinery and subverts the integrity of the court itself.'"

State Farm Mut. Auto. Ins. Co. v. Remley, 270 Va. 209, 217, 618 S.E.2d 316 (2005).

"Examples of extrinsic fraud that justify setting aside a judgment include the bribery of a judge or juror, the fabrication of evidence by an attorney, preventing another party or party's witness from appearing in court, an attorney corruptly selling out his client's interest, and misleading another party into thinking a continuance has been granted". *Vaughn v. Cherry*, 62 Va. Cir. 446, 448, 2003 Va. Cir. LEXIS 290, *4 (Va. Cir. Ct. August 19, 2003). An order obtained through extrinsic fraud may be "impeached directly or collaterally by all persons, anywhere, at any time, or in any manner". *Singh v. Mooney*, 261 Va. 48, 52, 2001 Va. LEXIS 2, *4 (Va. January 12, 2001) (internal cite omitted). The Code of Virginia § 8.01-428(D) that states:

"Other judgments or proceedings. — This section does not limit the power of the court to entertain at any time an independent action to relieve a party from any judgment or proceeding, or to grant relief to a defendant not served with process as provided in § 8.01-322, or **to set aside a judgment or decree for fraud upon the court.**" (emphasis added).

Additionally, "[u]nder [Virginia Supreme Court] Rule 3A:11, a felony defendant is entitled to his own written or recorded statements made to law enforcement personnel, certain written reports in the possession of the Commonwealth, and tangible objects within the possession, custody, or control of the Commonwealth which may be material to the preparation of the defense. Va. Sup. Ct. R. 3A:11(b)." *Juniper v. Commonwealth*, 271 Va. 362, 375, 626 S.E.2d 383,

393, 2006 Va. LEXIS 29, *1 (Va. March 3, 2006).

1. Valid, tenable claims of extrinsic fraud were raised by the Petitioner which showed a violation of due process

Hoglan made complaints of extrinsic fraud which were actionable by the circuit court because the evidence showed that Hooper's attorney (Dillon) made a false representation of a material fact (the existence of viable recordings); that she made it intentionally with intent to mislead Hooper to plea bargain; that Hooper relied upon the deception to make the decision to plea bargain when he would have not otherwise done so; and that it significantly damaged his ability to mount a meaningful defense including his ability to use the recordings to suppress the unlawful interrogation in violation of his Fifth Amendment rights under *Miranda v. Ariz.*, 384 U.S. 436, 86 S. Ct. 1602 (1966). Hoglan's claims were supported by facts, that were not, and could not be, disputed as patently false or frivolous, and supported the elements of extrinsic fraud. Even if, arguendo, the court believed that the facts presented were not clear and convincing, the introduced evidence was more than sufficient to motivate a reasonable court to investigate its own previous decision's integrity by use of an evidentiary hearing. Instead, the circuit court used no analysis, nor cited any article of extrinsic fraud doctrine, yet alone disclosed any findings of fact that supported its decision. The cursory decision reeked of "sweeping [the issue] under the rug" in order to avoid embarrassment and to preserve the

finality of an order which was unlawfully obtained on its watch.

2. The circuit court's restricted examination, limited to just the trial record, could not possibly determine that the alleged incidents of extrinsic fraud had occurred, thus the Virginia Supreme Court erred in its finding of no error upon appeal

Extrinsic fraud, by its namesake, involve events that occur outside the intrinsic mechanisms of a court. Thus, for a court to limit its review for a determination to just "the files and the evidence during the trial and sentencing" as the circuit court did (App.2), when the incident of extrinsic fraud was stated to have happened outside of (extrinsic to) the court's record, was an absurd and insufficient examination. When presented with the aforementioned evidence, the Commonwealth did not and could not dispute that Hooper's lawyer had lied to him about the availability of viable recordings. The Commonwealth's response only regurgitated circumstances from the tainted criminal proceeding about the alleged crimes that were wholly irrelevant to the extrinsic fraud at issue. In its response to the irrefutable evidence, the circuit court failed to state any finding of fact outside of its record to deny that the extrinsic fraud had actually occurred. Hoglan's claims were, at the least, inquiry worthy claims given both their seriousness and the significant impact upon the integrity of the court's decision and warranted, at least, an evidentiary hearing to hear directly from Hooper's defense counsel that she had indeed lied, why she had lied, that Hooper had indeed adamantly requested the

recordings, and other relevant circumstances. With this in mind, any review by the Virginia Supreme Court that did not directly address these specific dispositive issues was plain error.

3. Defendant Hooper's entrance into the plea bargain was not made knowingly, voluntarily, and informedly due to the extrinsic fraud perpetrated

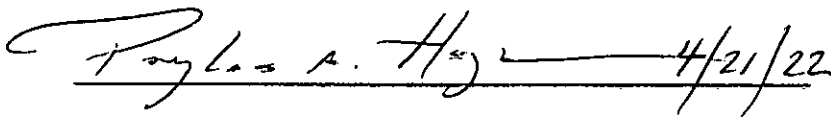
"A guilty plea operates as a waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently, 'with sufficient awareness of the relevant circumstances and likely consequences'. *Brady v. United States*, 397 U.S. 742, 748 (1970)." *Bradshaw v. Stumpf*, 545 U.S. 175, 183, 125 S. Ct. 2398, 2405, 162 L. Ed. 2d 143, 153, 2005 U.S. LEXIS 4841, *15 (U.S. June 13, 2005). Defendant Hooper immediately sought from his defense lawyer the recordings of his police interrogation because he knew they were important for his defense. He wanted them to suppress the damaging statements, and the evidence derived thereof, because the recordings would clearly show that the police had violated his *Miranda* rights during the interrogation. He also wanted them to evaluate just how damaging his statements were in order to make informed decisions such as to whether to continue onto trial. Hooper in his sworn affidavit, stated that had he known about the circumstances that viable recordings existed, and thus consequently been armed with them, to mount a meaningful defense he would have continued his proceedings and intelligently, knowingly, and voluntarily **not**

entered a plea bargain. The only thing that prevented him from having the recordings, guaranteed by due process of Virginia Supreme Court Rule 3A:11, was his lack of knowledge that they actually existed. And that unknowing was effected by his counsel's deception.

CONCLUSION

WHEREFORE, for the aforementioned reasons above, the petition for writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature, which appears to read "Douglas A. Hoglan", is written over a horizontal line. To the right of the signature, the date "4/21/22" is handwritten.

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