

22 - 7885

IN THE SUPREME COURT OF THE UNITED STATES

1 FIRST STREET, N.E.

WASHINGTON, DC. 20543-0001

CLERK OF THE COURT

FILED

FEB 06 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

EX. #AA
Cover page

Antwon G. Whitten, PRO SE v. Harold W. Clark, VDOC, DIR,
PETITIONER/APPELLANT, APPELLEE/RESPONDENT

(CASE NO.

Antwon Gairrio Whitten, PRO SE, 1138537
Red Onion State Prison
10800 H. Jack Rose Hwy.
P.O. Box 970
Pound, Va. 24279-0970

PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT OF VIRGINIA
FINAL JUDGMENT ON DECEMBER 22, 2022
CASE: Whitten v. Clark, 22-5640 (2:20-cv-570-WAK)

QUESTIONS PRESENTED

1) Whether the trial court took judicial notice of the crime scene in order to lawfully have subject matter jurisdiction and if ruled in the negative makes the conviction void ab initio?

2) Whether the courts of the states and federal appeals courts denied due process of law when it failed to answer the federal question of my Probable Cause claim for my arrest thus, if ruled in the affirmative, the writ shall issue?

3) Whether officers of the court committed fraud upon the court in a carefully executed plan and scheme to defraud the court itself as its improper influence from its rulings caused substantial due process violations?

4) Whether Whitten's constitutional right to the effective assistance of counsel as defined in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) was violated, and whether the judgment/final order by the highest State court "la. Sup. Ct." ruling is void as well the federal question was not answered under the (2) prong test of Strickland?

Rule 14(b) Federal & State Court Proceedings

2) United States Court of Appeals Va. (2)

Whitten v. Clarke, 22-6540 (2:20-cv-00570-LRL) (Dec. 22, 2022)

2) United States District Court E.D. Va. (2 Norfolk (2)

Whitten v. Clarke, 2:20-cv-570-LRL (March 24, 2022)

3) Supreme Court of the United States (2)

Whitten v. Clarke, 20-5106-141 S. Ct. 396 (Oct. 5, 2020)

STATE APPELLATE COURT REVIEW (2)

4) Whitten v. Clarke, 190683 Sup. Ct. Va. (March 20, 2020)

5) Whitten v. Clarke, 190683 Sup. Ct. Va. (ECF no. 118)

6) Whitten v. Clarke, 190683 Sup. Ct. Va. (Jan. 20, 2020)

7) Whitten v. Clarke, 190683 Sup. Ct. Va. (8/29/2019)

8) Whitten v. Clarke, 190683 Sup. Ct. Va. (ECF no. 12)

9) Whitten v. Commonwealth, 061708 Sup. Ct. Va. (Jan. 4, 2007)

10) Whitten v. Commonwealth, 2814-05-4 Ct. App. Va. (Jan. 26, 2006)

STATE COURT REVIEWS

- 11) Whitten v. Clarke, CK19-336-00 Stafford County Cir. Ct. Va. (April 25, 2019)
- 12) Commonwealth v. Whitten, CR03-1070-00 Stafford County Cir. Ct. Va. (Oct. 27, 2005)
- 13) Commonwealth v. Whitten, CR03-1070-01 Stafford County Cir. Ct. Va. (Oct. 27, 2005)

Antwon B. Whitten, pro se, 1138537

TABLE OF CONTENT

Cover page	1
Questions Presented	2
List of all proceedings in state and Federal trial and Appellate Courts	3
Table of Contents	5
Table of Authorities	7
Jurisdiction Statement	11
Statutory Provisions Statement of Jurisdiction	12
Constitutional Provisions	13
Statutory Provisions, Codes, Rules, Articles, etc.	15
A concise Procedural statement of the case	17
Argument	19
Jurisdiction basis in federal court of first instance	39
Reasons for granting the writ	40
Appendix	41
Other relevant orders written entered necessary to ascertain the grounds of the judgment of the companion cases	43
Material essential to understand the Petition	44
Importance of exceptional Questions Presented	2
Conclusion	45
Certificate of service	46
Material Essential to understand the Petition - see as follows:	

- 1) AB - Freedom of Information (FOIA) request 2015 docs. received — 19, 22, 24, 29, 36
- 2) Trial Trans. #pg. 6, May 17, 2004 — 21, 26, 29, 36
- 3) Tr. Trans. pg. 206, 5/26/2005 — 21, 26, 29, 36
- 4) Tr. Trans. pg. 239, 5/23/05 — 21, 26, 29, 36
- 5) Tr. Trans. pg. 240, 5/23/05 — 21, 26, 29, 36
- 6) Tr. Trans. pg. 395, 5/23/05 — 21, 26, 29, 36
- 7) Tr. Trans. pg. 396, 5/23/05 — 21, 26, 29, 36
- 8) Tr. Trans. pg. 397, 5/23/05 — 26, 29, 36
- 9) Ex. #4 - "APP" from Defense Atty. Basefold — 29,
- 10) Ex. #54 - Map, from Commonwealth's Atty. — also as #F.2 — 26, 31, 36
- 11) Ex. #F.1, History of Independent City of Fredericksburg, Va. — 26, 29, 36
- 12) Ex. #73-74 also as #75 - Rental Poster, address left out by Stafford on purpose to prevent the actual address of crime scene — 26, 29, 36
- 13) Ex. #75 - Indictment Va. Code § 18.2-58, Robbery — 26, 29, 36
- 14) Ex. #76 - Indictment Va. Code § 18.2-31, 1st degree instead of Capital Murder. — 19, 36
- 15) Ex. #B - History of Stafford County, Va. — 19, 36
- 16) Ex. #AAA - Sup. Ct. Va. March 20, 2020 judgment @ Whitten v. White, 190683 — 29, 36
- 17) F.U. 1 - Article with CSI's True Value Store's Brick & Mortar address — 36
- 18) Ex. #T - Capias for Robbery - no crime (or) location noted. — 19, 29, 36
- 19) Ex. #D1 - Arrest Warrant - no crime or address noted. — 19, 36
- 20) Ex. #A2 - Clerk of Court — 31
- 21) Ex. #4-1 - "APP" from Stafford County Sheriff's Lectures... for handed upon the Court by offices of the Court. — 26
- 22) Ref. CIA, pg. 43 AP #4, 5, 6, 7 — 19, 20, 21, 26, 31
- 23) Ref. CIA, pg. 43 AP 8, 9, 10, 11, 12, 13 — 21, 26,
- 24) Ref. CIA, pg. 43 AP 10, 11, 22 — 31
- 25) Ref. CIA, pg. 43 AP 19 — 26

TABLE OF AUTHORITIES

1) <u>Antwon G. Whitten v. Harold W. Clarke, CL19-336</u>	33
2) <u>Arizona v. Fulminate, 499 U.S. 279, 310, 311, 111 S. Ct. 1246, 1265, 113 L. Ed. 2d 302</u>	28
3) <u>Carey v. Stafford, 536 U.S. 214, 225-26, <i>per the AEDPA</i></u>	36
4) <u>Clisby v. Jones, 960 F.2d 925, 1992 U.S. App. LEXIS 8906 U.S. App. 11th Cir. (May 4, 1996)</u>	25
5) <u>Collison v. Underwood, 1 Va. App. 443, 445, 339 S.E.2d 897 (1986)</u>	25
6) <u>Commonwealth v. Whitten, CR03-1070-00 Stafford County Cir. Ct. Va. (Oct. 27, 2005)</u>	19, 26, 29, 31
7) <u>Commonwealth v. Whitten, CR03-1070-01 Stafford County Cir. Ct. Va. (Oct. 27, 2005)</u>	19, 26, 29, 31
8) <u>Costello v. United States, 365 U.S. 265, 282, 81 S. Ct. 534, 5 L. Ed. 2d 551 (1961)</u>	21, 29, 37
9) <u>County of Allegheny v. ACNU Greater Pittsburgh Chapter, 492 U.S. 573, 106 L. Ed. 2d 472, 109 S. Ct. 3086 (1989)</u>	26
10) <u>Emory v. Roanoke City Sch. Bd., 432 F.2d 294, 298 (4th Cir. 2005)</u>	33
11) <u>Friend of the Earth, Inc. v. Gaston Copper Recycling Corp., 204 F.3d 149, 154 (4th Cir. 2000) (en banc)</u>	33
12) <u>Gonzalez, 565 U.S. at 140-41</u>	29, 33
13) <u>Gonzalez v. Thaler, 565 U.S. 134, 148 & n. 9 (2012)</u>	29
14) <u>Gribb v. Rhy, 455 F.2d 494, 495 (9th Cir. 1972)</u>	29, 29, 37
15) <u>Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir. 2000)</u>	36
16) <u>Hazel-Atlas Glass Co. v. Hartford-Empire Co., 302 U.S. 238, 64 S. Ct. 997, 88 L. Ed. 1250 (1944)</u>	26, 26

- 17) Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 246, 64 S.Ct. 997, 88 L.Ed. 1250 (1944) 19
- 18) Koon v. United States, 518 U.S. 81, 116 S.Ct. 2035, 2047 (1996) 33
- 19) Lujan, 504 U.S. at 560-61 33
- 20) Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed. 2d 351 (1992) 33
- 21) Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed. 2d 1201 (July 6, 1983) 30
- 22) Pace v. Dinglielmo, 554 U.S. 408, 418 (2005) 36
- 23) Roe v. Flores-Ortega, 528 U.S. 470, 145 L.Ed. 2d 985, 120 S.Ct. 1029 (2000) 37
- 24) Schulp v. Delo, 513 U.S. at 327 36
- 25) Schulp v. Delo, 513 U.S. 298, 309 (1995) 36
- 26) Shoottz v. Shoottz, 27 Va. App. 264 (April 28, 1998) 33
- 27) Slack v. McDaniel, 120 S.Ct. @ 1604 33
- 28) Slack v. McDaniel, 529 U.S. 473, 484 (2000) 20, 22, 22, 23, 24, 30, 33, 36, 37
- 29) Spencer v. Sutton, 239 F.3d 626, 630 (4th Cir. 2001) 36
- 30) Strickland, 466 U.S. at 694 37
- 31) Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2050, 80 L.Ed. 2d 674 (1984) 3, 37
- 32) Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2050, 80 L.Ed. 2d 674 (1984) 37
- 33) Townsend v. Sain, 372 U.S. 293, 9 L.Ed. 2d 770, 83 S.Ct. 745 (1963) 20
- 34) Townsend v. Sain, 372 U.S. 293, 312, 83 S.Ct. 745, 756, 9 L.Ed. 2d 770 (1963) 27, 28
- 35) Townsend v. Sain, 372 U.S. 293, 372 U.S. 313 (1963) 36
- 36) United States ex rel. Jennings v. Ragen, 358 U.S. 276, 277, 97 S.Ct. 321, 3 L.Ed. 2d 292 (1959) 20, 29, 37
- 37) United States v. Smith, 331 U.S. 469, 475, 67 S.Ct. 1330, 1333 28
- 38) Wainwright v. Sykes, 433 U.S. 72, 53 L.Ed. 2d 594, 97 S.Ct. 2497 (1977) 28
- 39) Walker v. Johnston, 312 U.S. 275, 287, 85 L.Ed. 830 (Feb. 10, 1941) 37
- 40) Whitten v. Clarke, CL19-336-00 19
- 41) Whitten v. Clarke, CL19-336 (1-22-2019) 19

- 42) Whitten v. Clarke, CL19-336-00 Stafford County Cir. Ct. Va. (1-22-2019) filed — 23, 31
- 43) Whitten v. Clarke, CL19-336 Stafford County Cir. Ct. Va. (March 18, 2019) — 23, 26, 29, 31
- 44) Whitten v. Clarke, CL19-336 Stafford County Cir. Ct. Va. (April 25, 2019) — 19, 23, 23, 26
- 45) Whitten v. Clarke, CL19-336-00 Stafford County Cir. Ct. Va. April 25, 2019 — 31
- 46) Whitten v. Clarke, 190683 Sup. Ct. Va. (11-14, 2019) — 26
- 47) Whitten v. Clarke, 190683 Sup. Ct. Va. (Nov. 22, 2019) — 29, 24, 28, 33
- 48) Whitten v. Clarke, 190683 (Cir. Ct. no. CL19-336) Sup. Ct. Va. (March 20, 2022) — 29, 24, 28, 33
- 49) Whitten v. Clarke, 20-5106 Sup. Ct. U.S. (June 7, 2020) — 21, 25, 29, 35, 35
- 50) Whitten v. Clarke, 20-5106 Sup. Ct. U.S. (Oct. 5, 2020) — 21, 25, 29
- 51) Whitten v. Clarke, 20-5106 (190683 Sup. Ct. Va.) Sup. Ct. U.S. (Oct. 5, 2020) — 35
- 52) Whitten v. Clarke, 2:20-cv-570-AWA-LRL U.S. Dist. Ct. E.D. Va. (Alexandria) (Dec. 9, 2020) ...
 ... 21, 29, 36
- 53) Whitten v. Clarke, 2:20-cv-570-LRL U.S. Dist. Ct. E.D. Va. (Nash.) (June 7, 2021) — 21, 25, 29, 36
- 54) Whitten v. Clarke, 2:20-cv-570-LRL U.S. Dist. Ct. E.D. Va. (Nash.) (March 24, 2022) — 21, 25, 29, 36
- 55) Whitten v. Clarke, 22-5640 (2:20-cv-570-LRL) U.S. Ct. App. 4th Cir. Va. (May 23, 2022) — 22, 30, 37
- 56) Whitten v. Clarke, 22-5640 (2:20-cv-570-LRL) U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022) ...
 ... 19, 20, 21, 21, 22, 22, 23, 25, 25, 26, 28, 30, 30, 31, 33, 35, 36, 37, 37.
- 57) Whitten v. Clarke, 22-5640 (2:20-cv-570-LRL) U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022) (Per Curiam) ...
 ... 24
- 58) Williams v. Taylor, 529 U.S. 362, 120 S. Ct. 1455, 146 L. Ed. 2d 389 — 31

Antwon G. Whitten, pro se, 1188537

CITATIONS

- 1) Whitten v. Clarke, CL19-336 Stafford County Cir. Ct. Va. (March 18, 2019)
- 2) Whitten v. Clarke, CL19-336 Stafford County Cir. Ct. Va. (April 25, 2019)
- 3) Whitten v. Clarke, CL19-336-00 Stafford County Cir. Ct. Va. (April 25, 2019)
- 4) Whitten v. Clarke, 190683 Sup. Ct. Va. (11-14-2019)
- 5) Whitten v. Clarke, 190683 (Cir. Ct. no. CL19-336) Sup. Ct. Va. (March 20, 2020)
- 6) Whitten v. Clarke, 20-5106 Sup. Ct. U.S. (Oct. 5, 2020)
- 7) Whitten v. Clarke, 20-5106 (190683 Sup. Ct. Va. Sup. Ct. U.S. (Oct. 5, 2020)
- 8) Whitten v. Clarke, 20-5106 - 141 S. Ct. 396 (Oct. 5, 2020)
- 9) Whitten v. Clarke, 2:20-cv-570-LRL U.S. Dist. Ct. E.D. Va. @ Norfolk (May 3, 2021)
- 10) Whitten v. Clarke, 2:20-cv-570-LRL U.S. Dist. Ct. E.D. Va. @ Norfolk (March 24, 2022)
- 11) Whitten v. Clarke, 22-5640 @:20-cv-570-LRL U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022)
- 12) Whitten v. Clarke, 22-5640 @:20-cv-570-LRL U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022)

Antwan G. Whitten, pro se, 1138537

STATUTORY PROVISIONS, Codes, Rules, Articles, etc.

1) AEDPA	36
2) Rule 9 Governing Rules of 2854 habeas corpus proceedings	21
3) Sup. Ct. Va. R. 1:1	19
4) Sup. Ct. Va. R. 3A:24	28
5) U.S. Const. Art. III	33
6) U.S. Const. Art. III, sec. 2	21, 33
7) U.S. Const. Fourth Amend.	24, 25
8) U.S. Const. Sixth Amend.	20, 21, 23, 26, 28, 30, 31
9) U.S. Const. Fourteenth Amend.	20, 23, 28, 29, 30
10) Va. Code § 8.01-654(B)(2)	33
11) Va. Code § 8.01-654(B)(5)	28
12) Va. Code § 8.01-660	31
13) Va. Code § 17.1-513	19, 31
14) Va. Code § 19.2-239	19, 31
15) Va. Const. Art. I, sec. 11	28
16) Va. Sup. Ct. R. 5:1(11)	33
17) Va. Sup. Ct. R. 5:17(c)(ii)	28
18) Va. Sup. Ct. R. 5:25	37
19) 28 U.S.C. § 1251(1)	19, 20, 21, 21, 22, 23, 25, 25, 26, 28, 29, 31, 33, 35, 36, 37
20) 28 U.S.C. § 1254(1)	33, 36, 37
21) 28 U.S.C. § 2254(1)(A)	36
22) 28 U.S.C. § 2254(1)(B)	37
23) 28 U.S.C. § 2254	20, 21, 23, 23, 29, 37
24) 28 U.S.C. § 2254(1)	

25) 28 U.S.C. § 2254 (d)(2)

20, 21, 23, 23, 29, 37

Aston G. Whitten, pro SE, 1138537

JURISDICTION

The date on which the United States Court of Appeals judgment became final: Whittes v. Clarke, 22-5640

(2:20-cv-570-LRL) U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022) Decision:

Denied and Dismissed with prejudice as untimely, order in favor of Respondent (Clarke).

Grounds: untimely @ 28 U.S.C. § 2253(c) Petition.

Judges: NIEMEYER AND QUATTLEBAUM, circuit judges, and Floyd, senior Judge.

Dismissed by unpublished per curiam opinion.

This Court has jurisdiction under 28 U.S.C. § 1251(1); U.S. Const. Art. III.

The United States Court of Appeals (4th Cir. Va.) had jurisdiction under 28 U.S.C. § 2253(c).

The U.S. Dist. Court of Va. had jurisdiction under 28 U.S.C. § 2254(c).

The Habeas Trial Court had jurisdiction under Va. Code § 8.01-654(c).

Antwon G. Whittes, pro SE, 1138537

Jurisdiction

The jurisdiction to review this judgment for the
Case: Whitten v. Clarke, 22-5646 (2:20-cv-570-LRL)
(4th cir) U.S. Ct. App. (Dec. 27, 2022) (Per Curiam) 28 U.S.C § 1251 (1)

Antwon G. Whitten, #12561138537

The Statutory Provision conferred on this Court's jurisdiction to review this case on a writ of Certiorari judgment/order in question is under 28 U.S.C. § 1251 (1) in case: Whitten v. Clarke, no. 22-5640 (2:20-cv-570-LRL) U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022) (Per Curiam).

Antwan G. Whitten, prose, 1138537

CONSTITUTIONAL PROVISIONS

1) UNITED STATES CONSTITUTION ART. III.

2) UNITED STATES CONSTITUTION ART. III, SEC. 2.

Requirement of the case-or-controversy limitation on judicial authority found in Art. III of the constitution.

3) UNITED STATES Constitution Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

4) UNITED STATES Constitution VI Amendment.

In all criminal prosecutions, the accused shall enjoy the right to a speedy trial and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

5) UNITED STATES CONSTITUTION XIV Amendment.

ALL persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state 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 to any person within its jurisdiction life, liberty or property without due process of law, nor deny them equal protections of the laws.

Antwon G. Whitten, pro se, 1138537

Statement of the nature of the case of the material
proceedings in the state trial court and the state
and federal appellate court proceedings to clarify
my petition

I, Whitten, pro se, petitioner, certify that I was unlawfully arrested in Prince William County, Va. on Sept. 13, 2003 by Stafford County Sheriff's Detectives George Bond, Jr. & J.L. DeBord, by way of them providing misrepresented information to obtain arrest & search warrants for Robbery @ Va. Code § 18.2-58 and Va. Code 18.2-31 wrong code for Capital Murder. Fraud upon the Court was committed to obtain these totally defective warrants. Their Affidavits stated: That East's True Value Hardware store was located @ 300 Chatham Heights Rd. Fredericksburg, Va. which is located in Stafford County, Va. The statement is false and, and the jurisdiction loss. The issue of probable cause, is a federal Constitutional issue and law & fact. The trial court in Stafford County Cir. Ct. never took judicial notice that provides facts to support its legal authority to acquire Subject Matter jurisdiction. The trial began on May 19, 2005 before a jury and Judge, John R. Alderman. The Trial ended with guilty verdict and Life x 2 were the sentences. Each level of trial and appellate courts violated Constitutional law; precedent case laws and failed to safeguard Whitten's rights to a fair trial in a proper tribunal.

A prima facie case will present to this court all the egregious errors, conduct, and denial of fundamental fairness as the jury was misled. The state and federal courts had denied Whitten a full and fair hearing on issues as the denial of an evidentiary hearing is a denial of due process. The whole record was not properly reviewed (or) outright ignored based on prejudice. Thus, Townsend v. Sain, elements were not acknowledged. A serious question arises as to the legality of Whitten's conviction and detention, as factual disputes have not been resolved but, presented to

each court. The reasonable cause and prejudice for the delay has been asserted by Whittes and Respondent (Clarke) has not stated (p) any court that he (the state) has been prejudiced by the delay. It's clearly known, that delay alone can't bar relief, especially when the State is responsible for the delay and a void ab initio judgment. Extraordinary circumstances are clear and convincing. It's also a fact that the trial court tossed out my phone cellphone records intentionally to deny me a sound alibi and, defense attorney's failed to tie my cellphone records into my alibi defense. The trial was a farce and a no evidence case. The state offered defense attorney's an extract DNA sample for testing, stating no true crime scene material left, and defense attorney accepted it instead of denying it under Va. Sup. Ct. R. 3A:11-Denial and inspection. Defense attorney's then allowed the Commonwealth's attorney to have the testing results from the defense expert but, failed to call defense expert to testify. It was a unilateral contest and showed ineffective representation in a capital case. The defense attorney, now submitted an "aff" in support of the State saying: Putting the defense expert on the stand would have hurt Whittes and not helped. That train of thought is unacceptable as the report should not have come in if the attorney's felt that way. The attorney's also allow defective charging instruments to go forward, the bench and bar knew of the false jurisdictional claim but chose to conceal vs. correcting it. The jurisdiction in this case is not a state law issue as fraud upon the court by bench & bar was committed and defrauded the court itself with their deceit and planned scheme. This deception has Whittes, held in unlawful detention in violation of the Constitution, laws, treaties of the United States. Thus, this writ of Habeas Corpus involves constitutional questions as they are substantial questions, determinative issues or matter of significant precedential value. The state & federal courts judgments are unreasonable.

ARGUMENT

Whether the trial court took judicial notice of the crimes being committed in the Commonwealth of Virginia and if not it negates both Va. Codes §§ 17.1-513, 19.2-239 sections because the court exerted its power in a way not warranted by the law?

- 1) Contestability and disputation are the critical considerations herein. A court may take judicial notice of its own affairs/procedures but, its not absolute as, the problem with the internal affairs here entail the central allegation of impropriety are both trial errors of law so egregious when the judicial officers are the conduct and source of the confidential information vindicating these procedures. The bond upon the court by bench & bar concealed the true location of the crimes and allowed perjured testimony throughout the trial in order to obtain jurisdiction. This is a federal and constitutional question as well jurisdictional. As in Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 64 S. Ct. 997, 88 L. Ed. 1250 (1944) thus, applicable on a habeas corpus challenge and tolling on these extraordinary circumstances are warranted, the court in Whitten v. Clarke, CA19-336 Stafford County Cir. Ct. Va. (1-22-2019) passed upon this federal question/claim timely raised (Pet. CIA, pp 4@1; pp. 5@3 with proffered ex. # J2, K2, A, & D1; pp. 5@4; pp. 4@5-7; pp. 8@10. No venue argument made in claim #1 (pp. 4-9. The court credited defense attorney Barabold's affidavit @ 4, pp. 1 @1; pp. 2@3 without allowing Whitten's Decl. @ C2 to be heard as a disputed material fact, nor does it consider the exhibits herein stated. The court also committed reversible error while crediting Respondent (Clarke) Mot. to Dis. in Whitten v. Clarke, CA19-336 (March 18, 2019) where Clarke, alleges Whitten has not asserted an exception to Sup. Ct. Va. R. 1:1 but, see: Pet. CIA, pp. 4@1 for dispute and error of law by the court in Whitten v. Clarke, CA19-336 Stafford County Cir. Ct. Va. (April 25, 2019). Thus, the unreasonable ruling and prejudice is seen @

Pet. CIA, pp. 43-A(2) 4, 5, 6, & 7 provides facts that the court lacked the required proof by law and violated precedent case law thus a federal question and jurisdiction violation is presented. The judgment in Whitten v. Clarke, CU19-336 Stafford County Cir. Ct. Va. (April 25, 2019) is void and this court has jurisdiction under 28 U.S.C. § 1251(1) to review the judgment in Whitten v. Clarke, 02-6540 (2:20-cv-570-LRK) U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022) on a writ of certiorari.

- 2) See: Whitten v. Clarke, 190683 Sup. Ct. Va. (Nov. 22, 2019) federal question timely raised P ECF no. 125, pp. 1, para. 1A-1; claim presented (P pp. 1 (P 1A); pp. 1 (P 2B); pp. 2 (P 3C). The court passed upon this claim when it refused to rule on the remaining claims/assignments of error. Whitten asserts the court erred as their claimed independent review failed to mention Whitten's exhibits submitted (P pp. A(1) see Pet. CIA, pp. 43A, ex. #19, #7, 4, 5, and 6; pp. 1 (P 2B(2), exhibits presented pp. 43A (P 4, 5, 6, & 7; pp. 2 (P C(3), ex. # Pet. CIA, pp. 43A, 4, 5, 6, 7. The court's passed on this claim by failing to review this assigned error of law. It's determination was unauthorized per: Griff v. Ray, 455 F.2d 494, 495 (9th Cir. 1972) and clearly established law (P United States ex. rel. Jennings v. Ragen, 358 U.S. 276, 277, 79 S.Ct. 32, 3 L.Ed. 2d 296 (1959) thus the decision in Whitten v. Clarke, 190683 (Cir. Ct. no. CU19-336) Sup. Ct. Va. (March 20, 2020) is void, see: 28 U.S.C. §§ 2254(d)(1), 2254(d)(2) are implicated, as U.S. Const. 6th Amend. violation to be heard before a fair and proper court and U.S. Const 14th Amend. violation, life and liberty interest denied. Also see: Michigan v. Long, 463 U.S. 1032, 1035, 67 S.Ct. 3469, 77 L.Ed. 1201 (July 6, 1983). Plain statement requirement not met. Thus, a denial of a constitutional right under Stark v. McDaniel, 529 U.S. 473, 484 (2000) is asserted. A full and fair hearing under Townsend v. Sain, 372 U.S. 293, 9 L.Ed. 2d 770, 83 S.Ct. 745 (1963) was denied and now requested. This court has jurisdiction to review the judgment in Whitten v. Clarke, 02-5640 (2:20-cv-570-LRK) U.S. Ct.

App. 4th Cir. Va. (Dec. 23, 2022) under 28 U.S.C. § 1251(1) on a writ of certiorari.

3) SEE: Whitten v. Clarke, 20-5106 Sup. Ct. U.S. (June 7, 2020) Filed - federal question timely raised @ original Pet. 20-5106, pp. 2, claim presented on pp. 17-19. The Court bypassed this claim without a merits review or any explanation. Cert. Denied was its judgment. The ruling @ Whitten v. Clarke, 20-5106 Sup. Ct. U.S. (Oct. 5, 2020) can't be determined from its ruling. This Court has jurisdiction to review the judgment in Whitten v. Clarke, 20-5106 (2:20-cv-570-LRL) U.S. Ct. App. 4th Cir. Va. (Dec. 23, 2022) under 28 U.S.C. § 1251(1).

4) SEE: Whitten v. Clarke, 2:20-cv-570-AWA-LRL U.S. Dist. Ct. E.D. Va. (Alexandria) (Dec. 9, 2020) federal question timely raised @ pp. 2 @ 11C, claim presented on pp. 4 @ 1; pp. 5 @ 3; pp. 6 @ 5; pp. 7; and pp. 8 @ 10. The Court passed upon the claims by agreeing with the Habeas Pet. Ct. that the address of the crime scene is recorded in the record. This issue has not been resolved as nowhere in the record has the State Court's provided an address or location to gain the legal jurisdiction/judicial notice of Virginia being the place the crimes took place. The Stokes Map @ 54 - Tr. Trans. @ 44, 396-400 5/23/05 is not a conclusive document for proof as it also does nothing for proof. Whitten provided exhibits from Pet. CIA, pp. 43A, 4, 5, 6, 7, 8, 10, 11, 12, & 13 to show a void judgment and by way of fraud upon the court from bench & bar. SEE: Tr. Trans. @ Pet. CIA, pp. 43A, Trans. #6, May 17, 2004; Tr. Trans. pp. 395, 5/23/05; Tr. Trans. pp. 239 x 240, 5/23/2005 and pp. 206 Tr. Trans., 5/24/2005; "Aff." from Band & DeBord @ Ex. # R., Sept. 19, 2003 @ pp. 2; Tr. Trans. pp. 239-240 is officer of the court; Pet. CIA, pp. 43A, @ 12, Ex. B1 for proof Fredericksburg is not in Stafford County, Va, thus, the Fraud is clear and convincing; pp. 43A @ 11-K for history of Fredericksburg, and pp. 43A p. 13 M. reward poster. SEE: EX. # AB for extraordinary circumstances.

thus, the Whitten v. Clarke, 2:20-cv-570-LRL (June 7, 2021) legal brief
federal question timely raised @ p. 2 @ 2; see Doc. #3, 3/25/2022 opinion
and older claims presented in Pet. W.A., pp. 17 @ 11, pp. 20 @ 16; pp. 19, see: Decl.
Ex. T, pp. 3 @ 3, pp. 10 @ 5. The court passed upon this question with an
identical opinion of the Sup. Ct. Va.'s clerk final order thus, no merits
(or) independent review given. The decision is unauthorized and no comity
attaches to a void judgment as the highest state court never ruled
on my state habeas corpus petition. The ruling was unreasonable and
prejudicial thus, 28 U.S.C. § 2254(d)(1) and 28 U.S.C. § 2254(d)(2) are raised
as the U.S. Const. 6th Amend. rights to a fair trial is implicated. The
State (Clarke) never claims prejudice, just delay thus, Rule 9 of the
Rules Governing Habeas Corpus requires a claim of prejudice by the
State. It's now waived. See: Castello v. United States, 365 U.S. 265, 282,
81 S. Ct. 534, 5 L. Ed. 2d 551 (1961). The judgment in Whitten v. Clarke, (2:20-cv-
570-LRL U.S. Dist. Ct. E.D. Va. P. No. 1 (March 24, 2022)) is void ab initio and
this court has jurisdiction to review the judgment in Whitten v. Clarke,
22-5640 (2:20-cv-570-LRL) U.S. Ct. App. 4th Cir. Va. P. Richmond (Dec. 27, 2022)
on a writ of Certiorari under 28 U.S.C. § 1251(1) & U.S. Const. Art. III, Sec. 2.

5) See: Whitten v. Clarke, no. 22-5640 (2:20-cv-570-LRL) U.S. Ct. App. 4th Cir. Va.
(May 23, 2022) Federal question timely raised @ Pet. T. D. I @ #2 and pp. 1
@ 3; claim presented @ pp. 6-7 and pp. 8-10. The court passed upon this
federal question when it states: we have independently reviewed the record
and conclude that Whitten has not made the requisite showing of a denial
of a constitutional right. Thus the certificate of appealability (COA) is denied
and dismiss the appeal. The court claims my petition is untimely thus,
no merits review made. The exhibits @ Pet. C.A. @ 19 Ex. #A/B and the
void judgment from the hand upon the court was sufficient for tolling.
Slack v. McDaniel, 529 U.S. 473, 484 (2000) is asserted.

the Whitten v. Clarke, 22-5640 (2:20-cv-570-LRK) U.S. Ct. App. 4th Cir. Va.
(May 23, 2022) federal question timely raised @ issue #1, pp. 1, claims presented
on pp. 2. The court passed upon this question by stating the petition is
untimely under Gonzalez v. Thaler, 565 U.S. 134, 148 & n. 9 (2012) and that
Whitten has not shown a denial of a substantial constitutional right.
Whitten asserts this claim has not been resolved and the dispositive
procedural ruling is debatable and the petition states a debatable
claim of a denial of a constitutional right. Gonzalez, 565 U.S.
at 140-41 (citing Stack v. McDaniel, 529 U.S. 473, 484 (2000)) The judgment
@ Whitten v. Clarke, no. 22-5640 (2:20-cv-570-LRK) U.S. Ct. App. 4th Cir. Va.
(Dec. 22, 2022) is a void judgment and this court has jurisdiction to
review the judgment @ Whitten v. Clarke, 22-5640 (2:20-cv-570-LRK)
U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022) under 28 U.S.C. § 1251(c) on a writ
of certiorari.

Whether the state trial court/habeas trial court failed to
answer the federal question of the probable cause claim and
if ruled in the affirmative the writ shall issue to resolve
said question?

6) Whitten v. Clarke, CL19-336-00 Stafford County Cir. Ct. Va. (1-22-2019)
the federal question timely raised @ Pet. CIA, pp. 8 & 9, claims presented
@ pp. 8 & 9 but the court passed upon this federal question by not
answering the question at all. The court acknowledges the question @
Whitten v. Clarke, CL19-336 Stafford County Cir. Ct. Va. (March 18, 2019) det.
to Dis. Ex. #, pp. 2 & 4; see Final order @ Whitten v. Clarke, CL19-336
Stafford County Cir. Ct. Va. (April 25, 2019) pp. 2 & 4, never answered thus,
the ruling was unreasonable and prejudice results. 28 U.S.C. § 2254(d)(1)
28 U.S.C. § 2254(d)(2) is applicable.

This error of law constitutes a substantive due process violation as notice, opportunity to be heard, and a full and fair hearing was denied. U.S. Const. 14th Amend and 6th Amend. U.S. Const. violations are asserted. Prejudice has been created and the matter has not been resolved thus, a hearing is requested under Townsend v. Sain, 372 U.S. 293, 312, 83 S. Ct. 745, 756, 9 L. Ed. 2d 770 (1963). Thus, 28 U.S.C. § 2254(d)(1) and 2254(d)(2) are implicated and, Slack v. McDaniel, 539 U.S. 473, 484 (2000). The judgment in Whitten v. Clarke, CL19-336 Stafford County Cir. Ct. Va. (April 25, 2019) is void for the mode & procedure used to deny the state habeas corpus petition. This court has jurisdiction to review the judgment of Whitten v. Clarke, 02-5640 (0:20-cv-570-LRL) U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022) under 28 U.S.C. § 1251(1). Clerk of Court order is invalid.

7) See, Whitten v. Clarke, 190683 Sup. Ct. Va. (Nov. 22, 2019). Federal question timely raised @ ECF No. 105 Assignments of error @ pp. 30-40; claim presented @ pp. 30-6. The court passed upon the federal 4th Amend. U.S. Const. violation when it stated: It chooses to acknowledge the question was raised and passed upon by the habeas trial court and then chose to answer it as well. See: EX-1111 final order ruling @ Whitten v. Clarke, 190683 (Cir. Ct. No. CL19-336) Sup. Ct. Va. (March 20, 2020). A full and fair hearing denied and sought under Townsend v. Sain, 372 U.S. 293, 312, 83 S. Ct. 745, 756, 9 L. Ed. 2d 770 (1963). A denial of a substantial constitutional right was violated. See: Slack v. McDaniel, 539 U.S. 473, 484 (2000). This court has jurisdiction to review the judgment in Whitten v. Clarke, 02-5640 (0:20-cv-570-LRL) U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022) (Per Curiam) under 28 U.S.C. § 1251(1).

8) See: Whitten v. Clarke, 20-5106 Sup. Ct. U.S. (Oct. 5, 2020) ruling from the denial of Whitten v. Clarke, 20-5106 Sup. Ct. U.S. (June 07, 2020) federal question timely raised @ questions presented #3, claims presented on pp. 20-21 and passed upon without explanation, cert. denied was stated. This court has jurisdiction to review the judgment of Whitten v. Clarke, 22-5640 (2:20-cv-570-LRL) U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022) under 28 U.S.C. § 1251(1).

9) See: Whitten v. Clarke, 20-5106 (2:20-cv-570-LRL) U.S. Dist. Ct. E.D. Va. (Norb. (June 7, 2021)) federal question timely raised @ legal brief pp. 4 (P), claim raised @ pp. 28 (P) 20. See opinion & order @ pp. 2 (P) for question raised was acknowledged by the court but passed upon as it failed to answer it thus, violating the rule of law in Clisby v. Jones, 960 F.2d 925, 1992 U.S. App. Lexis 8906 U.S. Ct. App. 11th Cir. (May 4, 1992) where it's stated District Courts are to resolve all constitutional claims in petition before granting or denying relief. This error of law shows a denial of a substantial constitutional right. A full and fair hearing denied. Thus, the dispute has not been resolved, the remaining (5) elements under Townsend v. Sain, are implicated. Collison v. Underwood, 1 Va. App. 443, 445, 339 S.E.2d 897 (1986) is asserted on the disputed issue passed upon. The U.S. Ct. App. case above is controlling. A U.S. Const. 4th Amend. violation on the lack of probable cause issue passed upon deserves tolling. Statutory and equitable tolling are supported by the facts of the case and pleadings presented. The Whitten v. Clarke, 2:20-cv-570-LRL U.S. Dist. Ct. E.D. Va. (Norb. (March 24, 2022)) judgment is void. This court has jurisdiction to review the judgment of Whitten v. Clarke, 22-5640 (2:20-cv-570-LRL) U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022) on a writ of certiorari under 28 U.S.C. § 1251(1).

Whether officer's of the Court committed fraud upon the Court in a carefully executed plan and scheme to defraud the Court itself as its improper influence from its orders/ rulings caused substantial due process violation?

- 10) Whitten, pro se, argues that the State Trial Court @ Commonwealth v. Whitten, CL03-1070-00 & 01 Stafford County Cir. Ct. Va. (Oct. 27, 2005); Whitten v. Clarke, CL19-336-00 Stafford County Cir. Ct. Va. (April 25, 2019) infringed upon my constitutional rights pursuant to the 6th Amend. right to a fair trial in a fair tribunal and under Hazel-Atlas Glass Co. v. Hartford-Empire Co, 302 U.S. 238, 64 S. Ct. 977, 88 L. Ed. 1250 (1944). The federal question was timely raised @ Pet. CIA, pp. 3 10 @ 12; pp. 10 @ 14; pp. 11 @ 15; pp. 12 @ 16; pp. 13 @ 17; pp. 14 @ 18-19; pp. 15 @ 20; pp. 16 @ 21; pp. 17 @ 23; pp. 18 @ 24; pp. 19 @ 25-27; pp. 20 @ 28; pp. 21 @ 29-31; pp. 22 @ 32. The Court passed upon this question/claim. See Clarke's Ex. #4-mot. to dis., pp. 6 @ 7-8 (March 19, 2019) in Whitten v. Clarke, CL19-336. Whitten submitted evidence with factual exhibits to clearly and convincingly show the fraud upon the Court by bench & jur. See Pet. CIA, pp. 43A, @ #4, 5, 6, 7, 8, 10, 11, 12, 13 and 19 as well Tr. Trans. pp. 6, May 17, 2004; Tr. Trans. pp. 395-396, 5/23/05; Tr. Trans. 239, 240, 5/23/2005; Tr. Trans. pp. 206, 5/26/2005; Affidavit #R from Det. Bond & DeFord of Stafford County, Va. stating that Fredericksburg, Va. is located in Stafford County, Va. Resulting in the fraud upon the Court, FOIA Request 2015 @ EX. #AB where I received the "Att." in support of search warrant for the first time claim raised @ pp. 19 @ 25; pp. 17 @ 23 above; EX. #F2 @ #54 Index to Maps, claim raised @ Pet. CIA, pp. 17 @ 23, Pet. CIA, pp. 43A, @ 12-L, EX. #B1, claim raised @ Pet. CIA, pp. 17 @ 23; Index #18 @ 11-K;

Edward Foster (EX.#73 & 74, Pet. CIA, pp. 43A @13-M, shows Stafford County Sheriff's office leaves out the address but, the postal service reveals the true location. Shows Stafford's intent from its inception. Ex. J2 & K2 for Capital Murder & Robbery @ Pet. CIA, pp. 5@3; pp. 6@5 for cause & prejudice; Capias upon indictment for robbery; Claim raised @ Pet. CIA, pp. 5@3; pp. 6@7 and in Whitten v. Clarke, 190683 Sup. Ct. Va. (11-14-2019) @ pp. 9@8, Ex.#1A-Warrant for Arrest of Capital Murder fails to state an offense and location of the crime. Claim raised @ Pet. CIA, pp. 5@3; pp. 6@5 and pp. 6@7 for no judicial notice in Commonwealth v. Whitten, LEO3-1070-WR01 (Oct. 27, 2005), see: 2003 Annual Report from U.S. Postal Service @ EX.#F.V., p. 2 shows address in form of Brick & mortar. The "Aff." @ 4, pp. 2@3, March 12, 2019 from defense Attorney Barotold clearly says, "Whitten is confusing mailing address with the physical location." There's no physical location address in the trial court record and its presented by Whitten for stand upon the last by bench and bar from the other discovered document @ "Aff." dated Sept. 12, 2003 from Detectives of Stafford County Sheriff's Office Barotold & Bold, claim raised in Pet. CIA, pp. 21@31, see: FOIA doc. #AB enclosed. The court passed upon this federal question by ignoring my exhibits submitted and just proceeded with the view of Clarke, no independent review. Violating precedent case law of County of Allegheny v. ACLU Greater Pittsburgh Chapter, 492 U.S. 573, 106 L.Ed. 2d 472, 109 S.Ct. 3086 (1989) when it failed to follow Hazel-Atlas Glass Co. v. Hartford-Empire Co. 322 U.S. 238, 64 S.Ct. 977, 88 L.Ed. 1250 (1944). The Whitten v. Clarke, CA19-336 Stafford County Cir. Ct. Va. (April 25, 2019) order is void. This court has jurisdiction to review the judgment in Whitten v. Clarke, 22-5640 (2-20-20-570-REV) U.S. Ct. App. Va. (Pet. Ct.) (Dec. 22, 2022) under 28 U.S.C. § 1251(1) on a writ of Certiorari.

11) see: Whitten v. Clarke, 190683 Sup. Ct. Va. (Nov. 22, 2019) federal question timely raised @ ECF no. 125 Assignments of error on pp. 4p 9A-2; claims presented @ pp. 5p 10-11; pp. 6p 12; pp. 7p 13-14; pp. 8p 15-17; pp. 9p 19-20. The court passed upon this federal question & claims when the clerk of court delivered the final order ruling on the habeas corpus petition. Only a judge or panel of judges are authorized to rule. see: Va. Sup. Ct. R. 5:1(1); Arizona v. Fulminante, 499 U.S. 279, 310, 111 S.Ct. 1246, 1265, 113 L.Ed. 2d 302 (1991); 6th Amend. and 14th Amend. rights violations, as well Va. Const. Art. I, sec. 11 due process violations. The court also passed upon the claim by refusing to address this claim which violates Sup. Ct. Va. R. 3A:24 & Va. Code § 8.01-654(2)(5) as well. Actual prejudice resulted and this cause and prejudice to the procedurally defaulted error is applicable under Va. Sup. Ct. R. 5:25; Wainwright v. Sykes, 433 U.S. 72, 53 L.Ed. 2d 594, 97 S.Ct. 2497 (1977) Federal and State courts are bound to guard and protect rights secured by the constitution. In United States v. Smith, 331 U.S. 469, 475, 67 S.Ct. 1330, 1333 Mr. Justice Jackson, states: Habeas corpus provides a remedy for jurisdictional and constitutional errors at the trial, without time limitations. As here, the errors at trial were egregious and denied fundamental fairness and a denial of due process and fair trial. The Whitten v. Clarke, 190683 (Cir. Ct. no. CL19-336) Sup. Ct. Va. (March 20, 2020) ruling is void. This court has jurisdiction to review the judgment in Whitten v. Clarke, 22-5640 (2:20-cv-570-LRY) U.S. Ct. App. 4th Cir. Va. (Dec. 23, 2022) under 28 U.S.C. 1251(1) on a writ of certiorari.

12) SEE: Whitten v. Clarke, 20-5106 Sup. Ct. U.S. (June 7, 2020) - the federal question timely raised @ Question Presented #5, claims presented @ pp. 28-29, pp. 30-32. The court passed upon the federal question/claims without opinion. Whitten, pro se, asserts, the trial court in Commonwealth v. Whitten, CR03-1070-00-01 Stafford County Cir. Ct. Va. (Oct. 27, 2005) was so totally devoid of evidentiary support as to raise a due process issue; thus a violation of the U.S. Const. 14th Amend. affording Whitten, a remedy in this federal court on a writ of Certiorari and habeas corpus. The prejudicial effects deprived Whitten of a fair trial. No comity attaches to a void ab initio judgment; the jurisdiction was invalid in each state court. The Whitten v. Clarke, 20-5106 Sup. Ct. U.S. (Oct. 5, 2020) ruling was unreasonable. This court has jurisdiction to review the judgment in Whitten v. Clarke, 20-5640 (2:20-cv-570-LRL) U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022) under 28 U.S.C. § 1251 (1), on a writ of Certiorari.

13) SEE: Whitten v. Clarke, 2:20-cv-570-AWA-LRL U.S. Dist. Ct. E.D. Va. (Dec. 9, 2020) federal question timely raised @ pp. 12 @ 9; claims presented @ pp. 12 @ 9; pp. 13 @ 10; pp. 14 @ 10; pp. 16 @ 13; pp. 29 @ 14; pp. 24 @ 15; pp. 36 @ 16. No judgment case forwarded to U.S. Dist. Ct. E.D. Va. p. Norfolk for legal brief filing.

14) SEE: Whitten v. Clarke, 2:20-cv-570-LRL U.S. Dist. Ct. E.D. Va. (June 7, 2021) legal brief @ EX. # W.A - federal question timely raised @ pp. 16 @ 17; claims presented @ pp. 2 @ 19; pp. 16 @ 9; pp. 17 @ 10; pp. 19 @ 11; Also, see: Decl. Ex. T - pp. 3 @ 3; pp. 12 @ 5. The court passed upon this federal question by ruling directly as the Sup. Ct. Va. but, claimed it gave an independent review. No evidence presented by Whitten is given acknowledgment by the dist. Ct., it made an unauthorized decision

in its determination. A denial of a substantial constitutional right.
see: Griffith v. Ray, 455 F.2d 494, 495 (4th Cir. 1972); United States ex rel.
Tennings v. Roper, 358 U.S. 376, 377, 79 S.Ct. 321, 3 L.Ed. 2d 296 (1959) for
clearly established law as determined by the Supreme Court of the
United States. 28 U.S.C. § 2254(d)(1) and 28 U.S.C. § 2254(d)(2); Shack v.
McDaniel, 529 U.S. 473, 484 (2000). SEE: Exhibits submitted to the Court
for this claim. Ex. #54/F2 Map; Ex. #75, now 75 & 74, reward posters with true
address of crime scene; Ex. #AB-FOIA request docs received in 2015, July 30th
that revealed the address and showed these docs were in possession of the
bench & Bar but, concealed from Whitten throughout trial proceedings; now
Ex. #R-"AB" from Affiant's Bond & DeBord, detectives of Stafford County
Sheriff's office, see pp. 20 para. 1 for fraud upon the court by officers of the
court to obtain unlawful jurisdiction and defraud the court; Ex. #F.U.1-1p.
2 shows real brick and motor address; Trial Trans. pp. 6, May 17, 2004; Tr. Trans.
pp. 206, 5/26/2005; Tr. Trans. pp. 239-240, 5/23/2005; Tr. Trans. pp. 375, 5/23/2005; Tr.
Trans. pp. 396-397, 5/23/2005; Ex. #B-History of Stafford County, Va.; Ex. #F.U.-History
of the independent City of Fredericksburg, Va. Thus, no prejudice to the State
and Rule 9 of the Rules Governing Habeas Corpus 2254. Delay alone can't
bar relief. SEE: Castello v. United States, 365 U.S. 265, 289, 81 S.Ct. 534,
5 L.Ed. 2d 551 (1961) "Thus, the Whitten v. Clarke, 2:20-cv-570-LRL
U.S. Dist. Ct. E.D. Va. D. Norfolk (March 24, 2022)" is in valid. This court
has jurisdiction to review the judgment in Whitten v. Clarke, 22-5640
(2:20-cv-570-LRL) U.S. Ct. App. 4th Cir. Va. D. Richmond (Dec. 22, 2022)
on a writ of Certiorari under 28 U.S.C. § 1251(1).

- 15) SEE: Whitten v. Clarke, no. 22-5640 (2:20-cv-570-LRL) U.S. Ct. App. 4th
Cir. Va. (May 23, 2022). Pet. T.D.1, Federal Question timely raised (p. #2,
claims presented on pp. 6-7 and question timely raised (p. 1/13, claims
pp. 8-10.

The court passed upon this federal question by stating the petition is time barred. It's clear that no independent review was done as the record evidence as a whole was judged unbiased in favor of the state (Clarke). The court claims an independent review was conducted but relevant and material disputed facts are unresolved. Without a merits review the denial of a full and fair hearing has been denied. U.S. Const. 14th Amend. Due process of law and U.S. Const. 6th Amend. denial of a fair trial is asserted. SEE: Slack v. McDaniel, 529 U.S. 473, 484 (2000) is implicated. This ruling @ Whitten v. Clarke, no. 22-5640 @: 20-cv-570-LRL U.S. Ct. App. 4th Cir. Va. was unreasonable and prejudice resulted; thus, injury remains. This court has jurisdiction to review the judgment of Whitten v. Clarke, 22-5640 @: 20-cv-570-LRL U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022) on a writ of certiorari under 28 U.S.C. § 1251(1).

Whether Whitten's constitutional right to effective assistance of counsel as defined in Strickland v. Washington standard under the (a) prong test was violated and, whether the judgment/final order was void @ Sup. Ct. Va. as the trial court failed to safeguard my 6th Amend. rights to effective assistance of counsel?

- 16) SEE: Commonwealth v. Whitten, C103-1070-00 and 01 Stafford County Cir. Ct. Va. (Oct. 27, 2005) for errors asserted @ Whitten v. Clarke, C119-336-00 Stafford County Cir. Ct. Va. (Jan. 22, 2019) @ Fed. Cir. A, federal question timely raised @ SEE: Clarke's Mot. To Dis. @ pp. 2(1), (A), (B), (C), (D); pp. 3, (3), (A), (B), (C) @ (March 18, 2019) Whitten v. Clarke, C119-336. Claims presented @ pp. 23, 24, 25, 26, 27, 28, and 29, para's 33-42. The court passed upon this federal question in its final

Whitten v. Clarke, CL19-336-00 Stafford County Cir. Ct. Va.
(April 25, 2019) judgment, that "the court finds that based on the evidence at trial that East's True Value Hardware Store is located in Stafford County, Va." This issue is not resolved as the trial court never provided an address for the location of the crimes being committed in the state of Virginia thus, the "Affidavit" #4, pp. 2 @ 3, provided on (March 18, 2019) with/in support of (Clarke's) Mot. To Dis. in Whitten v. Clarke, CL19-336-00 from Defense Attorney Allen Basford pursuant to Va. Code § 8.01-660. He states: "Evidence in the record clearly establishes that East's True Value Hardware store is physically located in the County of Stafford, Va. Whitten is appearing to be confusing mailing address with physical location." Whitten, asserts @ Ver. Ex. #2, pp. 2 @ 3; pp. 3 @ 4 and para. 5; and pp. 4 @ 8, and the Amended pp. 4 @ 8 a genuine, relevant material disputed fact and, the court passed upon it by not granting a hearing. The exhibits submitted to the court were ignored and thus, the "Aff." from Basford was credited by the court. See: Ex. #4, 5, 6, 7, 10, 11, and 12 @ Ver. CIA to show verified proof that the court never took lawful judicial notice nor acquired subject matter jurisdiction. Whitten's trial attorney, Mostakowski and Basford knew the charging instruments lacked proof of a crime and locational proof by the state but, their incompetence at trial created unprofessional errors, the results of the proceedings had negative effects versus the results being different, the evidence will show a reasonable probability of their errors

and that reasonable probability is a probability sufficient to undermine confidence in the outcome. See: Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2050, 80 L.Ed. 2d 674 (1984). Whitter, alleges that the habeas trial court applied the governing legal rule unreasonably to the facts of the case. See: Williams v. Taylor, 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed. 2d 389. All claims herein alleged stand on the same extraordinary circumstances for cause and prejudice, especially the allegations of fraud upon the court by my defense trial attorney's. The map used by the state at trial @ Tr. Trans. 44, pp. 396-400, 5/23/05 can not be used to validate Va. Code §§ 17.1-513, 19.2-239 code sections as the Map does not provide an address or verified locational proof of the crime scene. Thus, the Whitter v. Clarke, C-19-336-00 Stafford County Cir. Ct. Va. (April 25, 2019) final order is void for lack of jurisdictional facts and constitutional U.S. 6th Amend. rights violation of ineffective assistance of counsel. This court has jurisdiction under 28 U.S.C. § 1251 (1) to review the judgment of Whitter v. Clarke, 22-5640 (200-w-570-lev) U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022) on a writ of certiorari.

- 17) See: Whitter v. Clarke, 190683 Sup. Ct. Va. (Nov. 22, 2019). Pet. Assignments of error @ ECF no. 125, the federal question timely raised @ pp. 9 @ 21A-3; claims presented on pp. 10 @ 22; pp. 11 @ 33; pp. 12 @ 25. The court passed upon this federal question in its ruling stating: The court finds assignment no. 3 is

insufficient as it does not address any findings or ruling on an issue in Anton G. Whitten v. Harold W. Clarke, no. 01-19-336 from an appeal is sought. Accordingly, the petition for Appeal is dismissed as to that assignment of error 16a, Sup. Ct. R. 5.17 (e)(1)(iii). Upon further consideration whereof, the court refuses the remaining assignments of error. The judgment signed by Clerk of Court without any judges signatures. Thus, the highest state court judgment is void and no comity attaches. Whitten has a liberty interest for my appeal to be heard by judges by law. Whitten has satisfied the standing requirement of the case and controversy limitation on judicial authority in Art. III, section 2 of the Constitution. (1) As the injury I suffered is a fact of my unlawful detention (2) the injury is traceable to (Clarke's) actions, and (3) it is likely and not merely speculative, that the injury will be redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed. 2d 351 (1992); Friends of the Earth, Inc. v. Gaston Copper Recycling Corp., 204 F.3d 149, 154 (4th Cir. 2000) (en banc). My unlawful detention is an egregious error which injury is concrete and particularized, and actual/imminent, not hypothetical. Lujan, 504 U.S. at 560-61. Whitten, pro se, alleges I have a personal stake in the outcome this dispute to render an appropriate judicial resolution. Emery v. Roanoke City Sch. Bd., 432 F.3d 294, 298 (4th Cir. 2005) The decision is absolutely necessary in the interest of justice. The ruling

of the court in Whitten v. Clarke, 190683 (Cir. Ct. No. CK19-336) Sup. Ct. Va. (March 29, 2020). was an abuse of discretion - see: Shoatz v. Shoatz, 27 Va. App. 264 (April 28, 1998); Koon v. United States, 518 U.S. 81, 116 S. Ct. 2035, 2047 (1996). The external circumstances to my own conduct would be unconscionable for this court to enforce the limitation period of both Va. Code § 8.01-654 (A)(2) and 28 U.S.C. § 2244(d)(1). Both rulings should be applicable to Gonzalez, 565 U.S. at 140-41 (2000) (citing Shack v. McDaniel, 529 U.S. 473, 484 (2000); Shack v. McDaniel, 100 S. Ct. 1604). This court has jurisdiction under 28 U.S.C. § 1251(1) and 42 U.S.C. Art. III to review the judgment @ Whitten v. Clarke, 22-5640 (2:20-cv-570-LER) U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022), on a writ of certiorari.

18) see: Whitten v. Clarke, 20-5106 (190683 Sup. Ct. Va.) Sup. Ct. U.S. (June 7, 2020) filed. the federal question timely raised @ #6; claims raised @ pp 33-34, pp. 35-37. The court @ the above case # passed upon this claim without an opinion as to its determination thus, no reason for its ruling noted. The Whitten v. Clarke, 20-5106 (190683 Sup. Ct. Va.) Sup. Ct. U.S. (Oct. 5, 2020) ruling leaves unresolved issues of relevant and material facts for this court's review. This court has jurisdiction to review the judgment @ Whitten v. Clarke, 22-5640 (2:20-cv-570-LER) U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022) under 28 U.S.C. § 1251(1) on a writ of certiorari.

see: Supreme Court of the United States judgment reviewable orders

under 28 U.S.C. § 1251(1) on a writ of certiorari.

- 19) See: Whitten v. Clarke, 2:20-cv-570-LRL-AWA U.S. Dist. Ct., E.D. Va.,
@ Alexandria (Dec. 7, 2020) @ Fed. R., federal question timely raised on
pp. 27, claims raised on pp. 31 @ 30; pp. 36 @ 23 - no ruling by the
court, it sent the petition to the Norfolk Division for legal brief.
- 20) See: Whitten v. Clarke, 2:20-cv-570-LRL U.S. Dist. Ct., E.D. Va., @ Norfolk.
(June 7, 2021). Legal Brief @ Fed. R. U.S.A., federal question timely raised
@ pp. 8 @ 14; claims presented @ pp. 30 @ 21 through pp. 48. The court
passed upon this federal question when it agreed with the Sup. Ct. Va.
and Habeas H. Ct. by using Carey v. Stafford, 536 U.S. 314, 205-26, per
the AEDPA in stating the petition is time barred thus, no merits
review necessary by the court. Thus, the court's analysis is unreasonable
and deserves statutory and equitable tolling. See: 28 U.S.C. § 2244(d)(1)(2)
Whitten, prose, clearly demonstrated equitable tolling @ (1) and (2)
to proceed further see: Pace v. DiGirolamo, 554 U.S. 408, 418 (2005). The
evidence is clear that circumstances external to my own conduct -
it would be unconscionable to enforce the limitation period (Whitten)
and gross injustice would result. Spencer v. Sutton, 237 F.3d 626, 630
(4th Cir. 2000) (quoting Harris v. Hutchinson, 207 F.3d 325, 330 (4th Cir. 2000)
See: pg. 8 @ 2 in the court's opinion para. 2 where the Dist. Ct. relies
on the trial court's finding, that the address where the crimes
took place was elicited at trial and was located in Stafford County,
Contrary to Whitten's claim of conspiracy and concealment. ECF no. 24,
attach. 4 @ 6. The very next paragraph the dist. court alleges Whitten
had not shown any extraordinary circumstances which prevented the
timely filing of the instant petition. Schelp v. Delo, 513 U.S. 298, 329 (1995).

Schlup, 513 U.S. at 327 are not applicable as the petition is not time barred for the many reasons the court overlooked. 28 U.S.C. § 2244(d)(1) of the AEDPA is also inapplicable as the tolling sought shows extraordinary circumstances from the Jurisdiction, Probable Cause, Fraud upon the Court, and ineffective assistance of Counsel claims for cause and prejudice. See: Ex. # A.B. J. 2, K. 2, 54/F. 2, 73-74, T, D1, #4, R. 2, 2, F. U. 1, 2, T. Trans. pp. 5, 6, May 17, 2009, pp. 395, 5/23/05, pp. 239-240, 5/23/05, pp. 206, 5/26/05, and F. U. 1, B. all for the proof of extraordinary circumstances. Note: The court(s) have not provided an address to support their claim nor settle the dispute. The states May @ 54, their labled T. Trans. 44, pp. 396-400, 5/23/05 is not persuasive as it does not present an address. An extraordinary hearing requested was denied thus, a full and fair hearing was not afforded Whitten v. Howard U. Sain, 372 U.S. 293, 379 U.S. 313 (1963) is applicable for disputed facts and due process. The Whitten v. Clarke, 2:20-cv-570-LRL U.S. Dist. Ct. E.D. Va. (March 24, 2022) ruling is unreasonable and Slack v. McDaniel, 529 U.S. 473, 484 (2000) is asserted. This court had jurisdiction to review the judgment of Whitten v. Clarke, 22-6540 (2:20-cv-570-LRL) U.S. App. 4th Cir. Va. (Dec. 22, 2022) per 28 U.S.C. § 1251(1) on a writ of Certiorari.

21) See: Whitten v. Clarke, no. 22-6540 (2:20-cv-570-LRL) U.S. App. 4th Cir. Va. (May 23, 2022). Federal question timely filed @ Issue #1, pp. 2 other, claims presented @ pp. 5-7; pp. 1-4; pp. 8-12. The court passed upon these federal questions when its ruling alleges the "pet." is time barred. Under 28 U.S.C. § 2254 and 28 U.S.C. § 2244(d)(1). Also,

the overall wholesale suppression of relevant and material evidence, egregious error of counsel (2) Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2050, 80 L.Ed.2d 674 (1984); Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2050, 80 L.Ed.2d 674 (1984); and Strickland, 466 U.S. at 694, the highest state court's void ab initio judgment error by the clerk; Rule 9(c) requires the state to prove that it has been prejudiced in its ability to respond to the habeas petition as a result of the petitioner's delay in filing. The delay alone is no bar to federal relief. The respondent Clarke, has not made a particularized showing of prejudice thus, it is hereby waived. See: Costello v. United States, 365 U.S. 265, 282, 81 S.Ct. 534, 5 L.Ed.2d 551 (1961). Whitten, pro se, has been prejudiced by these errors of law and abuse of discretion by the trial court. These officers of the court whom acted at trial to deprive Whitten of his fundamental fairness/due process should be held to answer under Walker v. Johnston, 312 U.S. 275, 287, 85 L.Ed. 830 (Febr. 10, 1941). Whitten, has not received a full and fair hearing in the state court proceedings 28 U.S.C. § 1254(b); Roe v. Flores-Ortega, 528 U.S. 470, 145 L.Ed.2d 985, 120 S.Ct. 1009 (2000). The error in this decision can be seen (2) United States ex rel. Jennings v. Raper, 358 U.S. 276, 277, 79 S.Ct. 321, 3 L.Ed.2d 296 (1959). See: 28 U.S.C. §§ 2254(d)(1), 2254(d)(2); Stack v. McDaniel, 529 U.S. 473, 484 (2000). The Whitten v. Clarke, no. 22-5640 (2:20-cv-570-LRG) U.S. Ct. App. 4th Cir. Va. (Dec. 22, 2022) ruling was unreasonable. Thus, this court has jurisdiction to review the judgment (2) Whitten v. Clarke, 22-5640 (2:20-cv-570-LRG) 4th Cir. App. 9th Cir. Va. (Dec. 22, 2022) per 28 U.S.C. § 1254(1) on a writ of certiorari.

Reasons For GRANTING THE WRIT

The United States Court of Appeals of the Fourth Circuit, Va. has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by a lower court, as to call for exercise of this court's supervisory power, and a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or a United States Court of Appeals; a state court and a United States Court of Appeals has decided an important question of federal law that has not, but should be, settled by this court in a way that conflicts with relevant decisions of this court.

Antonin G. Whitten, pro se, 1138537

CONCLUSION

I, Antwon G. Whitten, pro SE 1138537, hereby certify that I respectfully request of this court, the granting of the writ of certiorari and ordering the U.S. Dist. Ct. to provide Whitten, with an evidentiary hearing in the interest of justice, if the state decides not to retry/have the hearing, to release Whitten, without further delay.

Respectfully Submitted,

Antwon G. Whitten

Antwon G. Whitten, pro SE 1138537
Red Onion State Prison
10800 H. Jack Rose Hwy.
P.O. Box 970
Pound, Va. 24279-0970

Dated: 6-14, 2023

Antwon G. Whitten, pro SE 1138537