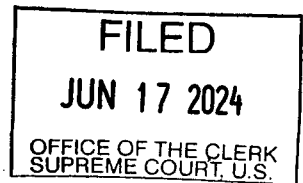


Case No **23 - 7733**

IN THE
SUPREME COURT OF THE UNITED STATES



THOMAS RICHARD WARD,
Petitioner,
vs.
COUNTY OF FAIRFAX & COMMONWEALTH OF VIRGINIA,
Respondents.

**ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF VIRGINIA**

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF VIRGINIA**

SCOTUS RULE 29 CERTIFICATE OF SERVICE

Thomas Richard Ward, *pro se*
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Annandale, VA 22003
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QUESTIONS PRESENTED FOR REVIEW

1) Whether or not Petitioner's Due Process according to **U.S. Amendments V, VI, & XIV** was violated due to errors *Coram Vobis* committed in the plea colloquy process by the Trial Court regarding the Petitioner's ability to plead knowingly, intelligently, and voluntarily for an alleged 2019 misdemeanor Protection Order Violation after:

a) The Trial Court never asked whether the Petitioner 's "not guilty" plea, entered for him by his attorney, was made knowingly, intelligently, and voluntarily; and

b) The Petitioner was unaware of the Prosecution's plea bargain offer for a non-criminal Trespassing charge in exchange for the Protection Order Violation so that Petitioner could best manage his **U.S. Amendment V, VI, & XIV** Rights where the plea bargain ultimately would not have adversely affected Petitioner's employment status, nor his clean criminal record, nor cause him the loss of Custody Rights of his children?

2) If even one error *Coram Vobis* was committed by the Trial Court in the above question, whether or not the Trial Court or the Supreme Court of Virginia possessed the authority to set aside the conviction and/or expunge the Petitioner's Criminal Record?

3) Whether or not Petitioner's **U.S. Amendment VIII & XIV** Right to protection from cruel and unusual punishment was violated by the Virginia State and County Courts?

LIST OF ALL PARTIES

1) ***Petitioner / Defendant Thomas Richard Ward, pro se***, 8115 Gale Street, Annandale, Virginia, 22003, Email: twconsult1995@gmail.com, Phone: 703-470-5047,

2) **Respondents:**

a) ***Respondent / Prosecutor County of Fairfax*** represented by Associate District Attorneys from the office of Steve Descano, Fairfax Commonwealth's Attorney, 4110 Chain Bridge Road, Suite #114, Fairfax, Virginia, 22030, Phone: 703-246-2776. Prosecutor County of Fairfax appeared in the Fairfax J&DR and the FCCC.

b) ***Respondent Commonwealth of Virginia*** represented by Collin C. Crookenden (VSB#93455), Assistant Attorney General Criminal Appeals Section, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219, Emails: ccrookenden@oag.state.va.us and OAG Criminal Litigation oagcriminallitigation@oag.state.va.us, Phone: 804-786-2071, Facsimile: 804-371-0151. Prosecutor Commonwealth of Virginia appeared in CAV and were served by Petitioner filings in the SCV.

CORPORATE DISCLOSURE STATEMENT

There is no parent corporation nor any publicly held company that owns >10% of anything associated with *pro se* Petitioner. The Petitioner owns ~14% of a family business in Minnesota where a prenuptial agreement exists with his ex-wife, who had the Protective Order that Petitioner was alleged to have violated. However, Petitioner has a mortgage and three IRA accounts. Since Petitioner is not a corporation, he has no corporate disclosures to make. Petitioner is not a director of any corporation.

LIST OF VIRGINIA STATE PROCEEDINGS

Supreme Court of Virginia (hereafter "SCV")

Thomas Richard Ward v. Commonwealth of Virginia, Record No. 230358, Final Order March 18, 2024 [A1-4, A11];

In Re: Thomas Richard Ward, Record Nos. 230366 & 230367, for Writs of Mandamus seeking full Court Records for FCCC, CAV, and SCV [A5-10, A12].

Court of Appeals of Virginia (hereafter “CAV”)

Thomas Richard Ward v. Commonwealth of Virginia, Record No. 1336-22-4, Order on February 17, 2023 then Final Order denying rehearing on March 20, 2023 [A13-20 (A13-15 Denied Records on A14)].

Circuit Court of Fairfax County (hereafter “FCCC”)

Thomas Richard Ward v. Commonwealth of Virginia, Case No. CL-2022-7040, with Writ of Errors *Coram Vobis* Hearing June 24, 2022 and Final Order July 11, 2022 where the FCCC stated it lacked “authority” to correct errors *Coram Vobis*. This case involves COVID Trolling from Case No. MI-2019-517 below and discusses a Plea Bargain Offer which was unknown to Petitioner on May 23, 2019 at the time of the Plea Colloquy which Plea Colloquy never occurred in the FCCC by error of the FCCC. A timely August 1, 2022 Motion to Reconsider was amended on August 3, 2022 without Relation Back before a timely August 9, 2022 Notice of Appeal followed by an August 30, 2022 Order denying the untimely August 3, 2022 Motion for Reconsideration [A21-24 (A23 has erroneous caption and date 7/22/2022 should be 7/11/2022)];

Commonwealth of Virginia v. Thomas Richard Ward, Case No. MI-2019-517. Hearing and Final Order May 23, 2019. This case involves the Plea Bargain Offer which was unknown to Petitioner on May 23, 2019 at the time of the Plea Colloquy which Plea Colloquy never occurred in the FCCC by error of the FCCC [A25-26].

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Va. Code § 8.01-654 writ of habeas corpus with COVID and the Supreme Court of Virginia’s Declaration of Judicial Emergency tolling periods and thus original filing of May 23, 2022 in air but refiled by Counsel of CL-2022-7040 on May 31, 2022. *P7*

Va. Code § 8.01-677 - a writ of coram vobis may lie, “[f]or any clerical error or error in fact for which a judgment may be reversed or corrected...”.*P5, 9, 21*

Va. Code § 8.01-428(D) (2020) (See **Va. Codes § 18.2-251, 18.2-57.3, and § 19.2-303.2**P 16, 17

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<u><i>Commonwealth of Virginia vs. Kimberlyn Baig-Ward</i></u> , FCCC Case Nos. MI-2021-532 & MI-2021-533	P14
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<u><i>Keel v. Keel</i></u> , Record No. 802029, Va. SCt. 303 S.E.2d 917 (1983)	P16
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Virginia Criminal Benchbook for Judges and Lawyers (2020-2021 Edition).. P7, 17

Carissa Byrne Hessick, Punishment Without Trial: Why Plea Bargaining is a Bad Deal, noting, (Hessick, 2021, p. 57).

OPINIONS AND ORDERS BELOW

SUPREME COURT OF VIRGINIA (herein “SCV”), all orders signed by Clerks contrary to VA Code §8.01-389 and RSCV Rule 1. Orders appear in Appendix.

MARCH 18, 2024 (Record No. 230358) [A1]

FEBRUARY 12, 2024 (Record No. 230358) [A2]

JANUARY 18, 2024 (Record No. 230358) [A3]

DECEMBER 13, 2023 (Record No. 230358) [A4]

NOVEMBER 15, 2023 (Record No. 230366) [A5]

NOVEMBER 15, 2023 (Record No. 230367) [A6]

OCTOBER 12, 2023 (Record No. 230366) [A7-8]

OCTOBER 12, 2023 (Record No. 230367) [A9-10]

JUNE 23, 2023 (Record No. 230358) [A11]

JUNE 23, 2023 (Record No. 230366) [A12]

COURT OF APPEALS OF VIRGINIA (herein “CAV”) which no order was signed by a judge as mandated by the Va. Code

SEPTEMBER 25, 2023 (Denied under two Custody Case Appeals) [A13-15]

MARCH 20, 2023 (Record No. 1336-22-4) [A16]

FEBRUARY 17, 2023 (Record No. 1336-22-4) [A17-18]

JANUARY 10, 2023 (Record No. 1336-22-4) [A19]

DECEMBER 27, 2022 (Record No. 1336-22-4) [A20]

FAIRFAX COUNTY CIRCUIT COURT orders lack an order log per Va. Code § 17.1-123

AUGUST 30, 2022 (Case No. CL-2022-7040) [A21-22]

AUGUST 15, 2022 (Erroneous Caption and Case No. CL-2017-3891) [A23]

JULY 11, 2022 (Case No. CL-2022-7040) [A24]

MAY 23, 2019 (Case No. MI-2019-517) [A25-26]

The July 11, 2022 Fairfax County Circuit Court (here in “FCCC” or “Trial Court”) Order [A24] denied the May 31, 2022 “Petition for Writ of Error *Coram Vobis*, or in the Alternative, Opportunity to Plead a Petition for a Writ of *Habeas Corpus*” [A27-47, A161-167] stating “... within the confines of the facts presented and applicable precedent, the Court does not have the authority [*emphasized*] to enter the relief for which the Petitioner prays, whereupon IT IS ORDERED, ADJUDGED, and DECREED that Thomas Richard Ward’s Petition for a Writ of Error *Coram Vobis* is respectfully DENIED [A24].” The August 15, 2022 FCCC Order in addition to being filed with the wrong case caption stated “July 22, 2022” instead of July 11, 2022 [A23].

JURISDICTION

The bases for jurisdiction in this SCOTUS for a Petition for Writ of Certiorari to the SCV is 28 U.S.C. §1257(a) (State courts; certiorari):

28 U.S.C. §1257(a) (State courts; certiorari) –

“Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any

title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.”

The SCV Order to be reviewed is dated December 13, 2023 [A4] and Petitioner filed a December 30, 2023 “Notice of Objections and Appeal to US Supreme Court per Rules 5:9 and 5:17 Post Rule 5A:33 / 5A:34 Petitions” then January 9, 2024 “Amended Notice of Objections and Withdraw Appeal to the US Supreme Court and Petition for Rehearing per Rules 5:9, 5:13, 5:17, 5:20, Post CAV Rule 5A:33 / 5A:34” which were treated as a Petition for Rehearing by the SCV on January 18, 2024 [A3]. Simultaneously, Petitioner filed under rule 5:37 a January 18, 2024 “Petition for Reconsideration / Rehearing of Petition to the Virginia Supreme Court (Rule 5:20)” before a SCV March 18, 2024 “Final Order [A1].”

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Amendment V –

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

U.S. Amendment VI –

“In all criminal prosecutions, the accused shall enjoy the right to a speedy 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 compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”

U.S. Amendment VIII –

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

U.S. Amendment XIV, Section 1 –

“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 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.”

42 U.S.C. §1983 – Civil action for deprivation of rights –

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s

judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.”

Virginia Code §8.01-677 – Errors corrected on motion instead of writ of error coram vobis.

“For any clerical error or error in fact for which a judgment may be reversed or corrected on writ of error coram vobis, the same may be reversed or corrected on motion, after reasonable notice, by the court.”

Virginia Code §16.1-253.2(D) – Violation of provisions of protective orders; penalty.

“D. Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 16.1-279.1 for a specified period not exceeding two years from the date of conviction.”

CONCISE STATEMENT OF THE CASE

Petitioner was found guilty in Commonwealth of Virginia v. Thomas Richard Ward, FCCC Case No. MI-2019-517 [A25-26] of a Protection Order Violation in accordance with Va. Code §16.1-253.2(D) on May 23, 2019 at a FCCC Hearing (Transcript discussed below [A53-66]). The Protective Order at issue was a one-

year Protective Order created on January 18, 2017 in the Fairfax County Juvenile and Domestic Relations District Court (hereafter “**Fairfax J&DR**”) then changed to a two-year Protective Order in the FCCC on April 6, 2017. On March 16, 2018, the Protective Order was modified. That Protective Order specified that Petitioner could only discuss his two children and visitation arrangements in e-mails with his ex-wife. While Petitioner was represented by counsel, he sent on January 10, 2019 attorney-client work product to his attorney which he inadvertently and mistakenly sent to his ex-wife nine days later. On April 4, 2019, FCCC found Petitioner’s January 19, 2019 e-mail to Petitioner’s ex-wife “relate[d] to the kids in every paragraph” so it was compliant with the Protective Order (**Transcript discussed below [A50-52]**). On April 5, 2019, the Fairfax J&DR found Petitioner guilty of violating the Protective Order despite *res judicata* as argued by Petitioner’s counsel. Petitioner was guilty of a Class 1 Misdemeanor in the Fairfax J&DR. Petitioner appealed *de novo* to the FCCC.

On May 23, 2019, the FCCC never had a Plea Colloquy where the Judge asked Petitioner if his “not guilty” plea made for him by his counsel was made knowingly, intelligently, and voluntarily **[A34-36, A48-49, A161-167]**. In fact, the Prosecution had made a Plea Bargain Offer for a non-criminal Trespassing Charge in exchange for the Protective Order Violation about which Petitioner was never informed on May 23, 2019 **[A27, A30-46, A161-163]**. On May 23, 2019, the FCCC found Petitioner guilty **[A25-26]** of the Class 1 Misdemeanor and he subsequently spent one day in jail. On that same day being May 23, 2019, there was a two-year

extension added to the previous Protective Order [A25]. This was in accordance with Va. Code §16.1-253.2(D).

COVID 19 was occurring. There was a one-year then two-year COVID Trolling period. Petitioner found new counsel who realized a “Petition for Writ of Error *Coram Vobis*” was possible for the way the FCCC had handled the plea colloquy process on May 23, 2019. On May 23, 2022, the “Petition for Writ of Error *Coram Vobis*, or in the Alternative, Opportunity to Plead a Petition for Writ of *Habeas Corpus*” was filed in FCCC Case No. MI-2019-517 [A27] alleging a specific procedural defect had occurred on May 23, 2019. Petitioner alleges his Due Process Rights in accordance with U.S. Amendments II, V, VI, & XIV were violated by the FCCC. This May 23, 2022 filing had attached to it one of the three transcripts mentioned above (*Commonwealth of Virginia v. Thomas Richard Ward*, FCCC Case No. MI-2019-517, Hearing dated May 23, 2019 [A34-35, A48-49]). Additionally, Petitioner’s May 23, 2022 filing had attached an Affidavit from May 23, 2019 Prosecutor as evidence that a Plea Bargain Offer exchanging the Protective Order Violation Charge for a Trespass Charge to be dismissed without further violations of the Protective Order Violations existed before the May 23, 2019 Trial [A161-163]. Further, Petitioner’s May 23, 2022 filing had attached the Virginia Criminal Benchbook for Judges and Lawyers (2020-2021 Edition) proper Plea Colloquy Procedure [A164-166] and an Arlington County Order in *Commonwealth v. Khoy* discussing *Boykin v. Alabama*, 395 U.S. 238, 242 (1969) and Error *Coram Vobis* [A167]. Thereafter, Petitioner’s counsel was instructed by the FCCC to refile the

May 23, 2022 “Petition for Writ of Error *Coram Vobis*, or in the Alternative, Opportunity to Plead a Petition for Writ of *Habeas Corpus*” as a civil case [A28-29, A47] which was refiled on May 31, 2022 [A30-46, A161-167] with attachments [A48-49, A161-167] to become Thomas Richard Ward v. Commonwealth of Virginia, FCCC Case No. CL-2022-7040.

Due to the Va. Code §16.1-253.2 Protective Order Violation Misdemeanor, Petitioner had lost his job at USAID on February 6, 2020 [A168-169]. Petitioner’s ex-wife had moved with Petitioner’s children to Dallas, Texas in April of 2020. Petitioner believes these were cruel and unusual punishment in violation to his U.S. Amendment VIII Rights secondary to the May 23, 2019 conviction of the Protection Order Violation [A25-26] which conviction should be set aside due to Errors *Coram Vobis* [A30-46, A161-167].

STATEMENT OF THE FACTS

Petitioner adopts by reference and incorporates all previous sections above and the attached Appendix [A1-169] herein as if rewritten verbatim hereat.

FCCC:

In the FCCC in Case No. CL-2022-7040, there was a June 24, 2022 Hearing (Transcript discussed below [A53-66]). Petitioner’s writ of error *Coram Vobis* was denied on July 11, 2022 [A24] stating:

“... the Court having considered the arguments and filings of counsel, and finding that within the confines of the facts presented and applicable precedent, the Court does not have the authority to enter the relief for which the Petitioner prays, whereupon IT IS ORDERED, ADJUDGED, and DECREED that Thomas Richard Ward’s Petition for a Writ of Error Coram Vobis is respectfully DENIED ... [A24].”

Petitioner believes Va. Code §8.01-677 provides the FCCC, CAV, and SCV authority to correct errors made due to lack of a Plea Colloquy Process in the FCCC. Petitioner, *pro se*, filed an August 1, 2022 Motion for Reconsideration with a mistaken Case No. “2017 CL-03891.” Without Referring Back, Petitioner filed an Amended Motion for Reconsideration on August 3, 2022 with hand-written “2022-7040” in the caption then Petitioner filed a timely August 9, 2022 Notice of Appeal. On August 15, 2022 in an Order [A23] erroneously captioned “Kimberly (sic. – Kimberlyn) Maravet Baig-Ward v. Thomas Richard Ward, Case No. CL-2017-3891 [A23]” and with additional error “... the Order not entered by this Court on July 22, 2022 [A23]” referring to the July 11, 2022 Order [A24], the FCCC denied Petitioner’s August 1, 2022 Motion for Rehearing and August 3, 2022 Amended Motion for Rehearing [A23] stating “[these Reconsideration Motions] have not raised any issues such that this Court should reverse the Order [A23].” On August 26, 2022, Petitioner filed the other two of the three transcripts mentioned above [Kimberlyn Maravet Baig-Ward v. Thomas Richard Ward, (Case No. erroneous) [A50-52], FCCC Extract Ruling, Hearing April 4, 2019 as Exhibit 4 and Thomas Richard Ward v. Commonwealth of Virginia, FCCC Case No. CL-2022-7040 [A53-66], Hearing June 24, 2022 as Exhibit 1] as attachments to his August 26, 2022

“Petitioner’s Certification of Transcripts for VA Appeal of ‘Petition for Writ of Error *Coram Vobis*, [or in the] Alternative, Opportunity to Plead a Petition for Writ of *Habeas Corpus*.” On August 30, 2022, the FCCC thought of a better way to deny Petitioner’s timely August 1, 2022 Motion for Rehearing and untimely August 3, 2022 Amended Motion for Rehearing [A21-22] by stating “... denied because the Court entered a Final Order on July 11, 2022, more than 21 days have elapsed since the entry of that Final Order and the Court no longer has jurisdiction over this case [A21-22].”

CAV:

In the CAV, Petitioner filed a November 4, 2022 Opening Brief then a November 17, 2022 Amended Opening Brief. There was a December 27, 2022 Order [A20] alleging that Petitioner *pro se* failed to follow Rules of the Supreme Court of Virginia (hereafter “RSCV”) Rule 5A:20(c & e) and giving Petitioner ten days to fix the errors in his Amended Opening Brief. Petitioner was having difficulty receiving the Records alleging missing Records from FCCC Case No. MI-2019-517 and the related Fairfax J&DR cases. There was a January 10, 2023 Order [A19] denying Petitioner (now living on his Individual Retirement Account because of his unemployment caused by the May 23, 2019 Protective Order Violation) the appointment by the CAV of counsel. Petitioner filed a January 6, 2023 Second Amended Opening Brief but his Assignments of Error were still allegedly scattered in different parts of that Second Amended Opening Brief. There was a February 17, 2023 Order [A17-18] dismissing Petitioner’s CAV Appeal Record No. 1336-22-4.

After Petitioner's CAV Appeal was denied, Petitioner realized his FCCC Appeal did not lie with the CAV but with the SCV because it was an appeal about a Writ.

Viorel Draghia v. Commonwealth of Virginia, 54 Va. App. 291, 678 S.E.2d 272 (2009).

MISSING COURT RECORDS:

On March 5, 2023, Petitioner filed a Motion for Records in the FCCC. On March 11, 2023, Petitioner filed a Petition for Rehearing in the CAV which was denied by March 20, 2023 Order [A16]. On April 7, 2023, Petitioner filed a timely Notice of Appeal to the SCV. On April 10, 2023, Petitioner filed a Second Motion for Records in the FCCC. On May 22, 2023 to May 24, 2023, Petitioner filed two SCV Petitions for Writ of Mandamus for FCCC Records for both his Misdemeanor Appeals and his on-going Custody Appeals (the SCV Petition for Mandamus for FCCC Custody Records includes Misdemeanor-related issues in the Custody Records). On June 23, 2023, Petitioner filed a SCV Objection to the Office of Virginia Attorney General's Demurer for FCCC Records. On July 5, 2023, Petitioner filed a Motion to Supplement his June 23, 2023 Objection with actual Transcript Excerpts of relevant information about the Misdemeanor Appeal in FCCC Misdemeanor and Custody Records. The CAV and SCV needed these FCCC Misdemeanor and Custody Records for proper review of Petitioner's appeals. Petitioner needed these FCCC Misdemeanor and Custody Records to factually write his Appellate Briefs. On July 19, 2023, Petitioner filed a SCV Responsive Corrected

Objection concerning FCCC Misdemeanor and Custody Records. To date, the FCCC has provided no Misdemeanor Records and only selective Custody Records to the CAV and SCV reviewing courts.

In a September 25, 2023 CAV Order [A13-15] pertaining to Petitioner's Custody Appeals (Record Nos. 1921-22-4 & 0883-23-4), the CAV referenced the CAV Record No. 1336-22-4 [A14] concerning Petitioner's claim there were missing Records:

“On July 20, 2023, appellant filed a document purporting to list items missing from the record. But the list did not identify the name or the title of the allegedly missing documents. In some instances, appellant included only a hearing date, without specifying what was missing from the record. Appellant also requested documents related to Record No. 1336-22-4, but the Court previously dismissed that appeal. *See Ward v. Commonwealth*, No. 1336-22-4 (Va. Ct. App. Feb. 17, 2023). In addition, appellant made very broad requests for various documents, including juvenile and domestic relations district court records, police records and communications between judges and staff, without identifying exactly what was missing. In response, appellee moved to dismiss because the list did not comply with the Court's order and sought documents that were not part of the circuit court record.

Appellant also moved to amend his assignments of error, for a suspension and/or extension of the briefing schedule, and an extension to file assignments of error. Appellant claimed that he was ‘unable to continue with the briefing schedule due to the missing records in assurance of truth and fact.’ Appellee opposed the motion to amend the assignments of error because appellant and appellee already had filed briefs in the appeal. Appellee emphasized that appellant's request followed this court's direction to file an amended opening brief, which he had not done [A14].”

SCV:

In the SCV, there were three cases: CAV Appeal (SCV Record No. 230358) and two cases concerning missing records (SCV Record Nos. 230366 for FCCC Custody Records & 230367 for FCCC Misdemeanor Records). Petitioner filed a May 22, 2023 “Petitioner’s Petition to the Virginia Supreme Court, per Rules 5:9 and 5:17 Post Rule 5A:33 / 5A:34 Petitions [A79-130].” There was an Oral Argument on 12/5/2023 [A131-142]. Petitioner filed a 1/18/2024 “Petition for Reconsideration / Rehearing of Petition to the Virginia Supreme Court (Rule 5:20) Rules: 5:5, 5:17(A), 5:20, and 5:37 Post Rule 5A:33 / 5A:34 Petitions [A143-160].”

There were two June 23, 2023 Orders [A11-12] denying Petitioner the appointment by the SCV of counsel in Record Nos. 230358 & 230366 but granting Petitioner leave to file replies to responsive pleadings in Petitioner’s missing records

There were two October 12, 2023 Orders for the Custody SCV Record No. 230366 [A7-8] and Misdemeanor SCV Record No. 230367 [A9-10] appeals which state that it is for the trial court or the Clerk of the trial court to resolve disagreements as to the contents of the Custody Records and for the Clerk of the CAV to transmit the Misdemeanor Records to the SCV. Petitioner had requested Writs of Mandamus for FCCC Records be sent to Judge David Bernhard (Judge of Petitioner’s Custody and Misdemeanor cases), Kristi Smith (Clerk of the Fairfax County Juvenile and Domestic Relations District Court), and John Frey (Clerk of the Circuit Court of Fairfax County). Petitioner argues that the missing Exhibits from his Custody Case demonstrate that there is a double standard which exists in

the Office of the Fairfax Commonwealth's Attorney where Selective Prosecution is occurring. In FCCC Case No. MI-2021-532 and FCCC Case No. MI-2021-533, there were alleged Misdemeanors by Petitioner's ex-wife which the Fairfax Commonwealth's Attorney did not prosecute "because we don't prosecute misdemeanors [only felonies]" according to a **FOIA** Exchange between the Fairfax County Police and the Office of the Fairfax Commonwealth's Attorney. However, Petitioner was prosecuted on a May 23, 2019 Misdemeanor.

There were two November 15, 2023 Orders for the Custody SCV Record No. 230366 [A5] and Misdemeanor SCV Record No. 230367 [A6] appeals which basically denied Petitioner the appointment by the SCV of counsel in Record Nos. 230366 & 230367. Petitioner filed a May 22, 2023 Petition for Appeal [A79-130]. There was December 5, 2023 Oral Argument [A131-142]. There was a December 13, 2023 Order [A4] which refused the Petition for Appeal [A79-130]. Petitioner filed a January 3, 2024 "Notice of Objections and Appeal to US Supreme Court per Rules 5:9 and 5:17 Post Rules 5A:33 / 5A:34 Petitions." There was a January 18, 2024 Order [A3] which treated this January 3, 2024 filing as a Petition for Rehearing and extended time for a proposed Amended Petition for Rehearing. Simultaneously, Petitioner filed a January 18, 2024 [Amended] Petition for Rehearing [A143-160]. There was a February 12, 2024 Order [A2] which accepted the January 18, 2024 [Supplemental] Petition for Rehearing [A143-160]. There was a March 18, 2024 Final Order [A1] which denied the Petition for Rehearing [A143-160].

REASON FOR GRANTING THE WRIT

Petitioner adopts by reference and incorporates all previous sections above and the attached Appendix [A1-169] herein as if rewritten verbatim hereat.

ERRORS CORAM VOBIS:

There were two errors *Coram Vobis*:

- a) The FCCC on May 23, 2019 never asked Petitioner nor his counsel whether Petitioner made his plea via counsel “knowingly, intelligently, and voluntarily [A27, A30-46, A161-167]” because there was no Plea Colloquy.
- b) The fact that the Prosecution made a Plea Bargain Offer to exchange the criminal charge of Protective Order Violation with the no-criminal charge of Trespassing [A161-163] was never communicated to Petitioner prior to or during the May 23, 2019 Trial.

The Plea Bargain would have enabled Petitioner to continue his job at USAID which he lost on March 6, 2020 [A168-169], would likely have kept him out of jail, and would have prevented Petitioner’s ex-wife from taking his two children to Dallas, Texas in April of 2020.

This was a violation of Due Process according to Petitioner’s U.S. Amendment II, V, VI, VIII, & XIV Rights. Because Petitioner was denied the

opportunity to understand and agree to exchange the Protective Order Violation for the Trespassing Charge, he was compelled to enter a “not guilty” through his counsel where his e-mail was used against him to find him guilty of a Protective Order Violation which violates **U.S. Amendments V & XIV** (“nor shall be compelled in any criminal case to be a witness against himself”). Without being fully informed, Petitioner could not have made an intelligent decision about whether or not to waive a Jury Trial violating **U.S. Amendments VI & XIV** (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed ...”). This violated Petitioner’s Due Process according to **U.S.**

Amendments V, VI, & XIV including **U.S. Amendment V** (“nor be deprived of ... liberty ... without due process of law”) and **U.S. Amendment XIV** (“nor shall any state deprive any person of ... liberty ... without due process of law”). The fact that this conviction of a Protective Order Violation prevented Petitioner from continuing his \$160,000-a-year job at USAID [A168-169] forcing him into unemployment which fact was then used against him at a March 5, 2021 Pendente Lite Hearing ignoring the best interest of the children (*Keel v. Keel*, Record No. 802029, Va. SCt. 303 S.E.2d 917 (1983)) to allow Petitioner’s ex-wife to take his children to Dallas, Texas in April of 2020 was cruel and unusual punishment by the Virginia State and County Courts and a violation of Petitioner’s **U.S. Amendment VIII & XIV** Right.

In *Elon Wilson v. Commonwealth*, FCCC Case No. CL-2021-3146 [A69-78], Officer Jonathen Freitag made a false police report about Wilson driving over a

solid yellow line where Freitag's Dash Camera shows Wilson only touching the solid yellow line. In the ensuing traffic stop, Freitag assumed Wilson's tinted windows were at 35% illegal window tint without ever testing Wilson's windows. The subsequent drug and gun charges followed an illegal traffic stop by Freitag. The options that Wilson was offered before trial was a five-year mandatory sentence for the firearm possession plus a five-year to forty-year sentence for the drug possession charge or a plea bargain offer of seven years. Wilson made an *Afford* Plea to both charges and got three years and seven months suspended from the seven years.

Wilson v. Commonwealth, is a FCCC Case where it was recognized that Wilson would not have accepted the *Afford* Plea had he been informed about the fraud in Freitag's false police report. Wilson did not make his *Afford* Plea knowingly and therefore intelligently. In Petitioner's case, the Prosecutor's Plea Bargain Offer was unknown to Petitioner when he pled "not guilty" through his lawyer and the FCCC never verified in a Plea Colloquy that Petitioner was making his "not guilty" plea either through his lawyer or personally "knowingly, intelligently, and voluntarily." Petitioner was aware his job at USAID would be in jeopardy with a criminal conviction where the Plea Bargain Offer was a non-criminal Trespassing Charge [A161-163] where Petitioner's job at USAID would not be in jeopardy. The FCCC Trial Court failed to verify that Petitioner's Plea was given "knowingly, intelligently, and voluntarily" according to the Virginia Criminal Benchbook for Judges and Lawyers [A164-167]. But for the FCCC's error *Coram*

Vobis, Petitioner would have become informed of the possibility to accept the Plea Bargain Trespassing Offer and continue to work at USAID without fear of becoming fired and unemployed.

In McCarthy v. United States, 394 U.S. 459, 466 (1969), it was established that a guilty plea must be voluntary and knowing. If it is not, it is obtained in violation of due process and is therefore void. This lack of full disclosure calls into question the validity of the court's findings and the fairness of the proceedings.

Henderson v. Morgan, 426 U.S. 637, 645 (1976), states due process requires a plea be “voluntary” and constitute an “intelligent admission” that the defendant committed the offense. If evidence critical to the defense was withheld, the plea cannot be considered voluntary or intelligent.

Similarly, Bradshaw v. Stumpf, 545 U.S. 175, 183 (2005), holds that a guilty plea is valid only if done voluntarily, knowingly, and intelligently.

The trial court’s failure to provide full records and address the procedural missteps further undermines confidence in the judicial process, suggesting a systemic issue. In Maryland v. King, 569 U.S. 435, 447 (2013), the Court noted that procedural due process ensures that individuals are not deprived of life, liberty, or property without appropriate legal safeguards. This principle was not upheld in the Petitioner’s case. These due process violations call for the convictions to be overturned, and for a comprehensive review of the procedural fairness in this and similar cases to prevent future injustices.

Throughout these proceedings, due process was fundamentally flawed as the Defendant was presented with two options: accepting the plea bargain or entering a plea without full knowledge of the offer. This lack of complete information impaired the Defendant's ability to make an intelligent and voluntary decision, affecting the fairness of the trial. Carissa Byrne Hessick highlights this issue in *Punishment Without Trial: Why Plea Bargaining is a Bad Deal*, noting, "The whole idea behind plea bargaining is that defendants negotiate a plea offer that is less than their expected punishment. But it is impossible for defendants to do that if they don't know what evidence the prosecutor has" (Hessick, 2021, p. 57).

The Fourteenth Amendment guarantees that the government cannot deprive a person of life, liberty, or property without due process of law. Cases such as *Mathews v. Eldridge*, 424 U.S. 319 (1976), and *Goldberg v. Kelly*, 397 U.S. 254 (1970), emphasize the necessity of procedural safeguards before depriving individuals of benefits.

Rooker-Feldman Doctrine: The Rooker-Feldman doctrine generally precludes lower federal courts from reviewing state court decisions. However, this doctrine does not apply when fundamental rights under the U.S. Constitution are at stake. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). 28 U.S.C. § 2254 allows federal courts to grant a writ of habeas corpus even after a state court denial.

CONCLUSION

Federal Rules of Appellate Procedure Rule 26(a)(1)(C) has given this Petitioner a 91st day to file this Petition for Writ of Certiorari to the SCV in the SCOTUS beyond the 90 days in SCOTUS Rule 13.1 because the 90th day fell on a Sunday.

On May 23, 2019, the FCCC trial court made two Errors *Coram Vobis*. But for the lack of a Plea Colloquy Processes in the May 23, 2019 Criminal Trial, Petitioner may have learned that Prosecutor Bennett W. Brasfield had made a Plea Bargain Offer to exchange the criminal Protection Order Violation charge for a non-criminal Trespassing charge [A161-163]. This would have allowed Petitioner to continue working at USAID in the event that Petitioner pled “not guilty” to the Protection Order Violation and was subsequently found guilty. This would have been of great interest to Petitioner on May 23, 2019. Because of the FCCC Errors *Coram Vobis* [A48-49] which violated Petitioner’s Due Process according to his U.S. Amendments V, VI, & XIV Rights, Petitioner was fired from USAID on March 6, 2020 [A168-169] becoming unemployed which was then used by his ex-wife to justify at a March 5, 2021 Pendente Lite Custody Hearing Petitioner’s ex-wife’s move with Petitioner’s two children to Dallas, Texas. Additionally, the Protective Order Violation conviction has made Petitioner’s job search for an Employer severely constrained. Petitioner argues that the result of this May 23, 2019 Protection Order Violation conviction was cruel and unusual punishment in violation of Petitioner’s U.S. Amendments VIII & XIV Rights. The punishment is excessive and does not

match the crime resulting in severe damages and hardship. This may rise to the level that the FCCC violated 42 U.S.C. §1983.

Petitioner seeks Relief from this SCOTUS to sets aside Petitioner's May 23, 2019 Protection Order Violation conviction, to expunge Petitioner's Criminal Record, and to provide Petitioner Equity, Fairness, and Justice. Petitioner believes Va. Code §8.01-677 grants the Virginia Courts the authority to grant this Relief Petitioner seeks. The denial of Petitioner's motions for mandamus for court records ("Certiorari") (SCV Record Nos. 230366 and 230367) contrary to Griffin v. Illinois, 351 U.S. 12 (1956) inclines the Petitioner to argue that the Virginia State and County Courts are Obstructing Justice to prevent a fair appellate process.

28 U.S.C. §1746 DECLARATION WITH SIGNATURE

I DECLARE under penalty of perjury that the foregoing "Petition for Writ of Certiorari to the SCV" is within 40 pages (SCOTUS Rule 33.2(b)) and is true and correct. Executed on June 17, 2024.



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