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SUPREME COURT, U.S.

V.

CHADWICK DOTSON, DIRECTOR.
VIRGINIA D.O.C.

ON PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

DEANDRE JOHNSON, 1999377
3521 WOODS WAY
STATE FARM, VIRGINIA 23160
PRO SE PETITIONER

QUESTIONS PRESENTED

IF REASONABLE JURY WOULD FIND DEBATEABLE
WHETHER AN INTERNALLY INCONSISTENT STATE
PROCEDURAL BAR IS ADEQUATE TO PRECLUDE
FEDERAL HABEAS REVIEW?

WHETHER A CONVICTION FOR HAVING CONTACT
OF ANY KIND VIOLATES THE FIRST AMENDMENT?

LIST OF PARTIES

ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE
COVER PAGE.

RELATED CASES

JOHNSON V. DOTSON, NO 23-6186
U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT JUDGMENT ENTERED AUGUST 15, 2024

JOHNSON V. CLARKE, NO 2:20CV474
U.S. DISTRICT COURT JUDGMENT ENTERED AUGUST 18, 2022

JOHNSON V. DIRECTOR, NO 200178
SUPREME COURT OF VIRGINIA JUDGMENT ENTERED AUGUST 7, 2020

TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	8
CONCLUSION	17

INDEX TO APPENDICES

APPENDIX A	COA	ORDER, FOURTH CIRCUIT	1-8
APPENDIX B	REPORT AND RECOMMENDATION/ADOPTION		9-19
APPENDIX C	STATE HABEAS ORDER, SUPREME COURT OF VIRGINIA		20
APPENDIX D	REHEARING ORDER, FOURTH CIRCUIT		21
APPENDIX E	PROTECTIVE ORDER		22-23
APPENDIX F	STATEMENT OF FACTS		24-28
APPENDIX G	OPENING BRIEF, FOURTH CIRCUIT		29-33
APPENDIX H	REHEARING BRIEF, FOURTH CIRCUIT		34-40

TABLE OF AUTHORITIES CITED

CASE		PAGE
BROOKS V. PEYTON ,	210 Va 318 (1969)	9
CARROLL V. JOHANSON,	278 Va 683 (2009)	11
ELLIOTT V. COMMONWEALTH,	277 Va 457 (2009)	15
GOODING V. WILSON,	405 U.S. 518 (1972)	14
HENRY V. MISSISSIPPI,	379 U.S. 443 (1965)	12
LEE V. KEMNA,	534 U.S. 362 (2002)	10
SLACK V. MCDANIEL,	529 U.S. 473 (2000)	8
VIRGINIA V. BLACK,	538 U.S. 343 (2003)	14
WALKER V. MARTIN,	562 U.S. 307 (2011)	10
YOUNG V. RAGEN,	337 U.S. 235 (1949)	10

STATUTES AND RULES

28 U.S.C. 2253

28 U.S.C. 2254

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

PETITIONER RESPECTFULLY PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW
THE JUDGMENT BELOW.

OPINIONS BELOW

THE OPINION OF THE UNITED STATES COURT OF APPEALS APPEARS
AT APPENDIX A TO THE PETITION, AND IS UNPUBLISHED.

THE OPINION OF THE UNITED STATES DISTRICT COURT APPEARS
AT APPENDIX B TO THE PETITION, AND IS UNPUBLISHED.

THE OPINION OF THE HIGHEST STATE COURT TO REVIEW THE
MERITS APPEARS AT APPENDIX C TO THE PETITION, AND
IS UNPUBLISHED.

JURISDICTION

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS
DECIDED MY CASE WAS AUGUST 15, 2024

A TIMELY PETITION FOR REHEARING WAS DENIED BY
THE FOURTH CIRCUIT ON SEPTEMBER 20, 2024

THE JURISDICTION OF THIS COURT IS INVOKED
UNDER 28 U.S.C. 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

VIRGINIA CODE 8.01-654(A)(7)

VIRGINIA CODE 16.1-253.2

FIRST AMENDMENT FREE SPEECH CLAUSE

STATEMENT OF FACTS

DEANDRE JOHNSON, A VIRGINIA PRISONER
WAS CHARGED AND CONVICTED UPON FIVE
MISDEMEANOR COUNTS OF PROTECTIVE ORDER
VIOLATION (POV) VA CODE 16.1-253.2.

THE COMMONWEALTH ISSUED A PROTECTIVE
ORDER AGAINST JOHNSON, PROHIBITING HIM
FROM HAVING "CONTACT OF ANY KIND" WITH
COURTNEY TEJADA. APP 22

HOWEVER, JOHNSON DID CONTACT TEJADA,
BY LETTER, ON FIVE SEPARATE OCCASIONS.

JOHNSON RELIED ON FIRST AMENDMENT
GROUNDS, ARGUING THAT A CONVICTION
FOR HAVING CONTACT OF ANY KIND VIOLATES
THE FIRST AMENDMENT. THE TRIAL COURT
REJECTED JOHNSON'S MOTION. APP 26-27

JOHNSON FILED A STATE HABEAS CORPUS PETITION VA CODE 8.01-654(A)(7) IN THE SUPREME COURT OF VIRGINIA, ARGUING THAT HE CANNOT BE CONVICTED FOR HAVING CONTACT OF ANY KIND.

THE SUPREME COURT OF VIRGINIA DISMISSED JOHNSON'S PETITION, FINDING THAT A HABEAS CORPUS PETITION "MAY NOT BE EMPLOYED AS A SUBSTITUTE FOR AN APPEAL. BROOKS V. PEYTON, 210 VA 318, 321-22 (1969)." JOHNSON V. DIRECTOR, NO 200178 (VA 8/7/2020) APP 20

THE UNITED STATES DISTRICT COURT DISMISSED JOHNSON'S FEDERAL HABEAS CORPUS PETITION 28 U.S.C. 2254, FINDING THAT THE BROOKS RULE WAS ADEQUATE TO PRECLUDE FEDERAL REVIEW, OF JOHNSON'S FIRST AMENDMENT CLAIM. JOHNSON V. CLARKE, NO 2:20CV474 (E.D. VA 6/14/2022) APP 12-13, 18

JOHNSON APPEALED TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT, ASKING
WHETHER REASONABLE JURIST WOULD FIND
DEBATEABLE IF THE BROOKS RULE WAS ADEQUATE;
ARGUING THAT THE RULE WAS "INTERNALLY INCONSISTENT"
WITH THE APPLICABLE STATE STATUTE VIRGINIA CODE
8.01-654(A)(1). APP 33

THE FOURTH CIRCUIT GRANTED JOHNSON
A CERTIFICATE OF APPEALABILITY ON AN UNRELATED
ISSUE, BUT DID NOT EXPRESSLY RULE ON JOHNSON'S
PROCEDURAL DEFAULT ARGUMENT, APP 1-7

JOHNSON SOUGHT REHEARING IN THE FOURTH
CIRCUIT, AGAIN ARGUING THAT THE BROOKS RULE
"IS INTERNALLY INCONSISTENT WITH VA CODE 8.01-654(A)(1)"
APP 37

THE FOURTH CIRCUIT DENIED REHEARING
WITHOUT EXPRESSLY DENYING JOHANSON A COA ON
THE PROCEDURAL DEFAULT ISSUE. APP 21

REASONS FOR GRANTING THE PETITION

WHEN THE DISTRICT COURT DENIES RELIEF ON PROCEDURAL GROUNDS, THE PRISONER MUST DEMONSTRATE BOTH THAT THE DISPOSITIVE PROCEDURAL RULING IS DEBATEABLE, AND THAT THE PETITION STATES A DEBATEABLE CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT. SLACK V. MCDANIEL, 529 U.S. 473, 484-85 (2000);

ALTOGETHER, JOHANSON MUST MAKE "A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT."
28 U.S.C. 2253(c)(2).

I. ADEQUACY

PRIOR TO THE ENACTMENT OF VA CODE 8.01-654(A)(4), THE PETITION FOR A WRIT OF HABEAS CORPUS, IN VIRGINIA, WAS A LIMITED INQUIRY - ASKING ONLY IF A COURT HAD JURISDICTION TO ACT, AND COULD NOT BE USED TO REVIEW THE CORRECTNESS OF THE CONCLUSIONS REACHED BY THE COURT.

THUS, IF A PRISONER WANTED TO CHALLENGE
FUNDAMENTALLY UNFAIR GOVERNMENT ACTION SUCH
AS: USE OF FALSE EVIDENCE, BIASED JURY,
OR SUPPRESSION OF SPEECH, THE WRIT OF
HABEAS CORPUS WAS NOT AN AVAILABLE REMEDY.

SO LONG AS THE COMMITTING COURT HAD
JURISDICTION TO ACT, VIRGINIA PRISONERS
WERE PRECLUDED FROM USING THE WRIT OF
HABEAS CORPUS AS AN APPEAL, DUE TO THE
WRIT'S LIMITED INQUIRY. BROOKS V. PEYTON,
210 VA 318 (1969).

HOWEVER, THE WRIT OF HABEAS CORPUS IN
VIRGINIA HAS EVOLVED FROM A LIMITED REMEDY -
NOW PERMITTING PRISONERS TO CHALLENGE ANY
UNLAWFUL DETENTION.

"THE ADEQUACY OF STATE PROCEDURAL BARS... IS ITSELF A FEDERAL QUESTION." LEE V. WEEMNA, 534 U.S. 362, 375 (2002); "FEDERAL COURTS MUST CAREFULLY EXAMINE STATE PROCEDURAL REQUIREMENTS TO ENSURE THAT THEY DO NOT OPERATE TO DISCRIMINATE AGAINST CLAIMS OF FEDERAL RIGHTS." WALKER V. MARTIN, 562 U.S. 307, 321 (2011)

THE RATIONALE BEHIND THE BROOKS RULE IS THAT THE PETITION FOR A WRIT OF HABEAS CORPUS IS NOT AN AVAILABLE REMEDY TO RAISE FEDERAL CLAIMS - AN ISSUE WHICH THIS COURT ADDRESSED IN YOUNG V. RAGEN, 337 U.S. 235 (1949).

IN YOUNG, THE STATE OF ILLINOIS WAS PREVENTING PRISONERS FROM RAISING FEDERAL CLAIMS THROUGH HABEAS CORPUS, DUE TO THE WRIT'S LIMITED JURISDICTION.

THIS COURT FOUND THAT IT WAS "NOT SIMPLY A QUESTION OF STATE PROCEDURE WHEN A STATE COURT OF LAST RESORT CLOSES THE DOOR TO ANY CONSIDERATION OF A CLAIM OF DENIAL OF A FEDERAL RIGHT." YOUNG V. RAGEN, AT 238; AND THE STATES MUST PROVIDE SOME "COURTLY DEFINED METHOD BY WHICH [PRISONERS] MAY RAISE CLAIMS OF DENIAL OF FEDERAL RIGHTS." ID., AT 239.

IN CARROLL V. JOHANSON, 278 VA 683 (2004), THE SUPREME COURT OF VIRGINIA INTERPRETED VIRGINIA'S HABEAS CORPUS STATUTE VA CODE 8.01-654(A)(1) TO ALLOW "A PETITIONER TO CHALLENGE THE LAWFULNESS OF THE ENTIRE DURATION OF HIS... DETENTION SO LONG AS AN ORDER ENTERED IN THE PETITIONER'S FAVOR... WILL DIRECTLY IMPACT THE DURATION OF THE PETITIONER'S CONFINEMENT." ID., AT 693.

TO BE ADEQUATE, A STATE PROCEDURAL RULE MUST BE "CLEARLY ANNOUNCED TO [THE] DEFENDANTS" HENRY V. MISSISSIPPI, 379 U.S. 443, 448 n.3 (1965); MOREOVER, A STATE PROCEDURAL RULE IS ADEQUATE ONLY WHERE THE RULE "SERVES A LEGITIMATE STATE INTEREST." ID., AT 447.

IN ONE BREATH, BROOKS V. PEYTON, THE COMMONWEALTH CONTENTS THAT THE WRIT OF HABEAS CORPUS IS A LIMITED INQUIRY INTO THE JURISDICTION OF A COURT TO ACT.

IN ANOTHER BREATH, CARROLL V. JOHANSON, THE COMMONWEALTH EXPANDS AND CLARIFIES THE JURISDICTION OF THE WRIT OF HABEAS CORPUS PURSUANT TO VA CODE 8.01-654(A)(1)

IF JOHANSON MUST NECESSARILY GUESS AT WHICH REMEDIES ARE AVAILABLE TO HIM, BECAUSE OF STATE LAW, THEN THE STATE HAS NOT FULFILLED ITS OBLIGATION OF PROVIDING SOME CLEARLY AVAILABLE REMEDIES.

LASTLY, EVEN IF THE BROOKS RULE IS STANDING PRECEDENT IN VIRGINIA, RULES OF COMPLIANCE AND PREREQUISITES, SUCH AS EXHAUSTION AND THE APPLICATION OF PROCEDURAL BARS "PRESUPPOSES THAT SOME ADEQUATE REMEDY EXISTS." YOUNG, AT 239.

IF THE BROOKS RULE IS ENFORCEABLE, THEN THAT MEANS JOHNSON'S FIRST AMENDMENT CLAIM WASN'T COGNIZABLE BY WAY OF THE WRIT OF HABEAS CORPUS IN VIRGINIA, AND RELIEF WAS NEVER AVAILABLE TO BEGIN WITH. SEE 28 U.S.C. 2254(b)(1)(B)(i).

CONSEQUENTLY, ANY PROCEDURAL BAR ASSOCIATED WITH AN UNAVAILABLE REMEDY IS INAPPLICABLE; AND PRECLUDING FEDERAL REVIEW THROUGH AN UNJUSTIFIED MEANS SERVES NO LEGITIMATE STATE INTEREST.

THE BROOKS RULE IS INADEQUATE TO PRECLUDE FEDERAL REVIEW.

II. FIRST AMENDMENT

"THE FIRST AMENDMENT PERMITS RESTRICTIONS UPON THE CONTENT OF SPEECH IN A FEW LIMITED AREAS..." VIRGINIA V. BLACK, 538 U.S. 343, 358 (2003); THUS, "A STATE MAY PUNISH THOSE WORDS WHICH BY THEIR VERY UTTERANCE INFLICT INJURY." ID AT 359.

HOWEVER, A STATE STATUTE REGULATING SPEECH MUST BE "AUTHORITATIVELY CONSTRUED TO PUNISH ONLY UNPROTECTED SPEECH AND NOT BE SUSCEPTIBLE OF APPLICATION TO PROTECTED EXPRESSION." GOODING V. WILSON, 405 U.S. 518, 522 (1972)

VA CODE 16.1-253.2 STATES THAT ANYONE WHO VIOLATES A PROTECTIVE ORDER WHICH "PROHIBITS CONTACTS BY THE RESPONDENT WITH THE ALLEGEDLY ABUSED PERSON... IS GUILTY OF A CLASS 1 MISDEMEANOR."

"CONTACTS ARE THOSE ACTS BY THE RESPONDENT THAT INTENTIONALLY PIERCE THE PROTECTIVE BARRIER BETWEEN THE PETITIONOR AND THE RESPONDENT FASHIONED BY THE PROTECTIVE ORDER." ELLIOTT V. COMMONWEALTH, 277 Va 457, 464 (2009)

THE COMMONWEALTH PRESENTED EVIDENCE THAT COURTNEY TEJADA OBTAINED A PROTECTIVE ORDER AGAINST JOHANSON. THAT JOHANSON SENT TEJADA FIVE LETTERS, WHICH TEJADA "VOLUNTARILY" RETRIEVED. APP 27

THUS, JOHANSON WAS FOUND GUILTY OF "INTENTIONALLY PIERCING] THE PROTECTIVE BARRIER", BY CONTACTING TEJADA.

NO GOVERNMENT IN THIS COUNTRY HAS THE AUTHORITY TO IMPOSE THE WHOLESALE PROHIBITION OF SPEECH. JOHANSON'S CONVICTIONS FOR HAVING CONTACT OF ANY KIND IS PATENTLY UNCONSTITUTIONAL UNDER THE FIRST AMENDMENT.

ACCORDINGLY, JOHANSON HAS MADE A SUBSTANTIAL
SHOWING OF THE DENIAL OF HIS CONSTITUTIONAL RIGHTS.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED

DEANORE JOHANSON

DATE: OCTOBER 25, 2024