

VIRGINIA SUPREME COURT

ISAIAH JAMES COLEMAN, #1414818,

Petitioner

vs.

HAROLD W. CLARKE,

DIRECTOR OF THE VIRGINIA

DEPARTMENT OF CORRECTIONS,

Respondent.

Case No. 161402

AMENDED PETITION FOR

WRIT OF HABEAS CORPUS

Counsel

Dale Jensen

Dale R. Jensen (VSB 71109)

Dale Jensen, PLC

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Petitioner Isaiah James Coleman (“Coleman”) does not believe that the taking of evidence is necessary for the proper disposition of the petition pursuant to Virginia Supreme Court Rule 5:7(a)(2)).

A. Criminal Trial

1. Name and location of court which imposed the sentence from which you seek relief: the Norfolk City Circuit Court, Norfolk, VA.

2. The offense or offenses for which sentence was imposed (include indictment number or numbers if known):

a. One count of abduction with intent to extort – case number CR12000787-00 (3/7/12);

b. One count of conspiracy – case number CR12000787-01;

c. One count of robbery – case number CR12000787-02;

- d. One count of armed statutory burglary –
case number CS12000787-03;
 - e. Three counts of use of a firearm in
commission of a felony, case numbers
CS12000787-04, CS12000787-05,
CS12000787-06;
 - f. One count of wearing a mask in public,
case number CS12000787-07 (3/7/12);
 - g. One count of malicious discharge of a
firearm in an occupied building, case
number CR12001879-16 (06/20/2012).
3. The date upon which sentence was imposed
and the terms of the sentence: On December 6,
2013, Coleman was sentenced by the Circuit Court
to forty-six (46) years in prison with thirty-three
(33) years suspended.

4. Check which plea you made and whether trial by jury: Coleman entered pleas of not guilty and was convicted in a bench trial.

5. The name and address of each attorney, if any, who represented you at your criminal trial.

Coleman was represented by Eric P. Korslund of Korslund and Korslund, P.C., 555 East Main Street, Suite 1501, Norfolk, Virginia 23510.

6. Did you appeal the conviction? Yes.

7. If you answered “yes” to 6, state: the result and the date in your appeal or petition for certiorari. Coleman’s appeal was denied. The Virginia Court of Appeals denied Coleman’s Petition for Appeal on October 15, 2014. The Virginia Supreme Court denied Coleman’s Petition for Appeal on May 28, 2015. The United States Supreme Court denied Coleman’s Petition for Writ of Certiorari on October 5, 2015.

8. List the name and address of each attorney, if any, who represented you on your appeal. Coleman was represented by Eric P. Korslund of Korslund and Korslund, P.C., 555 East Main Street, Suite 1501, Norfolk, Virginia 23510.

B. Habeas Corpus

9. Before this petition did you file with respect to this conviction any other petition for habeas corpus in either a State or federal court? No.

10. If you answered “yes” to 9, list with respect to each petition: the name and location of the court in which each was filed: not applicable.

11. Did you appeal from the disposition of your petition for habeas corpus? Not applicable.

12. If you answered “yes” to 11, state: the result
and the date of each petition: not applicable.

C. Other Petitions, Motions or Applications

13. List all other petitions, motions or applications
filed with any court following a final order of
conviction and not set out in A or B. No other
petitions, motions, or applications have been filed
with any other court regarding this conviction and
sentence.

D. Present Petition

14. State the grounds which make your detention
unlawful, including the facts on which you intend
to rely:

a. Ineffective assistance of counsel.

Coleman’s trial counsel failed to

investigate whether the grand jury indictments met requirements that would allow the Norfolk Circuit Court to properly exercise jurisdiction over Coleman. This failure to properly investigate whether the grand jury indictments complied with legal standards, Coleman's trial counsel resulted in the issue not being raised either after trial or on any appeal. This failure rendered Coleman's trial counsels assistance ineffective by constitutional standards. In addition, Coleman's trial counsel failed to properly object to a continuance granted the Commonwealth, which prejudiced Coleman in his ability to seek relief for violation of his speedy trial rights.

b. Lack of jurisdiction of the Norfolk

Circuit Court due to deficiencies in the grand jury indictments.

Because Coleman was never properly indicted by a grand jury, the Norfolk Circuit Court lacked jurisdiction. Consequently, the Sentencing Order of the Norfolk Circuit Court should be declared void.

15. List each ground set forth in 14, which has been presented in any other proceeding: not applicable. List the proceedings in which each ground was raised: not applicable.

16. If any ground set forth in 14 has not been presented to a court, list each ground and the reason why it was not: Coleman was not advised by his prior counsel of the deficiencies of the grand

jury indictment issues presented herein and prior
counsel did not raise the jurisdictional issues
created thereby on appeal.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Dale R. Jensen", is written over a light gray rectangular background.

By: _____ Counsel

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Certificate

The undersigned counsel certifies that the page count for this Petition and Amended Memorandum in Support excluding appendices, exhibits, cover page, table of contents, table of authorities, and certificate is 27.

Dated: October 13, 2016

By

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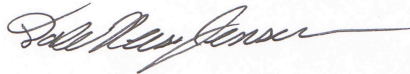
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Certificate of Service

I certify that on the 13th day of October 2016, I
emailed a true copy of the foregoing document to the
office of:

Mark Herring
Office of the Attorney General
900 East Main Street
Richmond, VA 23219

A handwritten signature in dark ink, appearing to read "Dale R. Jensen", is written over a light gray rectangular background.

Dale R. Jensen

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**AMENDED
MEMORANDUM
IN SUPPORT OF
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HABEAS CORPUS**

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Comes now the Defendant, Isaiah James Coleman ("Coleman"), by counsel, presents this Amended Memorandum in Support of his Memorandum for Writ of Habeas Corpus (the "Petition"). This amended memorandum is submitted with the consent of the Attorney General's office and responsive to their suggestion. The text content of the Memorandum in Support is identical to that previously submitted. This paragraph has been revised along with the Table of Contents. The Table of Contents in the originally submitted Memorandum in Support was an artifact from another petition that had not been updated. The Attorney General's office requested that documents referenced in the Memorandum in Support be added as Exhibits. Thus, the Table of Contents has been revised and Exhibits have been added. In support of the Petition, Coleman states:

I. Introduction

The Petition should be granted because Coleman was never indicted in accordance with the requirements of Virginia law. A fully compliant indictment is a bedrock requirement for a court to have jurisdiction to enter a valid criminal judgment under Virginia law.

The Petition relies upon a well-established rule that a proper grand jury indictment must list the name of the witness relied upon and be entered in order for a court to have jurisdiction over a criminal case.

Because the indictments of Coleman were defective, the judgments against Coleman must be vacated and Coleman ordered to be released from custody of the Virginia Department of Corrections.

Coleman's trial counsel was constitutionally ineffective due to his failure to investigate the jurisdictional defects in the Grand Jury proceedings in which Coleman was purported to be indicted and advise Coleman of same. Accordingly, Coleman did not knowingly or voluntarily waive any right to challenge jurisdiction in his case.

II. Background

On December 23, 2011 at around 7:00 p.m., the Philly Steaks sub shop, located at 7456 Tidewater Drive in the City of Norfolk, was robbed. Pursuant to that event, Mr. Isaiah James Coleman was charged with nine counts of Abduction in violation of Virginia Code 18.2-48, Conspiracy in violation of Virginia Code 18.2-22, Armed Statutory Burglary in violation of Virginia Code 18.2-30, Robbery in violation of Virginia Code 18.2-58,

eleven counts of Use of a Firearm in the Commission of a Felony in violation of Virginia Code 18.2-53.1, Wearing a Mask in Public in violation of Virginia Code 18.2-422, and Malicious Discharge of a Firearm in an Occupied Building in violation of Virginia Code 18.2-279.

Documents of the Norfolk Circuit Court (the “Circuit Court”) purported to indict Coleman, but those documents show that none of Coleman’s indictments were compliant with Virginia law. The indictments for the charges of Abduction in violation of Virginia Code 18.2-48, Conspiracy in violation of Virginia Code 18.2-22, Armed Statutory Burglary in violation of Virginia Code 18.2-30, Robbery in violation of Virginia Code 18.2-58, Use of a Firearm in the Commission of a Felony in violation of Virginia Code 18.2-53.1, and Wearing a Mask in Public in violation of Virginia Code 18.2-

422 failed to identify the grand jury witness testifying in support of those charges as required under Va. Code § 19.2-202. Significantly, these “indictments” were handed down on March 7, 2012. The indictment for Malicious Discharge of a Firearm in an Occupied Building in violation of Virginia Code 18.2-279 was never entered in the Order Book in compliance with Va. Code §§ 17.1-123(A), 17.1-124, and 17.1-240.

Mr. Coleman entered not guilty pleas to these charges, and elected to be tried by the Honorable Judge Mary Jane Hall (“Judge Hall”) in the Circuit Court for the City of Norfolk. On December 6, 2013, a full 639 days after Coleman was indicted, Judge Hall found Mr. Coleman, who had been incarcerated during the entire time between the “indictments” and his trial, guilty of the charges of one count of Abduction, Conspiracy, Robbery, Armed Statutory

Burglary, three counts of Use of a Firearm in the Commission of a Felony, Wearing a Mask in Public, and Malicious Discharge of a Firearm in an Occupied Building. The remaining charges of eight counts of Abduction and eight counts of Use of a Firearm in the Commission of a Felony were dismissed. On December 6, 2013, Judge Hall sentenced Coleman to sixty-six years in the Virginia State Penitentiary with fifty-three years suspended.

Coleman timely filed a Notice of Appeal on December 10, 2013. The Virginia Court of Appeals denied Coleman's appeal on October 15, 2014. Coleman filed a Notice of Appeal of the denial of the Virginia Court of Appeals on October 29, 2014. Coleman's Petition for Appeal to the Virginia Supreme Court was refused on May 28, 2015. Coleman petitioned the United States Supreme Court for Certiorari on June 17, 2015. The United

States Supreme Court denied Coleman's petition on October 5, 2015.

III. Argument

A. Coleman's Trial Counsel was Constitutionally Ineffective

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction has two components. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). First, the defendant must show that counsel's performance was deficient. *Id.* This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. *Id.* Second, the defendant must show that the deficient performance prejudiced the defense. *Id.*

The performance prong of *Strickland* requires

a defendant to show that counsel's representation fell below an objective standard of reasonableness.

Lafler v. Cooper, 132 S. Ct. 1376, 1384 (2012)

In Coleman's case, his trial counsel failed to perform any investigation to make a determination as to whether or not Coleman had been properly indicted such that the Circuit Court had jurisdiction over Coleman. As a consequence, Coleman was never advised concerning his rights to object to the Circuit Court's jurisdiction or appeal his convictions on jurisdictional grounds. This failure to investigate was objectively unreasonable and was so serious that trial counsel did not function in a manner as guaranteed by the Sixth Amendment.

In addition, Coleman was denied relief on the violation of his speedy trial rights pursuant to Code § 19.2-243 entirely because Coleman's trial counsel failed to object to a continuance made at the behest

of the Commonwealth. Coleman's trial counsel did not confer with Coleman before signing the order at issue and Coleman did not consent to his trial counsel endorsing the order indicating that Coleman in any way agreed to the continuance.

Coleman was prejudiced by the ineffective assistance of counsel because he was not advised, nor did he know that he could challenge jurisdiction based upon deficiencies in the grand jury indictments. Likewise, Coleman was also prejudiced because he was not able to obtain recourse on appeal for violation of his speedy trial rights under Code § 19.2-243.

But for the errors of Coleman's trial counsel, there is a reasonable probability that the convictions of Coleman would have been vacated, at least on appeal. *Lafleur*, 132 S. Ct. at 1384.

Accordingly, any purported waiver by

Coleman of the right to contest the jurisdiction of the Circuit Court or violation of his speedy trial rights was not knowing or intelligent, as required by binding precedent. See, e.g., *Smith v. Illinois*, 469 U.S. 91, 95 (1984) (holding that waivers of constitutional rights must be knowing and intelligent).

**B. The Norfolk Circuit Court Lacked
Jurisdiction Due to Deficiencies in the
Grand Jury Indictments**

1. The Long Standing Law

A void judgment, and not subject to time limitation and can be challenged at any time. *Slaughter v. Commonwealth*, 222 Va. 787, 793 (1981). A judgment entered by a court without jurisdiction is void. *Id.* A void judgment may be attacked collaterally or directly in any court at any

time. *Id.*

An order of a court of the Commonwealth can be “*void ab initio*,” meaning it was without effect from the moment it came into existence. In that respect it is “void.” Such a void order is a nullity without force or effect and may be collaterally challenged. *Kelley v. Stamos*, 285 Va. 68 (2013).

The Virginia Supreme Court held in *Kelley*:

[A]n order is void ab initio if entered by a court in the absence of jurisdiction of the subject matter or over the parties, if the character of the order is such that the court had no power to render it , or if the mode of procedure used by the court was one that the court "could not lawfully adopt."

Id. at 75.

Concerning grand jury indictments, over one hundred years ago, the Fourth Circuit Court of

Appeals held:

1 Chitty on Crim. Law, 324, describes the mode in which the grand jury returns the results of their inquiries to the court, by indorsing "A True Bill" if

found, and "Not a True Bill" if rejected; and says:

"When the jury have made these indorsements on the bills, they bring them publicly into court, and the clerk of the peace at sessions, or clerk of assize on the circuit, **calls all the jurymen by name, who severally answer to signify that they are present, and then the clerk of the peace or assize asks the jury whether they agreed upon any bills, and bids them present them to the court, and then the foreman of the jury hands the indictments to the clerk** of peace or clerk of assize."

4 Blackstone, 306, also describes the functions of the grand jury and the methods of its proceedings, the necessity of 12 at least assenting to the accusation, and adds:

"And the indictment when so found is publicly delivered into court."

A later text-writer (1 Bishop on Crim. Procedure, § 869) says:

"When the grand jury has found its indictments, it returns them into open court, going personally in a body."

Renigar v. United States, 172 F. 646, 648 (4th Cir.

1909)

Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed.

A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right as if it consisted more in sound than in substance. It is the duty of all the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments. Their motto should be *Obsta principiis*."

Renigar, 172 F. at 655.

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Id.

Neither sound reason nor public policy justifies any departure from settled principles applicable in criminal prosecutions for infamous crimes. Even if there were a wide divergence among the authorities upon this subject, safety lies in adhering to established modes of procedure devised for the security of life and liberty, nor ought the courts in their abhorrence of crime, nor because

of their anxiety to enforce the law against criminals, to countenance the careless manner in which the records of cases involving the life or liberty of an accused, are often prepared.

Renigar, 172 F. at 652.

The Virginia legislature has placed statutory requirements on grand jury procedures in addition to the long-standing common law requirements.

Among other provisions, it is required that grand jury indictments list the name of the witness relied upon by the grand jury. Va. Code § 19.2-202.

It is also long-standing law in Virginia that a failure to record a proper grand jury indictment in a court's order book deprives a court trying a case of jurisdiction. *Commonwealth v. Cawood*, 4 Va. 527, 541 (1826). In *Cawood*, the Virginia Supreme Court held:

It is undoubtedly true, that before any person can have judgment rendered against him for a felony, they must be regularly accused by the Grand Jury of his country, and his guilt must be

established by the verdict of a jury. The accusation in due and solemn form, is as indispensable as the conviction. What, then, is the solemnity required by Law in making the accusation? The Bill Indictment is sent or delivered to the Grand Jury, who, after hearing all the evidence adduced by the Commonwealth, decide whether it be true Bill, or not. If they find it so, the foreman of the Grand Jury endorses on it, 'a true Bill,' and signs his name as foreman, and then the Bill is brought into Court by the Whole Grand Jury, and in open Court it is publicly delivered to the Clerk, who records the fact. It is necessary that it should be presented publicly by the Grand Jury; that is the evidence required by Law to prove that it is sanctioned by the accusing body, and until it is so presented by the Grand Jury, with the endorsement aforesaid, the party charged by it is not indicted, nor is he required, or bound, to answer to any charge against him, which is not so presented.

Id., 4 Va. at 541-542.

Thus, in order for a judgment based upon an indictment to be valid, an indictment must be proper, and must be “delivered in court by the grand

jury, and its finding recorded.” *Simmons v.*

Commonwealth, 89 Va. 156, 157 (1892). Failure to deliver the indictment in court and record the finding is a “fatal defect”. *Id.*

These long-standing principles have been embodied in both Virginia statutory law and the Virginia Supreme Court Rules. For example, Virginia Supreme Court Rule 3A:5(c) requires that a Grand Jury return and presents their indictment findings in open court and that the indictment be endorsed 'A True Bill' or 'Not a True Bill' and signed by the foreman. Virginia statutes require the Clerk of the Court to record the Grand Jury indictment findings in the Order Book in compliance with Va. Code §§ 17.1-123(A) and 17.1-124 and 17.1-240.

A court speaks only through its orders. In those cases where the jurisdiction of the court depends upon compliance with certain mandatory

provisions of law, the court's order, spread upon its order book, must show such compliance or jurisdiction is not obtained. *Simmons*, 89 Va. at 159; *Cawood*, 4 Va. at 542.

The *Simmons* case is pertinent binding authority. In *Simmons*, the defendant was convicted of first degree murder. *Simmons*, 89 Va. at 157. Like Coleman in this case, the defendant in *Simmons* was convicted based upon a grand jury document that had allegedly been signed by a grand jury foreman, but had not been recorded in any order book of the circuit court. *Id.* The Lee County Circuit Court had found the defendant in *Simmons* guilty and did not grant him relief based upon a lack of any recording of grand jury indictment. *Id.* However, the Virginia Supreme Court reversed the conviction and found that the failure to record the grand jury indictment in an order book of the circuit court was a

fatal defect. *Id.*

In the case at bar, Coleman avers that the court records indicate that there were two grand jury proceedings in his case. In the first of these, which occurred on March 7, 2012. The court records in that case show that fourteen grand jurors were convened in Coleman's case in violation of Va. Code § 19.2-195, which requires grand juries to consist of not less than five nor more than seven persons. The grand jury of March 7, 2012 did not meet the statutory requirements of Va. Code § 19.2-195 because of the number of grand jurors shown in the record. More significantly, the name of the only purported witness against Coleman was crossed out and unintelligible scribbles scrawled on each of the purported "indictments". Moreover, there is nothing in the court's records that show that indicate that a clerk called each of the grand jurors by name to signify

that they were present or asked the grand jury whether they agreed on any bills.

The second grand jury proceeding was purported to have been held on June 20, 2012 to indict Coleman for discharge of a firearm within an occupied building in violation of Va. Code § 18.2-279. However, the records of the Circuit Court show no record of any indictment against Coleman having been entered in the Order Book. The failure of the clerk of the court to record in the Order Book, that the Grand Jury had returned into open court and presented true bill indictments against him, is a fatal defect in the indictment process. Coleman contends that the omission by the Clerk of Court to record the Grand Jury's indictment findings in the Order Book is a fatal defect that rendered his indictments a nullity and his convictions void ab initio for lack of jurisdiction. *Cawood*, 4 Va. at 541.

Moreover, there is nothing in the court's records that show that indicate that a clerk called each of the grand jurors by name to signify that they were present or asked the grand jury whether they agreed on any bills.

Accordingly, Coleman requests that this Honorable Court grant this Motion and rule that the failure to comply with proper grand jury procedures are fatal defects that render his indictments nullities and his convictions void *ab initio* for lack of jurisdiction.

Under Virginia law, although a prisoner has in fact been arraigned on, and has pleaded to, an indictment not appearing by the record to have been found by the Grand Jury, and if a third actual term has passed without such record of the findings, he is entitled under Va. Code § 19.2-242 to be discharged from the crime. *Cawood*, 4 Va. at 546; *Adcock v.*

Commonwealth, 49 Va. (Gratt.) 661, 671 (1851).

In this case Coleman should be forever discharged of the crimes charged because three (3) or more terms of the Circuit Court have passed without a trial on valid indictments that were presented in open court by the Grand Jury and recorded.

**2. Hanson v. Smyth is No Longer Valid
for its Relied Upon Premise**

Coleman anticipates that his “collateral attack” on the lack of a proper record of his grand jury indictment will be challenged based upon the Virginia Supreme Court decision, *Hanson v. Smyth*, 183 Va. 384, 390-91 (1944). Any such reliance by the Commonwealth on *Hanson* will be misplaced.

This case is distinguishable because in *Hanson*, an order was actually entered in an order book that showed that the defendant had, in fact,

been indicted by a grand jury. *Id.*, 183 Va. at 387-88. Such is not the case here where there is no such order of record. The issue in *Hanson* was whether a discrepancy between the charges recorded in the order book of the circuit court and the crimes that the defendant was actually convicted deprived the circuit court of jurisdiction in the case. *Id.*, 183 Va. at 389. The provisions of *Cawood*, 4 Va. at 541 and *Simmons*, 89 Va. at 157 are not fully implicated by a case such as *Hanson* as is the case here with *Coleman*. As stated in *Cunningham v. Smith*, 205 Va. 205 (1964):

A court speaks only through its orders. In those cases where the jurisdiction of the court depends upon compliance with certain mandatory provisions of law, the court's order, spread upon its order book, must show such compliance or jurisdiction is not obtained. *Simmons v. Commonwealth*, 89 Va. 156, 159, 15 S.E. 386; *Price v. Commonwealth*, 62 Va. 1044, 21 Gratt. 846, 858, 859; *Commonwealth v. Cawood*, *supra*, 2 Va. Cas., at p. 542.

There is no evidence that this Court spoke through its orders to establish jurisdiction over Coleman in this case.

Moreover, subsequent binding United States Supreme Court precedent has superseded the core premise from *Hanson* upon which this Court relied. In *Hanson*, the Virginia Supreme Court opined:

While the Fifth Amendment to the Federal Constitution requires a presentment or indictment in prosecutions under Federal statutes “for a capital, or otherwise infamous crime,” the Virginia Constitution contains no such requirement. Farewell v. Commonwealth, 167 Va. 475, 484, 189 S.E. 321, 325; Pine v. Commonwealth, 121 Va. 812, 835, 93 S.E. 652; Guynn v. Commonwealth, 163 Va. 1042, 1046, 177 S.E. 227. In this State the requirement is merely statutory ... Since the statutory requirement for an indictment in the present case is not jurisdictional, the failure of the record to show affirmatively that the indictment was returned into court by the grand jury is not such a defect as will render null and void the judgment of conviction based thereon.

Hanson, 183 Va. at 390-91.

Thus, the *Hanson* opinion implicitly relied upon a premise that the Fifth Amendment to the Federal Constitution did not apply to Virginia under the equal protection clause of the Fourteenth Amendment. However, since *Hanson* was decided, the United States Supreme Court has significantly expanded the application of the Bill of Rights of the Constitution to state law matters under the equal protection portion of the Fourteenth Amendment. For example; in *Griffin v. California*, 380 U.S. 609, 615 (1965); the United States Supreme Court specifically held that the self-incrimination provision of the Fifth Amendment applied to the States by reason of the Fourteenth Amendment.

In 2010, the United States Supreme Court provided a detailed analysis of the progression of application of the Bill of Rights to the States via the Fourteenth Amendment. *McDonald v. City of*

Chicago, 561 U.S. 742, 764-65 (2010). In *McDonald*, it was acknowledged that the Court had shed any reluctance to hold that rights guaranteed by the Bill of Rights met the requirements for protection under the Due Process Clause. It was also acknowledged that the Court had incorporated almost all of the provisions of the Bill of Rights. *Id.* Since the Bill of Rights is not an *ala carte* menu for courts to pick and choose from, any remaining provisions of the Bill of Rights not explicitly applied to states via the Fourteenth Amendment must be incorporated as jurisprudence moves forward. Coleman acknowledges that *McDonald* referenced a case from over 130 years ago concerning grand jury indictments standing for the premise that jurisprudence to date had not incorporated the Fifth Amendment's grand jury indictment requirement. *Id.*, 561 U.S. at 765 n.13. However, although the

case of *Hurtado v. California*, 110 U.S. 516, 519 (1884) stopped short of applying the grand jury provision of the Fifth Amendment to the States via the Fourteenth Amendment, it affirmatively held that the due process requirements of the Fifth and Fourteenth Amendment applied to the states as to indictments. *Id.*, 110 U.S. at 538. The *Hurtado* Court held that:

we are unable to say that the substitution for a presentment or indictment by a grand jury of the proceeding by information, after examination and commitment by a magistrate, certifying to the probable guilt of the defendant, with the right on his part to the aid of counsel, and to the cross-examination of the witnesses produced for the prosecution, is not due process of law.

Id. The *Hurtado* Court did not hold that California could ignore any and all indictment procedures established under California law as this Court did under Virginia law in Coleman's case. The due process requirement needed to be met under

Hurtado and to the extent that *Hurtado* has not been superseded for the purposes of incorporating all elements of the Fifth Amendment to the States, Virginia still must meet the due process requirement. That requirement has simply not been met in Coleman's case.

Accordingly, the *Hanson* opinion from 1944 is no longer valid for the premise relied upon by the Response or this Court's ruling because it did not reflect the jurisdictional components of the Fifth Amendment applying to Virginia state criminal statutes via the Fourteenth Amendment.

Accordingly, Coleman's Petition should be granted.

3. Void Judgments Can be Attacked

A void judgment, and not subject to time limitation and can be challenged at any time.

Slaughter, 222 Va. at 793. A judgment entered by a court without jurisdiction is void. *Id.*; *Seamster v. Blackstock*, 83 Va. 232, 234 (1887). A void judgment may be attacked collaterally or directly in any court at any time. *Slaughter*, 222 Va. at 793; *Seamster*, 83 Va. at 234. *Hanson* did not change this long-standing Virginia law. The misapplication of *Hanson* to this case would be reversible error.

An order of a court of the Commonwealth can be “*void ab initio*,” meaning it was without effect from the moment it came into existence. In that respect it is “void.” Such a void order is a nullity without force or effect and may be collaterally challenged. *Kelley*, 285 Va. 68. The Virginia Supreme Court held in *Kelley*:

[A]n order is void ab initio if entered by a court in the absence of jurisdiction of the subject matter or over the parties, if the character of the order is such that the court had no power to render it , or if the mode of procedure used by the court was one that the court “could not

lawfully adopt."

Id. at 75.

Collateral attacks, such as via habeas corpus petitions, are permitted when Constitutional rights have been violated. See, e.g., *Malloy v. Hogan*, 378 U.S. 1, 11-12 (1964). In *Malloy*, a denial of a habeas corpus petition was reversed in a case where the petitioner's self incrimination rights under the Fifth Amendment had been violated. *Id.*

The violation of Coleman's indictment rights under the Fifth Amendment are subject to collateral attack and are certainly subject to Coleman's attack in his Petition.

4. Coleman's Speedy Trial Rights Were Violated

Under VA Code § 19.2-243, since Coleman was incarcerated during the entire time between

indictment and trial, the Commonwealth had five months to commence Coleman's trial. The five month period is computed as 152 and a fraction of days. *Moten v. Commonwealth*, 7 Va.App. 438, 441 (1988).

The time elapsing from the finding of probable cause to the initial trial date, even though the accused concurs in the trial date, is not a continuance within the contemplation of subsection (4) of the statute, but counts against the Commonwealth in a calculation of compliance.” *Ballance v. Commonwealth*, 21 Va.App. 1 (1995).

In the instant case, the issue on appeal is whether the Appellant is responsible for the time that elapsed between March 21, 2012 and June 6, 2012. The Appellant was indicted on March 7, 2012, and was continuously held in custody awaiting trial. A total of 469 days elapsed between the date of

indictment and the date of trial. The time periods attributable to the Commonwealth constitute 154 days, one and a fraction days past the five-month period calculated in *Moten*. Between March 7, 2012, the date of indictment, and June 6, 2012, the initial trial date, 92 days elapsed. The series of continuances from March 13, 2013 to May 16, 2013, all of which were granted over the Appellant's objections, tally an additional 62 days.

The record also reflects a continuance from March 21, 2012 to April 4, 2012; both were docket call days. There is no record of an order continuing the case from March 21 to April 4. On April 4, 2012, a continuance order from March 21 to June 6 was entered, setting the initial trial date. As stated in *Nelms*, neither party had any reason to move for a continuance because no trial date in the instant case was set prior to March 21.

In the context of the record, it is also clear that the Court's intention in continuing the case from March 21, 2012 to April 4, 2012 was to allow both parties more time to select a trial date. It is also clear from the record that this delay neither prevented the Appellant's case from being scheduled within in the statutorily prescribed period, nor necessitated a slow-down in the judicial process. The burden is on the Commonwealth to explain and excuse this delay. Furthermore, because the initial trial date was set well within the statutorily prescribed period, there was no reason for the Appellant to object to the setting of this date.

Therefore, the Appellant's agreement to the setting of the initial trial did not constitute a continuance, and the time should have run against the Commonwealth.

When Coleman appealed this issue, the

Virginia Court of Appeals held that an apparent procedural mistake made by Coleman's trial counsel prevented any relief to Coleman.

An order signed on April 4, 2012 states that the matter was continued, upon the motion of both parties, from March 21, 2012 to June 6, 2012. The order was signed by defense counsel as "seen and agreed" to permit both parties to prepare for trial.

Coleman avers that he neither knew of this endorsement by his trial counsel nor did he authorize it.

Accordingly, any purported waiver by Coleman of the right to contest the violation of his speedy trial rights was not knowing or intelligent, as required by binding precedent. Instead, Coleman was prejudiced by constitutionally inadequate representation by his trial counsel.

IV. CONCLUSION

For all of the reasons discussed herein,

Coleman respectfully and humbly requests that this Court grant his Petition, rule the Circuit Court judgment void, and order Coleman's immediate release.

RESPECTFULLY SUBMITTED,

A handwritten signature in dark ink, appearing to read "Dale R. Jensen", with a long horizontal flourish extending to the right.

By: _____ Counsel

Dale R. Jensen (VSB 71109)
Dale Jensen, PLC
606 Bull Run
Staunton, VA 24401
(434) 249-3874
(866) 372-0348 facsimile
djensen@dalejensenlaw.com
Counsel for Isaiah James Coleman

Certificate of Service

I certify that on the 17th day of October 2016, I
emailed a true copy of the foregoing document to the
office of:

Mark Herring
Office of the Attorney General
900 East Main Street
Richmond, VA 23219

A handwritten signature in dark ink, appearing to read "Dale R. Jensen", is written over a light gray rectangular background.

Dale R. Jensen

VIRGINIA: In the Circuit Court of the City of
Norfolk

THE COMMONWEALTH OF VIRGINIA v.
ISAIAH JAMES COLEMAN

DOB: 07/04/86
SSN: 185-68-4208

Indictment for:
Abduction with Intent to Extort Money
(Felony)

March 7, 2012
The Grand Jury charges that:
On or about December 23, 2011, in the City of
Norfolk, ISAIAH JAMES COLEMAN, by force,
threat, intimidation, or deception and without legal
justification or excuse, feloniously did seize, take,
transport, detain, or secrete the person of Michele
Alston with the intent to extort money or for
pecuniary benefit.

Va. Code § 18.2-48.

Grand Jury Witness:
Paul J. Federke
Robbery
Norfolk Police Department
A True Bill ☒
Not A True Bill ☐

/S
Jennifer Castelow
Foreperson of the Grand Jury

James F Entas
(Direct Indictment)
VC Code: KID-1012-F2

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 1

VIRGINIA: In the Circuit Court of the City of
Norfolk

THE COMMONWEALTH OF VIRGINIA
v.
ISAAH JAMES COLEMAN

DOB: 07/04/86
SSN: 185-68-4208

Indictment for:
Conspiracy
(Felony)

March 7, 2012
The Grand Jury charges that:
On or about December 23, 2011, in the City of
Norfolk, ISAAH JAMES feloniously did conspire,
confederate, or combine with another to commit a
felony, to wit: Robbery.

Va. Code § 18.2-22/18.2-58.

Grand Jury Witness:
Paul J. Federke
Robbery
Norfolk Police Department

A True Bill ☒
Not A True Bill ☐

/S
Jennifer Castelow
Foreperson of the Grand Jury

(For administrative use only)
James F Entas
(Direct Indictment)
VC Code: ROB-1215-C9

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 1

VIRGINIA: In the Circuit Court of the City of
Norfolk

THE COMMONWEALTH OF VIRGINIA v.
ISAAH JAMES COLEMAN

DOB: 07/04/86
SSN: 185-68-4208

Indictment for:
Robbery
(Felony)

March 7, 2012
The Grand Jury charges that:
On or about December 23, 2011, in the City of
Norfolk, ISAAH JAMES COLEMAN, feloniously did
rob Ryan Hatch of U.S. currency and/or personal
property having some value.

Va. Code § 18.2-58.

Grand Jury Witness:
Paul J. Federke
Robbery
Norfolk Police Department

A True Bill ☒
Not A True Bill ☐

/S
Jennifer Castelow
Foreperson of the Grand Jury

(For administrative use only)
James F Entas
(Direct Indictment)
VC Code: ROB-1201-F9

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 1

VIRGINIA: In the Circuit Court of the City of
Norfolk

THE COMMONWEALTH OF VIRGINIA v.
ISAAH JAMES COLEMAN

DOB: 07/04/86
SSN: 185-68-4208

Indictment for:
Armed Statutory Burglary
(Felony)

March 7, 2012
The Grand Jury charges that:
On or about December 23, 2011, in the City of
Norfolk, ISAAH JAMES COLEMAN feloniously did
enter in the night time or break and enter the shop
belonging to Philly Steaks, while armed with a
deadly weapon and with the intent to commit
robbery.

Va. Code § 18.2-90.

Grand Jury Witness:
Paul J. Federke
Robbery
Norfolk Police Department

A True Bill ☒
Not A True Bill ☐

/S
Jennifer Castelow
Foreperson of the Grand Jury

James F Entas
(Direct Indictment)
VC Code: BUR-2218-F2

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 1

VIRGINIA: In the Circuit Court of the City of
Norfolk

THE COMMONWEALTH OF VIRGINIA

v.

ISAIAH JAMES COLEMAN

DOB: 07/04/86

SSN: 185-68-4208

Indictment for:

Use of a Firearm in the Commission of a Felony
(Felony)

March 7, 2012

The Grand Jury charges that:

On or about December, 23, 2011, in the City of
Norfolk, ISAIAH JAMES COLEMAN feloniously did
use, attempt to use, or display in a threatening
manner, a firearm, while committing a felony, to-wit:
Robbery.

Va. Code §18.2-53.1.

Grand Jury Witness:

Paul J. Federke

Robbery

Norfolk Police Department

A True Bill ☒

Not A True Bill ☐

/S

Jennifer Castelow

Foreperson of the Grand Jury

James F Entas

(Direct Indictment)

VC Code: ASL-1319-F9

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 1

VIRGINIA: In the Circuit Court of the City of
Norfolk

THE COMMONWEALTH OF VIRGINIA

v.

ISAIAH JAMES COLEMAN

DOB: 07/04/86

SSN: 185-68-4208

Indictment for:

Use of a Firearm in the Commission of a Felony
(Felony)

March 7, 2012

The Grand Jury charges that:

On or about December, 23, 2011, in the City of
Norfolk, ISAIAH JAMES COLEMAN feloniously did
use, attempt to use, or display in a threatening
manner, a firearm, while committing a felony, to-wit:
Burglary.

Va. Code §18.2-53.1.

Grand Jury Witness:

Paul J. Federke

Robbery

Norfolk Police Department

A True Bill ☒

Not A True Bill ☐

/S

Jennifer Castelow

Foreperson of the Grand Jury

James F Entas

(Direct Indictment)

VC Code: ASL-1319-F9

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 1

VIRGINIA: In the Circuit Court of the City of
Norfolk

THE COMMONWEALTH OF VIRGINIA v.
ISAAH JAMES COLEMAN

DOB: 07/04/86
SSN: 185-68-4208

Indictment for:
Use of a Firearm in the Commission of a Felony
(Felony)

March 7, 2012
The Grand Jury charges that:
On or about December, 23, 2011, in the City of
Norfolk, ISAAH JAMES COLEMAN feloniously did
use, attempt to use, or display in a threatening
manner, a firearm, while committing a felony, to-wit:
Abduction.

Va. Code §18.2-53.1.

Grand Jury Witness:
Paul J. Federke
Robbery
Norfolk Police Department

A True Bill ☒
Not A True Bill ☐

/S
Jennifer Castelow
Foreperson of the Grand Jury

James F Entas
(Direct Indictment)
VC Code: ASL-1319-F9

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 1

VIRGINIA: In the Circuit Court of the City of
Norfolk

THE COMMONWEALTH OF VIRGINIA v.
ISAAH JAMES COLEMAN

DOB: 07/04/86
SSN: 185-68-4208

Indictment for:
Wearing a Mask in Public
(Felony)

March 7, 2012
The Grand Jury charges that:
On or about December, 23, 2011, in the City of
Norfolk, ISAAH JAMES COLEMAN being a person
over the age of sixteen years, did feloniously and
unlawfully wear a mask or hood.

Va. Code § 18.2-422.

Grand Jury Witness:
Paul J. Federke
Robbery
Norfolk Police Department

A True Bill ☒
Not A True Bill ☐

/S
Jennifer Castelow
Foreperson of the Grand Jury

James F Entas
(Direct Indictment)
VC Code: VIO-5320-F6

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 1

DIRECT INDICTMENT DATA

DEFENDANT:

Isaiah James Coleman

BOND AMOUNT:

Hold

RACE/GENDER

B/M

DOB: 7/4/1986

SSN: 185-68-4208

LAST KNOWN ADDRESS:

Norfolk City Jail

PROSECTUTOR ASSIGNED:

James F. Entas

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 1

VIRGINIA: In the Circuit Court of the City of
Norfolk CM12-96

ORDER RE: Grand Jury of March 7, 2012

On March 7, 2012 came and forepersons, Jennifer Castelow and David Greene, foreman, and 12 other grand jurors, all of whom were found to be qualified as prescribed by law. They were duly sworn and charged by the Court. They heard the evidence adduced by the Commonwealth, deliberated, and returned into open Court with each of the indictments shown in the attached Grand Jury Action report found to be a "true bill."

Having disposed of the matters set before it, the Grand Jury is adjourned and the Grand Jurors are subject to be called at a later date. The Court allows each Grand Juror for his or her services thirty dollars (\$30.00) for each day's attendance and the necessary and reasonable cost of parking.

Thereupon, on Motion of the attorney for the Commonwealth, for good cause shown, it is Ordered that a capias be issued for the arrest of each defendant upon whom a fugitive indictment was returned, and drawn upon the Norfolk Police Department, who shall make return thereon forthwith as provided by law.

Entered: 3/07/2012

/S

Norman A. Thomas, Judge

Office of

GEORGE E.SCHAEFER

Clerk of the Circuit Court, Norfolk, Virginia

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 1

CCBRCR11 PAGE: 2
 NORFOLK CIRCUIT COURT – CRIMINAL
 GRAND JURY ACTION ON MARCH 07, 2012

CASE NUMBER COMMONWEALTH OF VIRGINIA VS ACTION F/M
710CR12000696-02 CARR, CHADWICK RYAN INDICTMENT – ATTEMPT TRUE BILL-NOT SET FELONY
710CR12000782-00 CLARKE, RIAANNE DIRECT IND. - FAIL TO RETURN RENTE TRUE BILL-NOT SET FELONY
710CR12000787-00 COLEMAN, ISAIAH JAMES DIRECT IND. - ABDUCTION W INTENT T TRUE BILL-NOT SET FELONY
710CR12000787-01 COLEMAN, ISAIAH JAMES DIRECT IND. - CONSPIRACY TRUE BILL-NOT SET FELONY
710CR12000787-02 COLEMAN, ISAIAH JAMES DIRECT IND. - ROBBERY TRUE BILL-NOT SET FELONY
710CR12000787-03 COLEMAN, ISAIAH JAMES DIRECT IND. – ARMED STATUTORY BURG TRUE BILL-NOT SET FELONY
710CR12000787-04 COLEMAN, ISAIAH JAMES DIRECT IND. – USE F/ A IN COMM OF TRUE BILL-NOT SET FELONY
710CR12000787-05 COLEMAN, ISAIAH JAMES DIRECT IND. - USE OF F/A IN COMM O TRUE BILL-NOT SET FELONY

Isaiah James Coleman - Petition for Writ of Habeas
 Corpus Exhibit 1

710CR12000787-06 COLEMAN, ISAIAH JAMES DIRECT IND. – USE F/A IN COMM OF F TRUE BILL-NOT SET FELONY
710CR12000787-07 COLEMAN, ISAIAH JAMES DIRECT IND. – WEARING A MASK IN PU TRUE BILL- NOT SET FELONY
710CR12000752-00 COLSTON, DEREK INDICTMENT - CONSPIRACY TRUE BILL- SET FELONY
710CR12000752-01 COLSTON, DEREK INDICTMENT - ROBBERY TRUE BILL- SET FELONY
710CR12000686-00 CONNOR, RASHADEEN A INDICTMENT - PWID COCAINE TRUE BILL- SET FELONY
710CR12000S73-00 COOK, MARTINIS LOVELL INDICTMENT-MALICIOUS WOUNDING TRUE BILL- SET FELONY
710CR12000781-00 CRADLE, JESSICA NICOLE DIRECT IND. - EMBEZZLEMENT TRUE BILL-NOT SET FELONY
710CR12000790-00 DANCE, ARTHUR LEE, JR INDICTMENT - OBJECT SEXUAL PENETR TRUE BILL- SET FELONY
710CR12000733-00 DAVIS, CHRISTOPHER DIRECT IND. - POSS F/A W/PWID CNTR TRUE BILL-NOT SET FELONY

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 1

VIRGINIA: In the Circuit Court of the City of
Norfolk

THE COMMONWEALTH OF VIRGINIA v.
ISAAH JAMES COLEMAN

DOB: 07/04/86
SSN: 185-68-4208

Indictment for:
Discharge firearm, missile within Occupied Building,
Maliciously
(Felony)

June 20, 2012
The Grand Jury charges that:
On or about December 23, 2011, in the City of
Norfolk, ISAAH JAMES COLEMAN did feloniously
and maliciously discharge a firearm within an
occupied building.

Va. Code § 18.2-279.

Grand Jury Witness:
/S
N.H.[illegible]
Robbery
Norfolk Police Department

A True Bill ☒
Not A True Bill ☐

/S [illegible]
Foreperson of the Grand Jury

James F Entas
(Direct Indictment)
VC Code: VPN-5229-F4

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 1

COMMITMENT ORDER CR12000787-00 thru 07
Commonwealth of Virginia

ACCUSED: COLEMAN, ISALAH JAMES

Jurisdiction: Norfolk

ADDRESS: Norfolk City Jail

[X] Circuit Court

SSN: 185-68-4208

DOB: 07/04/1986

Sex: Male

Charged Under: State

Offense Tracking No & Case Number - Offense Date	Virginia Crime Code	Code Section
710CR1200078707	12-23-11	VIO-5320-F6 WEARING A MASK IN PUBLIC 18.2-422
710CR1200078706	12-23-11	ASL-1319 USE F/A IN COMM OF FELONY 18.2-53.1
710CR1200078705		ASL-1319 USE F/A IN COMM OF FELONY 18.2-53.1
710CR1200078704		ASL-1319 USE F/A IN COMM OF FELONY 18.2-53.1

Addendum listing additional charges is attached and incorporated - Held without bail - Accused may not depart the Commonwealth of Virginia

If NOT released on bail: Court appearance: Norfolk
Circuit Court; Mar 08, 2012 02:00 PM

TO THE SHERIFF, JAIL OFFICER OR
CORRECTIONAL OFFICER: You are ordered to
take custody of and convey the accused to the Court,
unless otherwise released.

03/07/2012 06:13 PM Magistrate /S Laura Tsai

Received: 03/07/12 1816 By: /S [illegible]

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

COMMITMENT ORDER CHANGE ADDENDUM
Commonwealth of Virginia

COLEMAN, ISAIAH JAMES
Jurisdiction: Norfolk Charges: State

Offense Date – Offense Tracking/Case No Virginia Crime Code/Code Section
12-23-11 – 710CRI200078703 BUR-2218-F2 – 18.2-90 ARMED STATUTORY BURGLARY
12-23-11 – 710CR1200078702 ROB-2101-F9 – 18.2-58 ROBBERY
12-23-11 – 710CRI200078701 ROB-1215-F9 – 18.2-22 CONSPIRACY
12-23-11 – 710CR1200078700 KID-1012-F2 – 18.2-48 ABDUCTION W INTENT TO EXTORT

CBR710CM1200002640
FORM DC-351 REVISED 606

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

CHECKLIST FOR BAIL DETERMINATIONS
Commonwealth of Virginia

Name of the Accused: COLEMAN, ISAIAH JAMES
Length of Time in Community: 6 Years
Place of Employment: No
Involvement in Education: BA from NSU
Pending Charges: robbery, abduction, B&E, UFA,
conspiracy
Was a firearm allegedly used in the offense: ☒ Yes
Prior criminal record Poss. marijuana x2
☒ Presumptive pursuant to Virginia Code § 19.2-
120 applies and has not been rebutted.
Bail Set: Held without Bail

03/07/2012

Date

_____/S_____

Laura Tsai, Magistrate

FORM DC-327 FRONT 07/10

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

1. An act of violence as defined in § 19.2-297.1;
2. An offense for which the maximum sentence is life imprisonment or death;
3. A violation of §§ 18.2-248, 18.2-248.01, 18.2-250 or § 18.2-250.2 involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is 10 years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in § 18.2-248;
4. A violation of §§ 18.2-308.1, 18.2-308.2, or § 18.2-308.4 and which relates to a firearm and provides for a minimum, mandatory sentence;
5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2, whether under the laws of this Commonwealth or substantially similar laws of the United States;
6. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction;
7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted of an offense listed in § 18.2-67.5:2 or a substantially similar offense under the laws of any state or the United States and the judicial officer finds

Isaiah James Coleman - Petition for Writ of Habeas Corpus Exhibit 2

- probable cause to believe that the person who is currently charged with one of these offenses committed the offense charged;
8. A violation of § 18.2-374.1 or § 18.2-374.3 where the offender has reason to believe that the solicited person is under 15 years of age and that the offender is at least 5 years older than the solicited person.
 9. A violation of §§ 18.2-46.2, 18.2-46.3, 18.2-46.5 or § 18.2-46.7;
 10. A violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24 and the person has, within the past five years of the instant offense, been convicted three times on different dates of a violation of any combination of these Code sections, or any ordinance of any county, city, or town or the laws of any other state or of the United States substantially similar thereto, and has been at liberty between each conviction; or
 11. A second or subsequent violation of § 16.1-253.2 or § 18.2-60.4 or a substantially similar offense under the laws of any state or the United States; or
 12. A violation of subsection B of § 18.2-57.2.
 13. A violation of subsection C of § 18.2-460 charging the use of threats of bodily harm or force to knowingly attempt to intimidate or impede a witness.

The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is being arrested pursuant to § 19.2-81.6.

Virginia Code § 19.2-120

Isaiah James Coleman - Petition for Writ of Habeas Corpus Exhibit 2

The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of a person identified by U.S. Immigration and Customs Enforcement (ICE) as illegally present in the United States if such person is charged with one of the offenses enumerated below. However, for misdemeanor offenses under the provisions of law referred to in paragraphs a, b, c and e, and for felony offenses referred to in paragraph d, this presumption applies ONLY IF ICE has guaranteed that, in all such cases in the Commonwealth, it will issue a detainer for the initiation of removal proceedings and reimburse for the costs of incarceration from the time of issuance of the detainer.

- a. An offense listed under subsection C of § 17.1-805 (acts of violence);
- b. An offense listed under subsection A of § 19.2-297.1 (acts of violence);
- c. An offense listed under Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 (crimes against the person) except any offense listed under subsection A of § 18.2-57.2;
- d. A felony offense under Article I (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 (drug offenses); or
- e. An offense under Article 2 (§ 18.2-266 et seq.) or any local ordinance substantially similar thereto, Article 4 (§ 18.2-279 et seq.), Article 5 (§ 18.2-288 et seq.), Article 6 (§ 18.2-299 et seq.) or Article 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2 (crimes involving safety).

Virginia Code § 19.2-120.1.

FORM DC-327 REVERSE 07/10

Isaiah James Coleman - Petition for Writ of Habeas Corpus Exhibit 2

CRIMINAL CONTINUANCE ORDER

Date of Defendant's Arrest 3/7/12

VIRGINIA: IN THE CIRCUIT COURT OF THE
CITY OF NORFOLK on the 21st day of March, 2012
COMMONWEALTH OF VIRGINIA V.

Isaiah Coleman Docket No: CR 12-787

On indictment(s) charging: Robbery, Burglary,
Abduction, Use Firearm, etc.

This day came the defendant, by counsel, in the
person of Joseph Lindsey and came well the Attorney
for the Commonwealth, in the person of James
Entas, and thereupon, on motion of Both parties, for
good cause shown, by agreement, it is Ordered that
the trial of this case be continued from 3/21/12 to
6/6/12. This case has not been previously continued
on the docket of this Court.

The good cause is defendant recently charged by
Direct Indictment and parties need time to prepare.
Defendant requests trial by the court without a jury.
Counsel estimate the trial will require 2½ hours.

I, THE DEFENDANT, by signing this form,
understand that I must appear in the Norfolk Circuit
Court on the date set above for my trial/disposition.
I.THE DEFENDANT, UNDERSTAND THAT If I fail
to appear on the date set for trial, I may be tried and
convicted in my absence and may be Indicted,
pursuant to Va. Code §19.2-118, for the felony
offense of Failure to Appear which carries a sentence
or up to five year in prison.

ENTER: 4/4/2012 Judge, Open, /S [illegible]

We ask for this /S James Entas, Attorney for the
Commonwealth; /S Joseph Lindsey. Seen and agreed.
C – Continued; CD* – Continued Motion of Defense

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

CRIMINAL CONTINUANCE ORDER

Date of Defendant's Arrest 3/7/12

VIRGINIA: IN THE CIRCUIT COURT OF THE
CITY OF NORFOLK on the 25st day of May, 2012
COMMONWEALTH OF VIRGINIA V.

Isaiah Coleman Docket No: CR 12-787

On indictment(s) charging: Robbery, Abduction, Use
Firearm, etc.

This day came the defendant, by counsel, in the
person of Eric Korslund and came well the Attorney
for the Commonwealth, in the person of James
Entas, and thereupon, on motion of Defendant, for
good cause shown, by agreement, it is Ordered that
the trial of this case be continued from 6/6/12 to
6/11/12 for arraignment. This case has not been
previously continued on the docket of this Court.
The good cause is defense counsel retained to replace
Court appointed counsel, is unavailable and needs
time to prepare. Defendant requests trial by the
court without a jury. Counsel estimate the trial will
require TBD hours.

I, THE DEFENDANT, by signing this form,
understand that I must appear in the Norfolk Circuit
Court on the date set above for my trial/disposition.

I, THE DEFENDANT, UNDERSTAND THAT If I fail
to appear on the date set for trial, I may be tried and
convicted in my absence and may be Indicted,
pursuant to Va. Code §19.2-118, for the felony
offense of Failure to Appear which carries a sentence
or up to five year in prison.

ENTER: 5/31/2012 Judge, Open, /S [illegible]

I ask for this /S James Entas, Attorney for the
Commonwealth; /S Eric Korslund. Seen and agreed.
C – Continued; CD* – Continued Motion of Defense
Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

ORDER FOR CONTINUED CUSTODY

Commonwealth of Virginia, Norfolk, Circuit Court
 ACCUSED: COLEMAN, ISAIAH JAMES; 811 E
CITY HALL AVE NORFOLK VA 23510 SSN: 185-68-
4208 DOB: 07/04/1986 Hearing Date and Time:
07/26/2012 9:30AM CHARGED UNDER: State

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078700 - 12/23/2011 - KID-1012-F2 18.2-48 - ABDUCTION W INTENT TO EXTORT
710CR1200078701 - 12/23/2011 - ROB-1216-C9 18.2-22 - CONSPIRACY
710CR1200078702 - 12/23/2011 - ROB-1201-F9 18.2-58 - ROBBERY
710CR1200078703 - 12/23/2011 - BUR-2218-F2 18.2-90 – ARMED STATUTORY BURGLARY
710CR1200078704 - 12/23/2011 - ASL-1319-F9 18.2-53.1 – USE F/A IN COMM OF FELONY
710CR1200078705 - 12/23/2011 - ASL -1012-F2 18.2-48 - USE OF F/A IN COMM OF FELONY

☒ Addendum listing additional charges attached and incorporated.

☒ No change in bond conditions.

TO THE SHERIFF, JAIL OFFICER OR
 CORRECTIONAL OFFICER: Hold the accused in
 custody pending the hearing date and convey the
 accused to the Court, unless otherwise released.
 03/07/2012 06:13 PM Magistrate /S Laura Tsai
 Received: 03/07/12 1816 By: /S [illegible]

Isaiah James Coleman - Petition for Writ of Habeas
 Corpus Exhibit 2

TRIAL ORDER - ARRAIGNMENT

VIRGINIA: IN THE CIRCUIT COURT OF THE
CITY OF NORFOLK FIPS CODE: 710

Hearing Date: **June 11, 2012**

Court Reporter **-B. Bisignano**

Judge: **Karen J. Burrell** Court Clerk **-SMJ**

COMMONWEALTH OF VIRGINIA v.

ISAIAH JAMES COLEMAN, DEFENDANT

This case came before the Court for trial of the defendant, who appeared in person with his attorney, **Eric Korslund**. The Commonwealth was represented by **James Entas**.

On motion from the attorney for the defendant, a substitution order has been entered reliving Joseph Lindsey from this matter and entering Eric Korslund as counsel of record.

The defendant stands charged with the following offense(s):

CASE NUMBER	OFFENSE DESCR.- F/M INDIC.	OFF. DATE	VA CODE SEC.
CR12000787-00	ABDUCTION W INTENT TO EXTORT MONEY-F	12/23/11	18.2-48
CR12000787-01	CONSPIRACY - F	12/23/11	18.2-22
CR12000787-02	ROBBERY - F	12/23/11	18.2-58

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

CR12000787-03	ARMED STATUTORY BURGLARY- F	12/23/11	18.2-90
CR12000787-04	USE OF A F/A IN THE COMMIS. OF A FELONY-F	12/23/11	18.2-53.1
CR12000787-05	USE OF A F/A IN THE COMMIS. OF A FELONY-F	12/23/11	18.2-53.1
CR12000787-06	USE OF A F/A IN THE COMMIS. OF A FELONY-F	12/23/11	18.2-53.1
CR12000787-07	WEARING A MASK IN PUBLIC-F	12/23/11	18.2-422

Whereupon the defendant was arraigned and after private consultation with his attorney, plead not guilty to Abduction with Intent to Extort Money, as charged 1n Indictment #1, Conspiracy, as charged in Indictment #2, Robbery, as charged in Indictment #3, Armed Statutory Burglary, as charged in Indictment #4, Use of a Firearm in the Commission of a Felony, as charged in Indictments #5, #6, and #7, and Wearing a Mask in Public, as charged in Indictment #8, which plea was tendered by the

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

defendant, in person. After being advised by the Court of his right to trial either by jury or by the Court and after consultation with counsel, the defendant knowingly and voluntarily waived a right to trial by jury, and with the concurrence of the Attorney for the Commonwealth and the Court, here entered of record, the Court will proceed to try the case without the intervention of a jury, as provided by law.

This matter is hereby continued to July 26, 2012 at 9:30 a.m. for trial.

The defendant was remanded to custody.

The court certifies that at all times the defendant was personally present with his attorney.

DATE: 6-12-12 ENTER: /S KAREN J. BURRELL,
JUDGE

**DEFENDANT IDENTIFICATION: ISAIAH
JAMES COLEMAN, DEFENDANT**

SSN:185-68-4208 - DOB:07/04/1986 - Sex: MALE

MDL-ASTR.ORD

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

CRIMINAL CONTINUANCE ORDER

Date of Defendant's Arrest 3/7/12 & 7/17/12
VIRGINIA: IN THE CIRCUIT COURT OF THE
CITY OF NORFOLK on the 25st day of May, 2012
COMMONWEALTH OF VIRGINIA V. Isaiah
Coleman Docket No: CR 12-787 (0-7) & CR-1879 (0-
16) On indictment(s) charging: Robbery, Abduction,
Use Firearm, Wear Mask, etc. This day came the
defendant, by counsel, in the person of Eric Korslund
and came well the Attorney for the Commonwealth,
in the person of James Entas, and thereupon, on
motion of Both Parties, for good cause shown, by
agreement, it is Ordered that the trial of this case be
continued from 7/26/12 to 9/17/12 for arraignment.
This case has not been previously continued on the
docket of this Court. The good cause is defendant
recently charged with numerous additional offenses
by Direct Indictment, and parties need additional
time, and all indictments need to be set together.
Defendant requests trial by the court without a jury.
Counsel estimate the trial will require 3 hours.
I, THE DEFENDANT, by signing this form,
understand that I must appear in the Norfolk Circuit
Court on the date set above for my trial/disposition.
I, THE DEFENDANT, UNDERSTAND THAT If I
fail to appear on the date set for trial, I may be tried
and convicted in my absence and may be Indicted,
pursuant to Va. Code §19.2-118, for the felony
offense of Failure to Appear which carries a sentence
or up to five year in prison.
ENTER: 7/25/2012 Judge, Open, /S [illegible]
We ask for this /S James Entas, Attorney for the
Commonwealth; /S Eric Korslund. Seen and agreed.
C – Continued; CD* – Continued Motion of Defense
Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

CRIMINAL CONTINUANCE ORDER

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK on the 25st day of May, 2012 COMMONWEALTH OF VIRGINIA V. Isaiah Coleman Docket No: CR 12-787 (0-7) & CR-1879 (0-16) On indictment(s) charging: Robbery, Abduction, Use Firearm, Wear Mask, etc. This day came the defendant, by counsel, in the person of Eric Korslund and came well the Attorney for the Commonwealth, in the person of James Entas, and thereupon, on motion of Both Parties, for good cause shown, by agreement, it is Ordered that the trial of this case be continued from 9/17/12 to 11/7/12. Pending motions shall be set for hearing 10/23/12. This case has been previously continued on the docket of this Court. The good cause is pending motion needs to be resolved and defense needs opportunity to inspect surveillance videos. Defendant requests trial by the court without a jury. Counsel estimate the trial will require 4 hours.

I, THE DEFENDANT, by signing this form, understand that I must appear in the Norfolk Circuit Court on the date set above for my trial/disposition.

I, THE DEFENDANT, UNDERSTAND THAT If I fail to appear on the date set for trial, I may be tried and convicted in my absence and may be Indicted, pursuant to Va. Code §19.2-118, for the felony offense of Failure to Appear which carries a sentence or up to five year in prison.

ENTER: 9/17/2012 Judge, Open, /S [illegible]

We ask for this /S James Entas, Attorney for the Commonwealth; /S Eric Korslund. Seen and agreed.

C – Continued; CD* – Continued Motion of Defense
Isaiah James Coleman - Petition for Writ of Habeas Corpus Exhibit 2

ORDER FOR CONTINUED CUSTODY

Commonwealth of Virginia, Norfolk, Circuit Court
 ACCUSED: COLEMAN, ISAAH JAMES; 811 E
CITY HALL AVE NORFOLK VA 23510 SSN: 185-68-
4208 DOB: 07/04/1986 Hearing Date and Time:
10/23/2012 9:30AM CHARGED UNDER: State

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078700 - 12/23/2011 - KID-1012-F2 18.2-48 - ABDUCTION W INTENT TO EXTORT
710CR1200078701 - 12/23/2011 - ROB-1216-C9 18.2-22 - CONSPIRACY
710CR1200078702 - 12/23/2011 - ROB-1201-F9 18.2-58 - ROBBERY
710CR1200078703 - 12/23/2011 - BUR-2218-F2 18.2-90 – ARMED STATUTORY BURGLARY
710CR1200078704 - 12/23/2011 - ASL-1319-F9 18.2-53.1 – USE F/A IN COMM OF FELONY
710CR1200078705 - 12/23/2011 - ASL -1012-F2 18.2-48 - USE OF F/A IN COMM OF FELONY

[X] Addendum listing additional charges attached and incorporated. [X] No Change in Existing Amount of Bond. [X] No change in bond conditions.
 TO THE SHERIFF, JAIL OFFICER OR
 CORRECTIONAL OFFICER: Hold the accused in custody pending the hearing date and convey the accused to the appropriate court so that the accused will be present in court at the hearing date and time, unless, unless otherwise ordered by the appropriate judicial officer.
 09/17/2012 Clerk /S M. Vayl (illegible) (JCJ)

Page 1 of 2

Isaiah James Coleman - Petition for Writ of Habeas
 Corpus Exhibit 2

CHARGE ADDENDUM

[X] ORDER FOR CONTINUED CUSTODY
Commonwealth of Virginia

ACCUSED: ISAIAH JAMES COLEMAN
JURISDICTION: NORFOLK
CHARGED UNDER: STATE

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078706 - 12/23/2011 - ASL-1319-F9 18.2-53.1 – USE F/A IN COMM OF FELONY
710CR1200078707 - 12/23/2011 - VIO-5320-F6 18.2-422 – WEARING A MASK IN PUBLIC

ORDER FOR CONTINUED CUSTODY

Commonwealth of Virginia, Norfolk, Circuit Court
 ACCUSED: COLEMAN, ISAIAH JAMES; 811 E
 CITY HALL AVE NORFOLK VA 23510 SSN: 185-68-
4208 DOB: 07/04/1986 Hearing Date and Time:
11/07/2012 9:30AM CHARGED UNDER: State

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078700 - 12/23/2011 - KID-1012-F2 18.2-48 - ABDUCTION W INTENT TO EXTORT
710CR1200078701 - 12/23/2011 - ROB-1216-C9 18.2-22 - CONSPIRACY
710CR1200078702 - 12/23/2011 - ROB-1201-F9 18.2-58 - ROBBERY
710CR1200078703 - 12/23/2011 - BUR-2218-F2 18.2-90 – ARMED STATUTORY BURGLARY
710CR1200078704 - 12/23/2011 - ASL-1319-F9 18.2-53.1 – USE F/A IN COMM OF FELONY
710CR1200078705 - 12/23/2011 - ASL -1012-F2 18.2-48 - USE OF F/A IN COMM OF FELONY

☒ Addendum listing additional charges attached and incorporated. ☒ No Change in Existing Amount of Bond. ☒ No change in bond conditions.
 TO THE SHERIFF, JAIL OFFICER OR
 CORRECTIONAL OFFICER: Hold the accused in custody pending the hearing date and convey the accused to the appropriate court so that the accused will be present in court at the hearing date and time, unless, unless otherwise ordered by the appropriate judicial officer.
 10/23/2012 Clerk /S Anita M(illegible)

Page 1 of 2

Isaiah James Coleman - Petition for Writ of Habeas
 Corpus Exhibit 2

CHARGE ADDENDUM

[X] ORDER FOR CONTINUED CUSTODY
Commonwealth of Virginia

ACCUSED: ISAIAH JAMES COLEMAN
JURISDICTION: NORFOLK
CHARGED UNDER: STATE

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078706 - 12/23/2011 - ASL-1319-F9 18.2-53.1 – USE F/A IN COMM OF FELONY
710CR1200078707 - 12/23/2011 - VIO-5320-F6 18.2-422 – WEARING A MASK IN PUBLIC

ORDER FOR CONTINUED CUSTODY

Commonwealth of Virginia, Norfolk, Circuit Court
 ACCUSED: COLEMAN, ISAIAH JAMES; 811 E
 CITY HALL AVE NORFOLK VA 23510 SSN: 185-68-
4208 DOB: 07/04/1986 Hearing Date and Time:
12/06/2012 9:30AM CHARGED UNDER: State

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078700 - 12/23/2011 - KID-1012-F2 18.2-48 - ABDUCTION W INTENT TO EXTORT
710CR1200078701 - 12/23/2011 - ROB-1216-C9 18.2-22 - CONSPIRACY
710CR1200078702 - 12/23/2011 - ROB-1201-F9 18.2-58 - ROBBERY
710CR1200078703 - 12/23/2011 - BUR-2218-F2 18.2-90 - ARMED STATUTORY BURGLARY
710CR1200078704 - 12/23/2011 - ASL-1319-F9 18.2-53.1 - USE F/A IN COMM OF FELONY
710CR1200078705 - 12/23/2011 - ASL -1012-F2 18.2-48 - USE OF F/A IN COMM OF FELONY

☐ Addendum listing additional charges attached and incorporated. ☒ No Change in Existing Amount of Bond. ☒ No change in bond conditions.
 TO THE SHERIFF, JAIL OFFICER OR
 CORRECTIONAL OFFICER: Hold the accused in custody pending the hearing date and convey the accused to the appropriate court so that the accused will be present in court at the hearing date and time, unless, unless otherwise ordered by the appropriate judicial officer.
11/07/2012 Clerk /S Kathleen (illegible) (EAM)

Page 1 of 2

Isaiah James Coleman - Petition for Writ of Habeas
 Corpus Exhibit 2

CHARGE ADDENDUM

[X] ORDER FOR CONTINUED CUSTODY
Commonwealth of Virginia

ACCUSED: ISAIAH JAMES COLEMAN
JURISDICTION: NORFOLK
CHARGED UNDER: STATE

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078706 - 12/23/2011 - ASL-1319-F9 18.2-53.1 – USE F/A IN COMM OF FELONY
710CR1200078707 - 12/23/2011 - VIO-5320-F6 18.2-422 – WEARING A MASK IN PUBLIC

CRIMINAL CONTINUANCE ORDER

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK on the 7th day of Nov, 2012 COMMONWEALTH OF VIRGINIA V. Isaiah Coleman Docket No: CR 12-787 (0-7) & CR-1879 (0-16) On indictment(s) charging: Robbery, Abduction, Use Firearm, Wear Mask, etc. This day came the defendant, by counsel, in the person of Eric Korslund and came well the Attorney for the Commonwealth, in the person of James Entas, and thereupon, on motion of Defendant, for good cause shown, by agreement, it is Ordered that the trial of this case be continued from 11/7/12 to 12/6/12. This case has been previously continued on the docket of this Court. The good cause is defendant's pending motions having been heard, additional time needed for trial date. Defendant requests trial by the court without a jury. Counsel estimate the trial will require 3 hours. I, THE DEFENDANT, by signing this form, understand that I must appear in the Norfolk Circuit Court on the date set above for my trial/disposition. I, THE DEFENDANT, UNDERSTAND THAT If I fail to appear on the date set for trial, I may be tried and convicted in my absence and may be Indicted, pursuant to Va. Code §19.2-118, for the felony offense of Failure to Appear which carries a sentence or up to five yeans in prison. ENTER: 11/7/2012 Judge, Open, /S [illegible] I ask for this /S James Entas, Attorney for the Commonwealth; /S Eric Korslund. Seen and agreed. C – Continued; CD* – Continued Motion of Defense

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

ORDER FOR CONTINUED CUSTODY

Commonwealth of Virginia, Norfolk, Circuit Court
 ACCUSED: COLEMAN, ISAAH JAMES; 811 E
CITY HALL AVE NORFOLK VA 23510 SSN: 185-68-
4208 DOB: 07/04/1986 Hearing Date and Time:
1/29/2013 9:30AM CHARGED UNDER: State

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078700 - 12/23/2011 - KID-1012-F2 18.2-48 - ABDUCTION W INTENT TO EXTORT
710CR1200078701 - 12/23/2011 - ROB-1216-C9 18.2-22 - CONSPIRACY
710CR1200078702 - 12/23/2011 - ROB-1201-F9 18.2-58 - ROBBERY
710CR1200078703 - 12/23/2011 - BUR-2218-F2 18.2-90 - ARMED STATUTORY BURGLARY
710CR1200078704 - 12/23/2011 - ASL-1319-F9 18.2-53.1 - USE F/A IN COMM OF FELONY
710CR1200078705 - 12/23/2011 - ASL -1012-F2 18.2-48 - USE OF F/A IN COMM OF FELONY

☐ Addendum listing additional charges attached and incorporated. ☒ No Change in Existing Amount of Bond. ☒ No change in bond conditions.
 TO THE SHERIFF, JAIL OFFICER OR
 CORRECTIONAL OFFICER: Hold the accused in custody pending the hearing date and convey the accused to the appropriate court so that the accused will be present in court at the hearing date and time, unless, unless otherwise ordered by the appropriate judicial officer.
 12/06 /2012 Clerk /S Kathleen (illegible) (VPF)

Page 1 of 2

Isaiah James Coleman - Petition for Writ of Habeas
 Corpus Exhibit 2

CHARGE ADDENDUM

[X] ORDER FOR CONTINUED CUSTODY
Commonwealth of Virginia

ACCUSED: ISAIAH JAMES COLEMAN
JURISDICTION: NORFOLK
CHARGED UNDER: STATE

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078706 - 12/23/2011 - ASL-1319-F9 18.2-53.1 – USE F/A IN COMM OF FELONY
710CR1200078707 - 12/23/2011 - VIO-5320-F6 18.2-422 – WEARING A MASK IN PUBLIC

CRIMINAL CONTINUANCE ORDER

VIRGINIA: IN THE CIRCUIT COURT OF THE
CITY OF NORFOLK on the 7th day of Nov, 2012
COMMONWEALTH OF VIRGINIA V. Coleman,
Isaiah Docket No: CR 12-787 (0-7) & CR-1879 (0-16)
On indictment(s) charging: Robbery, Abduction, Use
Firearm. This day came the defendant, by counsel, in
the person of Eric Korslund and came well the
Attorney for the Commonwealth, in the person of Jim
Entas, and thereupon, on motion of Commonwealth,
for good cause shown, by agreement, it is Ordered
that the trial of this case be continued from 12/6/12
to 1/29/13. This case has been previously continued
on the docket of this Court. The good cause is DNA
Tech is unavailable; Investigator called in sick.
Defendant requests trial by the court without a jury.
Counsel estimate the trial will require 4 hours.
I, THE DEFENDANT, by signing this form,
understand that I must appear in the Norfolk Circuit
Court on the date set above for my trial/disposition.
I, THE DEFENDANT, UNDERSTAND THAT If I
fail to appear on the date set for trial, I may be tried
and convicted in my absence and may be Indicted,
pursuant to Va. Code §19.2-118, for the felony
offense of Failure to Appear which carries a sentence
or up to five year in prison.
ENTER: 12/6/2012 Judge, Open, /S [illegible]
I ask for this /S James Entas, Attorney for the
Commonwealth; /S Eric Korslund. Seen and agreed.
C – Continued; CP* – Prosecution Witness
Unavailable

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

CRIMINAL CONTINUANCE ORDER

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK on the 28th day of Jan, 2013 COMMONWEALTH OF VIRGINIA V. Isaiah Coleman, Docket No: CR 12-787 (0-7) & CR-1879 (0-16) On indictment(s) charging: Robbery, Abduction, Use Firearm, etc. This day came the defendant, by counsel, in the person of Eric Korslund and came well the Attorney for the Commonwealth, in the person of Jim Entas, and thereupon, on motion of Commonwealth, for good cause shown, by agreement, it is Ordered that the trial of this case be continued from 1/29/13 to 3/13/13. This case has been previously continued on the docket of this Court. The good cause is scheduling conflict. Defendant requests trial by the court without a jury. Counsel estimate the trial will require 3 hours.

I, THE DEFENDANT, by signing this form, understand that I must appear in the Norfolk Circuit Court on the date set above for my trial/disposition.

I, THE DEFENDANT, UNDERSTAND THAT If I fail to appear on the date set for trial, I may be tried and convicted in my absence and may be Indicted, pursuant to Va. Code §19.2-118, for the felony offense of Failure to Appear which carries a sentence or up to five year in prison.

ENTER: 1/28/2013 Judge, Open, /S [illegible]

I ask for this /S James Entas, Attorney for the Commonwealth; /S Eric Korslund. Seen and agreed.
C – Continued

Isaiah James Coleman - Petition for Writ of Habeas Corpus
Exhibit 2

CRIMINAL CONTINUANCE ORDER

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK on the 13th day of March, 2013 COMMONWEALTH OF VIRGINIA V. Isaiah James Coleman, Docket No: CR 12-787 & CR-1879 On indictment(s) charging: Robbery, Abduction, Use Firearm, Burglary, etc. This day came the defendant, by counsel, in the person of Eric Korslund and came well the Attorney for the Commonwealth, in the person of Jim Entas, and thereupon, on motion of Commonwealth, for good cause shown, over objection, it is Ordered that the trial of this case be continued from 3/13/13 to 4/24/13. This case has been previously continued on the docket of this Court. The good cause is newly discovered evidence by Commonwealth needs to be tested by the Department of Forensic Science. Defendant requests trial by the court without a jury. Counsel estimate the trial will require 3 hours.

I, THE DEFENDANT, by signing this form, understand that I must appear in the Norfolk Circuit Court on the date set above for my trial/disposition.

I, THE DEFENDANT, UNDERSTAND THAT If I fail to appear on the date set for trial, I may be tried and convicted in my absence and may be Indicted, pursuant to Va. Code §19.2-118, for the felony offense of Failure to Appear which carries a sentence or up to five years in prison.

ENTER: 1/28/2013 Judge, Open, /S [illegible]

I ask for this /S James Entas, Atty. for the Commonwealth; /S Eric Korslund, Atty. for the Defense. Seen and objected to. CP – Continued Mot. of Pros. Atty.

Isaiah James Coleman - Petition for Writ of Habeas Corpus Exhibit 2

ORDER FOR CONTINUED CUSTODY

Commonwealth of Virginia, Norfolk, Circuit Court
 ACCUSED: COLEMAN, ISAAH JAMES; 811 E
CITY HALL AVE NORFOLK VA 23510 SSN: 185-68-
4208 DOB: 07/04/1986 Hearing Date and Time:
4/24/2013 9:30AM CHARGED UNDER: State

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078700 - 12/23/2011 - KID-1012-F2 18.2-48 - ABDUCTION W INTENT TO EXTORT
710CR1200078701 - 12/23/2011 - ROB-1216-C9 18.2-22 - CONSPIRACY
710CR1200078702 - 12/23/2011 - ROB-1201-F9 18.2-58 - ROBBERY
710CR1200078703 - 12/23/2011 - BUR-2218-F2 18.2-90 - ARMED STATUTORY BURGLARY
710CR1200078704 - 12/23/2011 - ASL-1319-F9 18.2-53.1 - USE F/A IN COMM OF FELONY
710CR1200078705 - 12/23/2011 - ASL -1012-F2 18.2-48 - USE OF F/A IN COMM OF FELONY

☐ Addendum listing additional charges attached and incorporated. ☒ No Change in Existing Amount of Bond. ☒ No change in bond conditions.
 TO THE SHERIFF, JAIL OFFICER OR
 CORRECTIONAL OFFICER: Hold the accused in custody pending the hearing date and convey the accused to the appropriate court so that the accused will be present in court at the hearing date and time, unless, unless otherwise ordered by the appropriate judicial officer.
3/13/2013 Clerk /S SL (JJ)

Page 1 of 2

Isaiah James Coleman - Petition for Writ of Habeas
 Corpus Exhibit 2

CHARGE ADDENDUM

[X] ORDER FOR CONTINUED CUSTODY
Commonwealth of Virginia

ACCUSED: ISAIAH JAMES COLEMAN
JURISDICTION: NORFOLK
CHARGED UNDER: STATE

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078706 - 12/23/2011 - ASL-1319-F9 18.2-53.1 – USE F/A IN COMM OF FELONY
710CR1200078707 - 12/23/2011 - VIO-5320-F6 18.2-422 – WEARING A MASK IN PUBLIC

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Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

ORDER FOR CONTINUED CUSTODY

Commonwealth of Virginia, Norfolk, Circuit Court
 ACCUSED: COLEMAN, ISAIAH JAMES; 811 E
CITY HALL AVE NORFOLK VA 23510 SSN: 185-68-
4208 DOB: 07/04/1986 Hearing Date and Time:
5/7/2013 9:30AM CHARGED UNDER: State

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078700 - 12/23/2011 - KID-1012-F2 18.2-48 - ABDUCTION W INTENT TO EXTORT
710CR1200078701 - 12/23/2011 - ROB-1216-C9 18.2-22 - CONSPIRACY
710CR1200078702 - 12/23/2011 - ROB-1201-F9 18.2-58 - ROBBERY
710CR1200078703 - 12/23/2011 - BUR-2218-F2 18.2-90 - ARMED STATUTORY BURGLARY
710CR1200078704 - 12/23/2011 - ASL-1319-F9 18.2-53.1 - USE F/A IN COMM OF FELONY
710CR1200078705 - 12/23/2011 - ASL-1012-F2 18.2-48 - USE OF F/A IN COMM OF FELONY

[X] Addendum listing additional charges attached and incorporated. [X] No Change in Existing Amount of Bond. [X] No change in bond conditions.
 TO THE SHERIFF, JAIL OFFICER OR
 CORRECTIONAL OFFICER: Hold the accused in custody pending the hearing date and convey the accused to the appropriate court so that the accused will be present in court at the hearing date and time, unless, unless otherwise ordered by the appropriate judicial officer.
 4/24/2013 Clerk /S (illegible) (JCJ)

Page 1 of 2

Isaiah James Coleman - Petition for Writ of Habeas
 Corpus Exhibit 2

CHARGE ADDENDUM

[X] ORDER FOR CONTINUED CUSTODY
Commonwealth of Virginia

ACCUSED: ISAIAH JAMES COLEMAN
JURISDICTION: NORFOLK
CHARGED UNDER: STATE

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078706 - 12/23/2011 - ASL-1319-F9 18.2-53.1 – USE F/A IN COMM OF FELONY
710CR1200078707 - 12/23/2011 - VIO-5320-F6 18.2-422 – WEARING A MASK IN PUBLIC

CRIMINAL CONTINUANCE ORDER

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK on the 24th day of April, 2013 COMMONWEALTH OF VIRGINIA V. Isaiah James Coleman, Docket No: CR 12-787 & CR-1879 On indictment(s) charging: Robbery, Abduction, Use Firearm, etc. This day came the defendant, by counsel, in the person of Eric Korslund and came well the Attorney for the Commonwealth, in the person of James Entas, and thereupon, on motion of Commonwealth, for good cause shown, over objection, it is Ordered that the trial of this case be continued from 4/24/13 to 5/7/13. This case has been previously continued on docket of this Court. The good cause is material witness has been incarcerated and is in jail in another jurisdiction, Commonwealth only recently became aware, and transportation order is needed. Defendant requests trial by the court without a jury. Counsel estimate trial will require 5 hours.

I, THE DEFENDANT, by signing this form, understand that I must appear in the Norfolk Circuit Court on the date set above for my trial/disposition.

I, THE DEFENDANT, UNDERSTAND THAT If I fail to appear on the date set for trial, I may be tried and convicted in my absence and may be Indicted, pursuant to Va. Code §19.2-118, for felony offense of Failure to Appear which carries a sentence or up to five yeain in prison.

ENTER: 4/24/2013 Judge, Open, /S [illegible]

I ask for this /S James Entas, Atty. for the Commonwealth; /S Eric Korslund, Atty. for the Defense. Seen and objected to. C – Continued

Isaiah James Coleman - Petition for Writ of Habeas Corpus Exhibit 2

CRIMINAL CONTINUANCE ORDER

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK on the 7th day of May, 2013 COMMONWEALTH OF VIRGINIA V. Isaiah James Coleman, Docket No: CR 12-787 & CR-1879 On indictment(s) charging: Robbery, Abduction, Wear Mask, Use Firearm, etc. This day came the defendant, by counsel, in the person of Eric Korslund and came well the Attorney for the Commonwealth, in the person of Jim Entas, and thereupon, on motion of Commonwealth, for good cause shown, over objection, it is Ordered that the trial of this case be continued from 5/7/13 to 5/16/13. This case has been previously continued on the docket of this Court. The good cause is material witness incarcerated in another jurisdiction, and was not transported in spite of transportation order by the Commonwealth. Defendant requests trial by the court without a jury. Counsel estimate the trial will require 4-5 hours. I, THE DEFENDANT, by signing this form, understand that I must appear in the Norfolk Circuit Court on the date set above for my trial/disposition. I, THE DEFENDANT, UNDERSTAND THAT If I fail to appear on the date set for trial, I may be tried and convicted in my absence and may be Indicted, pursuant to Va. Code §19.2-118, for the felony offense of Failure to Appear which carries a sentence or up to five year in prison. ENTER: 5/7/2013 Judge, Open, /S [illegible] I ask for this /S James Entas, Atty. for the Commonwealth; /S Eric Korslund, Atty. for the Defense. Seen and objected to. C – Continued

Isaiah James Coleman - Petition for Writ of Habeas Corpus Exhibit 2

CRIMINAL CONTINUANCE ORDER

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK on the 7th day of May, 2013 COMMONWEALTH OF VIRGINIA V. Isaiah James Coleman, Docket No: CR 12-787 & CR-1879 On indictment(s) charging: Robbery, Abduction, Wear Mask, Use Firearm, etc. This day came the defendant, by counsel, in the person of Eric Korslund and came well the Attorney for the Commonwealth, in the person of Jim Entas, and thereupon, on motion of Both parties, for good cause shown, by agreement, it is Ordered that the trial of this case be continued from 5/16/13 to 6/19/13. This case has been previously continued on the docket of this Court. The good cause is defense is unavailable on first available trial date for court and Commonwealth and the parties jointly agree to continue the trial to 6/19/13. Defendant requests trial by the court without a jury. Counsel estimate the trial will require 4-5 hours. I, THE DEFENDANT, by signing this form, understand that I must appear in the Norfolk Circuit Court on the date set above for my trial/disposition. I, THE DEFENDANT, UNDERSTAND THAT If I fail to appear on the date set for trial, I may be tried and convicted in my absence and may be Indicted, pursuant to Va. Code §19.2-118, for the felony offense of Failure to Appear which carries a sentence or up to five yeans in prison. ENTER: 5/7/2013 Judge, Open, /S [illegible] We ask for this /S James Entas, Atty. for the Commonwealth; /S Eric Korslund, Atty. for the Defense. Seen and objected to. C – Continued

Isaiah James Coleman - Petition for Writ of Habeas Corpus Exhibit 2

ORDER FOR CONTINUED CUSTODY

Commonwealth of Virginia, Norfolk, Circuit Court
 ACCUSED: COLEMAN, ISAIAH JAMES; 811 E
CITY HALL AVE NORFOLK VA 23510 SSN: 185-68-
4208 DOB: 07/04/1986 Hearing Date and Time:
6/19/2013 9:30AM CHARGED UNDER: State

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078700 - 12/23/2011 - KID-1012-F2 18.2-48 - ABDUCTION W INTENT TO EXTORT
710CR1200078701 - 12/23/2011 - ROB-1216-C9 18.2-22 - CONSPIRACY
710CR1200078702 - 12/23/2011 - ROB-1201-F9 18.2-58 - ROBBERY
710CR1200078703 - 12/23/2011 - BUR-2218-F2 18.2-90 - ARMED STATUTORY BURGLARY
710CR1200078704 - 12/23/2011 - ASL-1319-F9 18.2-53.1 - USE F/A IN COMM OF FELONY
710CR1200078705 - 12/23/2011 - ASL-1012-F2 18.2-48 - USE OF F/A IN COMM OF FELONY

[X] Addendum listing additional charges attached and incorporated. [X] No Change in Existing Amount of Bond. [X] No change in bond conditions.
 TO THE SHERIFF, JAIL OFFICER OR
 CORRECTIONAL OFFICER: Hold the accused in custody pending the hearing date and convey the accused to the appropriate court so that the accused will be present in court at the hearing date and time, unless, unless otherwise ordered by the appropriate judicial officer.
 4/24/2013 Clerk /S Kathleen (illegible) (JXJ)

Page 1 of 2

Isaiah James Coleman - Petition for Writ of Habeas
 Corpus Exhibit 2

CHARGE ADDENDUM

[X] ORDER FOR CONTINUED CUSTODY
Commonwealth of Virginia

ACCUSED: ISAIAH JAMES COLEMAN
JURISDICTION: NORFOLK
CHARGED UNDER: STATE

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078706 - 12/23/2011 - ASL-1319-F9 18.2-53.1 – USE F/A IN COMM OF FELONY
710CR1200078707 - 12/23/2011 - VIO-5320-F6 18.2-422 – WEARING A MASK IN PUBLIC

ORDER FOR CONTINUED CUSTODY

Commonwealth of Virginia, Norfolk, Circuit Court
 ACCUSED: COLEMAN, ISAAH JAMES; 811 E
CITY HALL AVE NORFOLK VA 23510 SSN: 185-68-
4208 DOB: 07/04/1986 Hearing Date and Time:
6/19/2013 9:30AM CHARGED UNDER: State

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078700 - 12/23/2011 - KID-1012-F2 18.2-48 - ABDUCTION W INTENT TO EXTORT
710CR1200078701 - 12/23/2011 - ROB-1216-C9 18.2-22 - CONSPIRACY
710CR1200078702 - 12/23/2011 - ROB-1201-F9 18.2-58 - ROBBERY
710CR1200078703 - 12/23/2011 - BUR-2218-F2 18.2-90 - ARMED STATUTORY BURGLARY
710CR1200078704 - 12/23/2011 - ASL-1319-F9 18.2-53.1 - USE F/A IN COMM OF FELONY
710CR1200078705 - 12/23/2011 - ASL-1012-F2 18.2-48 - USE OF F/A IN COMM OF FELONY

☐ Addendum listing additional charges attached and incorporated. ☒ No Change in Existing Amount of Bond. ☒ No change in bond conditions.
 TO THE SHERIFF, JAIL OFFICER OR
 CORRECTIONAL OFFICER: Hold the accused in custody pending the hearing date and convey the accused to the appropriate court so that the accused will be present in court at the hearing date and time, unless, unless otherwise ordered by the appropriate judicial officer.
 6/12/2013 Clerk /S (illegible) (EAM)

Page 1 of 2

Isaiah James Coleman - Petition for Writ of Habeas
 Corpus Exhibit 2

CHARGE ADDENDUM

[X] ORDER FOR CONTINUED CUSTODY
Commonwealth of Virginia

ACCUSED: ISAIAH JAMES COLEMAN
JURISDICTION: NORFOLK
CHARGED UNDER: STATE

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078706 - 12/23/2011 - ASL-1319-F9 18.2-53.1 – USE F/A IN COMM OF FELONY
710CR1200078707 - 12/23/2011 - VIO-5320-F6 18.2-422 – WEARING A MASK IN PUBLIC

ORDER FOR CONTINUED CUSTODY

Commonwealth of Virginia, Norfolk, Circuit Court
 ACCUSED: COLEMAN, ISAIAH JAMES; 811 E
CITY HALL AVE NORFOLK VA 23510 SSN: 185-68-
4208 DOB: 07/04/1986 Hearing Date and Time:
6/20/2013 2:00 PM CHARGED UNDER: State

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078700 - 12/23/2011 - KID-1012-F2 18.2-48 - ABDUCTION W INTENT TO EXTORT
710CR1200078701 - 12/23/2011 - ROB-1216-C9 18.2-22 - CONSPIRACY
710CR1200078702 - 12/23/2011 - ROB-1201-F9 18.2-58 - ROBBERY
710CR1200078703 - 12/23/2011 - BUR-2218-F2 18.2-90 - ARMED STATUTORY BURGLARY
710CR1200078704 - 12/23/2011 - ASL-1319-F9 18.2-53.1 - USE F/A IN COMM OF FELONY
710CR1200078705 - 12/23/2011 - ASL-1012-F2 18.2-48 - USE OF F/A IN COMM OF FELONY

☐ Addendum listing additional charges attached and incorporated. ☒ No Change in Existing Amount of Bond. ☒ No change in bond conditions.
 TO THE SHERIFF, JAIL OFFICER OR
 CORRECTIONAL OFFICER: Hold the accused in custody pending the hearing date and convey the accused to the appropriate court so that the accused will be present in court at the hearing date and time, unless, unless otherwise ordered by the appropriate judicial officer.
 6/19/2013 Clerk /S (illegible) (MJH)

Page 1 of 2

Isaiah James Coleman - Petition for Writ of Habeas
 Corpus Exhibit 2

CHARGE ADDENDUM

[X] ORDER FOR CONTINUED CUSTODY
Commonwealth of Virginia

ACCUSED: ISAIAH JAMES COLEMAN
JURISDICTION: NORFOLK
CHARGED UNDER: STATE

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078706 - 12/23/2011 - ASL-1319-F9 18.2-53.1 – USE F/A IN COMM OF FELONY
710CR1200078707 - 12/23/2011 - VIO-5320-F6 18.2-422 – WEARING A MASK IN PUBLIC

TRIAL ORDER - CONTINUED

VIRGINIA: IN THE CIRCUIT COURT OF THE
 CITY OF NORFOLK FIPS CODE: 710
 Hearing Date: **June 19, 2013**
 Court Reporter - **T. Tatem**
 Judge: **Mary Jane Hall**
 Court Clerk - SL

COMMONWEALTH OF VIRGINIA

v.

ISAIAH JAMES COLEMAN, DEFENDANT

This case came before the Court for trial of the defendant, who appeared in person with his attorney, Eric Itorslund. The Commonwealth was represented by James Intas.

The defendant stands charged with the following offense(s):

CASE NUMBER	OFFENSE DESCR.- F/M INDIC.	OFF. DATE	VA CODE SEC.
CR12000787-00	ABDUCTION W INTENT TO EXTORT MONEY-F	12/23/11	18.2-48
CR12000787-01	CONSPIRACY - F	12/23/11	18.2-22
CR12000787-02	ROBBERY - F	12/23/11	18.2-58
CR12000787-03	ARMED STATUTORY BURGLARY-F	12/23/11	18.2-90

Isaiah James Coleman - Petition for Writ of Habeas
 Corpus Exhibit 2

CR12000787-04	USE OF A F/A IN THE COMMIS. OF A FELONY-F	12/23/1 1	18.2-53.1
CR12000787-05	USE OF A F/A IN THE COMMIS. OF A FELONY-F	12/23/1 1	18.2-53.1
CR12000787-06	USE OF A F/A IN THE COMMIS. OF A FELONY-F	12/23/1 1	18.2-53.1
CR12000787-07	WEARING A MASK IN PUBLIC-F	12/23/1 1	18.2-422

Whereupon the defendant was previously arraigned on June 11, 2012 and pled not guilty to Abduction With Intent to Extort Money (Indictment #1), Conspiracy (Indictment #2), Robbery (Indictment #3), Armed Statutory Burglary (Indictment #4), Use of a Firearm in the Commission of a Felony (Indictments #5, 6, and 7), and Wear a Mask in Public (Indictment #8), which plea was tendered by the defendant, in person. The defendant restated his intention to waive his right to trial by jury and proceed without the intervention of a jury.

Thereupon the Court proceeded to hear the evidence presented by the Commonwealth and at 5:00 p.m. the Court recessed until June 20, 2013 at 2:00 p.m., at which time all parties are required to return.
HDL-ASTR.ORD

Page 1

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

The Court hereby recognizes defense witnesses Howard J. Brown and Chelsea Parker to reappear on June 20, 2013 at 2:00 p.m.

The defendant was remanded to custody.

The Court certifies that at all times the defendant was personally present with his attorney.

ENTER: /S Mary Jane Hall. Judge
 Jun 25 2013 02:10PM

**DEFENDANT IDENTIFICATION: ISAIAH
JAMES COLEMAN
SSN: 185-68-4208 DOB: 07-04-86 Sex: MALE**

MDL-ASTR.ORD

TRIAL ORDER- DAY TWO- REFER FOR
PRESENTENCE REPORT
& VICTIM IMPACT STATEMENT
VIRGINIA: IN THE CIRCUIT COURT OF THE
CITY OF NORFOLK FIPS: 710
Hearing Date: June 20, 2013 Court Reporter - Tatem
Judge: Mary Jane Hall Court Clerk - ADM
COMMONWEALTH OF VIRGINIA v.
Isaiah James Coleman, DEFENDANT

This case came before the Court for trial of the defendant, who appeared in person with his attorney, Eric Korslund. The Commonwealth was represented by James Entas.

The defendant stands charged with the following offense(s):

Case Number Va. Code	Offense	F/M	Date
CR12000787-00 18.2-48	Abduction	F	12/23/11
CR12000787-01 18.2-22	Conspiracy	F	12/23/11
CR12000787-02 18.2-58	Robbery	F	12/23/11
CR12000787-03 18.2-90	Armed Statutory Burglary	F	12/23/11
CR12000787-04 18.2-53.1	Use of a Firearm in Commission of a Felony	F	12/23/11
CR12000787-05 18.2-53.1	Use of a Firearm in Commission of a Felony	F	12/23/11
CR12000787-07	Wearing a Mask in Public 18.2-422	F	12/23/11

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Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

On this date the Court reconvened at **2:20 pm** proceeded to hear the evidence presented by the Commonwealth and at the conclusion thereof, the attorney for the defendant moved the Court to strike the Commonwealth's evidence, on grounds stated to the record, which motion was taken under advisement.

Thereupon the Court proceeded to hear the evidence presented by the attorney for the defendant and at the conclusion thereof, the attorney for the defendant renewed his motion to strike the Commonwealth's evidence on the same grounds, which motion was overruled and exception noted.

And having heard the evidence and argument of counsel, the Court finds the defendant **guilty** of **Abduction with Intent to Extort Money as charge in Indictment #1, Conspiracy as charged in Indictment #2, Robbery as charged in Indictment #3, Armed Statutory Burglary as charged in Indictment #4, Use of a Firearm in the Commission of a Felony as charged in Indictments #5,#6, #7, and Wearing a Mask in Public as charged in Indictment #8.** And the Court, before fixing punishment or imposing sentence, Orders that this case be referred to the Probation Officer for a Presentence Report and Victim Impact Statement , the hearing on which will be held on October 4, 2013, at 9:00 am, to which time this case continued.

The defendant was remanded to custody. The Court certifies that at all times the defendant was personally present with his attorney.

ENTER: ____/S____ Mary Jane Hall, Judge
Jul 08 2013 02:56PM

DEFENDANT ID.: Isaiah James Coleman
SSN: 185-68-4208 DOB: 07/04/86 Sex: MALE
This order was emailed to the Probation Officer on 7/2/13.

Page 2

Isaiah James Coleman - Petition for Writ of Habeas Corpus
Exhibit 2

ORDER FOR CONTINUED CUSTODY

Commonwealth of Virginia, Norfolk, Circuit Court
 ACCUSED: COLEMAN, ISAAH JAMES; 811 E
 CITY HALL AVE NORFOLK VA 23510 SSN: 185-68-
4208 DOB: 07/04/1986 Hearing Date and Time:
6/19/2013 9:30AM CHARGED UNDER: State

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200187916 - 12/23/2011 - WPN-5229-F4 18.2-279 - ABDUCTION W INTENT TO EXTORT
710CR1200078700 - 12/23/2011 - KID-1012-F2 18.2-48 - ABDUCTION W INTENT TO EXTORT
710CR1200078701 - 12/23/2011 - ROB-1216-C9 18.2-22 - CONSPIRACY
710CR1200078702 - 12/23/2011 - ROB-1201-F9 18.2-58 - ROBBERY
710CR1200078703 - 12/23/2011 - BUR-2218-F2 18.2-90 - ARMED STATUTORY BURGLARY
710CR1200078704 - 12/23/2011 - ASL-1319-F9 18.2-53.1 - USE F/A IN COMM OF FELONY

☐ Addendum listing additional charges attached and incorporated. ☒ No Change in Existing Amount of Bond. ☒ No change in bond conditions.
 TO THE SHERIFF, JAIL OFFICER OR
 CORRECTIONAL OFFICER: Hold the accused in custody pending the hearing date and convey the accused to the appropriate court so that the accused will be present in court at the hearing date and time, unless, unless otherwise ordered by the appropriate judicial officer.
 6/20/2013 Clerk /S Anita Morgan (MJH)

Page 1 of 2

Isaiah James Coleman - Petition for Writ of Habeas
 Corpus Exhibit 2

CHARGE ADDENDUM

[X] ORDER FOR CONTINUED CUSTODY
Commonwealth of Virginia

ACCUSED: ISAIAH JAMES COLEMAN
JURISDICTION: NORFOLK
CHARGED UNDER: STATE

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078705 - 12/23/2011 - ASL-1012-F2 18.2-48 - USE OF F/A IN COMM OF FELONY
710CR1200078706 - 12/23/2011 - ASL-1319-F9 18.2-53.1 – USE F/A IN COMM OF FELONY
710CR1200078707 - 12/23/2011 - VIO-5320-F6 18.2-422 – WEARING A MASK IN PUBLIC

SENTENCING ORDER

VIRGINIA: IN THE CIRCUIT COURT OF
THE CITY OF NORFOLK

Hearing Date: **December 6, 2013**

FIPS Code 710

Judge: **Mary Jane Hall**

Court Reporter - **Feehery**

Court Clerk - **ADM/TDP**

COMMONWEALTH OF VIRGINIA v.
ISAIAH JAMES COLEMAN,
DEFENDANT

This case came before the Court for
sentencing of the defendant, who appeared in
person with his attorney. **Eric Korslund**.
The Commonwealth was represented by
James Entas.

On June 20, 2013, the defendant was
found guilty of the following offense(s):

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078700 - 12/23/2011 - KID-1012-F2 18.2-48 - ABDUCTION W INTENT TO EXTORT
710CR1200078701 - 12/23/2011 - ROB-1216-C9 18.2-22 - CONSPIRACY
710CR1200078702 - 12/23/2011 - ROB-1201-F9 18.2-58 - ROBBERY
710CR1200078703 - 12/23/2011 - BUR-2218-F2 18.2-90 - ARMED STATUTORY BURGLARY
710CR1200078704 - 12/23/2011 - ASL-1319-F9 18.2-53.1 - USE F/A IN COMM OF FELONY
710CR1200078705 - 12/23/2011 - ASL-1012-F2 18.2-48 - USE OF F/A IN COMM OF FELONY

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

OFF /CASE NO. - OFF DATE - VA CRIME CODE CODE SECTION - DESCRIPTION
710CR1200078706 - 12/23/2011 - ASL-1319-F9 18.2-53.1 – USE F/A IN COMM OF FELONY
710CR1200078707 - 12/23/2011 - VIO-5320-F6 18.2-422 – WEARING A MASK IN PUBLIC

The presentence report was considered and is ordered filed as a part of the record in this case in accordance with the provisions of Code Section 19.2-299.

Pursuant to the provisions of Code Section 19.2-298.01, the Court has considered and reviewed the applicable discretionary sentencing guidelines and the guidelines worksheets. The sentencing guidelines worksheets and the written explanation of any departure from the guidelines are ordered filed as a part of the record in this case.

Before pronouncing the sentence, the Court inquired if the defendant desired to make a statement and if the defendant desired to advance any reason why judgment should not be pronounced.

The Court **SENTENCES** the defendant to:

Incarceration with the Department of Corrections for the term of: 20 years for Abduction with Intent to Extort Money (Indictment #1), 5 years for Conspiracy (Indictment #2), 5 years for Robbery (Indictment #3), 20 years for Armed Statutory Burglary (Indictment #4), 3 years for Use of a Firearm in the Commission of a Felony (Indictment #5), 5 years for Use of a Firearm in the Commission of a Felony (Indictment #6) 5 years for Use of a Firearm in the Commission of a Felony (Indictment #7) and 1 year for Wearing a Mask in Public (Indictment #8). The total sentence imposed is **64 years**.

Isaiah James Coleman - Petition for Writ of Habeas Corpus Exhibit 2

This sentence shall run **consecutively** with all other sentences.

The Court SUSPENDS 20 years of Indictment #1, 5 years of Indictment #2, 5 years of Indictment #3, 20 years of Indictment #4, and 1 year of Indictment #8, for a period of 10 years, for a total suspension of 51 years, upon the following condition(s): The defendant shall have no contact with victims and is banned from Philly Steak Store located on Tidewater Dr. while on probation.

Supervised probation. The defendant is placed on probation to commence on his release from incarceration, under the supervision of a Probation Officer for an indeterminate period, or unless sooner released by the Court or Probation Officer. The defendant shall comply with all the rules and requirements set by the Probation Officer.

Uniform good behavior. In addition to fulfilling the requirements of supervised probation, if imposed, the defendant shall be of uniform good behavior while in custody and for 10 years after release from all confinement.

Fines/Costs/Restitution. The following amounts are due and payable at the time of sentencing. If the total payment is not made on the date of sentencing, the defendant shall enter into an Installment Agreement Plan with the Circuit Court Clerk's Office and a judgment entered therein. All payments are to be made payable to the Clerk, Norfolk Circuit Court. Payments shall be made at the rate of \$50.00 per month beginning 90 days after release from custody.

> Fines:	\$	<u> </u>
> Costs:	\$	<u>8552.00</u>
> Restitution:	\$	<u> </u>
> Total:	\$	<u>8552.00</u>

Isaiah James Coleman - Petition for Writ of Habeas Corpus
Exhibit 2

Credit for time served. The defendant shall be given credit for time spent in confinement while awaiting trial pursuant to Code Section 53.1-187.

Notice of Destruction of Exhibits. The Clerk hereby gives notice to the defendant and the attorney for the Commonwealth that any and all exhibits introduced in this matter may be destroyed pursuant to Virginia Code Section 19.2-270.4.

The defendant, by counsel, advised the Court that the defendant desires to appeal the judgment rendered, and accordingly the Court suspends execution of the sentence for a period of **30 days**, until the said appeal is acted upon.

And it appearing that the defendant is still indigent, the Clerk is Ordered to have the record transcribed free of charge.

And the Court appoints **Eric Korslund**, an able and competent attorney-at-law to represent the defendant in said appeal.

Distribution of Copies. The Clerk shall send a copy of this order to the:

Sheriff
Department of Corrections-sent electronically
Sentencing Guideline Commission
Probation Office of this Court
Office of the Commonwealth Attorney-sent electronically
Circuit Court Appeals Clerk

ENTER: /S Mary Jane Hall, Judge
Jan 14 2014 02:55PM

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

DEFENDANT IDENTIFICATION: ISAIAH
JAMES COLEMAN, DEFENDANT

SSN: 185-68-4208 DOB: 07/04/86 Sex: MALE

SENTENCING SUMMARY:

TOTAL SENTENCE IMPOSED: 64 YEARS
TOTAL SENTENCE SUSPENDED: 51 YEARS

Isaiah James Coleman - Petition for Writ of Habeas
Corpus Exhibit 2

VIRGINIA:

IN THE SUPREME COURT

ISAIAH JAMES COLEMAN, #1414818,

Petitioner,

v. Case No. 161402

HAROLD W. CLARKE, DIRECTOR,
VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent.

MOTION TO DISMISS

The respondent, by counsel, moves this Court to deny and dismiss the habeas corpus petition filed in this matter and in support of this motion states:

1. On March 7, 2012, a grand jury sitting in the Circuit Court of the City of Norfolk indicted the petitioner for abduction, conspiracy, robbery, armed statutory burglary, 3 counts of use of a firearm, and wearing a mask. On June 20, 2012 the petitioner was indicted by the grand jury of discharge of a firearm in an occupied building. All offenses occurred on December 23, 2011. Case Nos. CR12000787-00 through -07; CR12001879-16. (Petitioner's Exhibit 1). Following a two-day trial on the offenses, the petitioner was found guilty as charged. On December 6, 2013, the petitioner was sentenced to serve a total of 64 years in prison with 51 years suspended, leaving an active sentence of 13 years to serve. Final judgment was entered January 14, 2014. (Petitioner's Exhibit 2).
2. The Court of Appeals of Virginia was denied the petitioner's petition for appeal on October 15, 2014

(Record No. 2355-13-1), and this Court subsequently refused his petition for appeal on May 28, 2015. (Record No. 141595). The United States Supreme Court denied certiorari October 5, 2015. 136 S.Ct. 225 (2015) (state court appellate orders attached as Respondent's Exhibit A).

3. Counsel filed the present petition for a writ of habeas corpus on the petitioner's behalf on October 3, 2016, in which he raises the following claims:

1) Ineffective assistance of counsel: trial counsel failed to investigate whether the indictments comported with "legal standards" and failed to raise this issue at trial and on appeal; specifically the petitioner complains the indictments were defective because the name of the grand jury witness is illegible and the indictments were not properly recorded in the trial court.

2) Ineffective assistance of counsel: trial counsel failed to properly object to a continuance granted to the Commonwealth which precluded the petitioner from seeking relief for violation of his right to speedy trial;

3) Due to deficiencies in the grand jury indictments set out in claim 1, the petitioner was never properly indicted, the Norfolk Circuit Court lacked jurisdiction, and the circuit court's "sentencing order" should be declared void.

THE PETITION CANNOT BE CONSIDERED IN ITS CURRENT FORM

4. The habeas petition cannot be considered by this Court in its current form because it does not substantially comply with the requirements of Virginia Code § 8.01-655. Code § 8.01-655 addresses

numerous substantive and procedural matters related to the filing of a habeas petition with which all petitioners must comply. *Lahey v. Johnson*, 283 Va. 225, 230-31, 720 S.E.2d 534, 537 (2012); see also Rule 5:7(a)(2). Coleman did not sign and verify his petition. Virginia Code § 8.01-655 requires in order for a habeas petition "to receive consideration by the Court," the petitioner must first being duly sworn before a notary, sign the petition and state the facts in the petition are true to the best of his information and belief. See Code § 8.01-655; *Taylor v. Johnson*, 11 Va. S. Ct. UNP 102408 (2011) (Respondent's Exhibit B).

5. The purpose for this requirement is provided in the statute: "The petitioner shall be responsible for all statements contained in the petition and any false statement contained therein, if the same be knowingly or willfully made, shall be a ground for prosecution and conviction of perjury as provided for in § 18.2-434." The statute requires a petitioner to swear to the truth of the statements contained in the petition and establishes criminal liability for perjury under Code § 18.2-434.

6. Here, Coleman has failed to sign the petition under oath, and to verify its contents as true. The Court should order the petitioner to comply with Virginia Code § 8.01-655 by signing and verifying the petition before a notary and filing the verified copy of the petition within a reasonable period of time specified by the Court, and if he fails to comply, the petition should be dismissed.

THE PETITION IS UNTIMELY

7. The Court cannot consider the merits of the petitioner's allegations because his habeas corpus petition is untimely.

A habeas corpus petition attacking a criminal conviction or sentence ... shall be filed within two years from the date of final judgment in the trial court or within one year from either final disposition of the direct appeal in state court or the time for filing such appeal has expired, whichever is later. Virginia Code § 8.01-654(A)(2) (emphasis added) "contains no exception allowing a petition to be filed after the expiration of these limitations periods." *Hines v. Kuplinski*, 267 Va. 1, 2, 591 S.E.2d 692, 693 (2004). Once the limitation period has expired, the remedy of habeas corpus is extinguished. See *id.*

8. Here, final judgment was entered by the trial court on January 14, 2014, and this Court refused the petition for appeal on May 28, 2015. In accordance with the statute, the current habeas petition was due to be filed by May 28, 2016. The current petition was not filed by counsel on petitioner's behalf until October 3, 2016, well after that date. As a consequence, the petition must be dismissed as untimely. In any event, for the reasons stated below, the petitioner's claims are without merit.

MERITS

Standard of Review: Claims 1 and 2

9. To prevail on a claim of ineffective assistance, a habeas petitioner must satisfy the two-part test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984); *Va. Dep't of Corr. v. Clark*, 227 Va. 525, 318 S.E.2d 399 (1984). See also *Fuentes v. Clarke*, 290 Va. 432, 439, 777 S.E.2d 550, 553 (2015). Under this standard, "[t]he challenger's burden is to show 'that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment.'" *Premo v. Moore*, 562 U.S. 115, 121-22 (2011) (quoting *Harrington v. Richter*, 562 U.S. 86, 104 (2011)).

Counsel's. performance is presumed to be reasonable and must be judged without the "distorting effects of hindsight." Strickland, 466 at 689. "The question is whether an attorney's representation amounted to incompetence under 'prevailing professional norms,' not whether it deviated from best practices or most common custom." There are "countless ways to provide effective assistance of counsel," as "[e]ven the best criminal defense attorneys would not defend a particular client in the same way," and only in "rare ... situations" is counsel "limited to any one technique or approach." Richter, 562 U.S. at 104 (quoting Strickland, 466 U. S. at 690); see DeCastro v. Branker, 642 F.3d 442, 451 (4th Cir. 2011) (pertinent inquiry is not which strategy is best, but whether strategy counsel chose is reasonable). Specifically, the burden is on the petitioner to prove both deficient performance by his counsel and prejudice. See Strickland, 466 U.S. at 687 (emphasis added). "Unless [petitioner] establishes both prongs of the two-part test, his claims of ineffective assistance of counsel will fail." Jerman v. Dir. of the Dep't of Corr., 267 Va. 432, 438, 593 S.E.2d 255, 258 (2004). The Strickland standard is both "rigorous" and "highly demanding." Kimmelman v. Morrison, 477 U.S. 365, 381-82 (1986); see also Strickler v. Murray, 249 Va. 120, 128, 452 S.E.2d 648, 652 (1995) ("Strickland's standard, although by no means insurmountable, is highly demanding.").

10. To satisfy Strickland's performance prong, "the defendant must show that ... counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland, 466 U.S. at 687; Bowles v. Nance, 236 Va.310, 374 S.E.2d 19 (1988). "The proper measure of attorney performance remains simply reasonableness under prevailing professional norms." Strickland, 466 U.S. at 688. "In determining whether an attorney's performance in a given case meets the 'reasonable competence' standard, a court should make every effort 'to

eliminate the distorting effects of hindsight and to evaluate the conduct from counsel's perspective at the time." Clark, 227 Va. at 534, 318 S.E.2d at 403 (quoting Strickland, 466 U.S. at 689). See also Spencer v. Murray, 18 F.3d 229, 233 (4th Cir. 1993) (court reviews trial counsel's conduct with a "deferential eye" and presumes that "the challenged acts are ... the result of sound trial strategy"); Williams v. Dixon, 961 F.2d 448, 451 (4th Cir. 1992) (refusing to "second-guess" trial counsel); Stamper v. Muncie, 944 F.2d 170, 178 (4th Cir. 1991) (Strickland does not permit "Monday morning quarterbacking").

11. To satisfy Strickland's prejudice prong, "the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*; see also Lovitt v. Warden, 266 Va. 216, 250, 585 S.E.2d 801, 821 (2003) (same).

12. An ineffective assistance of counsel claim may be disposed of on either prong because deficient performance and prejudice are "separate and distinct elements." Spencer v. Murray, 18 F.3d at 232-33. See also Smith v. Spisak, 558 U.S. 139, 143 (2010) (applying only the "prejudice" prong of Strickland test); Williams v. Warden, 278 Va. 641, 647-49, 685 S.E.2d 674, 677-78 (2009) (same); Sheikh v. Buckingham Corr. Ctr., 264 Va. 558, 566-67, 570 S.E.2d 785, 790 (2002) (applying only the "performance" prong of Strickland test).

13. Significantly, there is no presumption of ineffectiveness; rather, in evaluating claims of ineffective assistance, there is "a strong presumption" that counsel rendered effective assistance. Strickland, 466 U.S. at 689 (1984). Thus, "the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial

strategy." *Id.* (citation and internal quotation omitted; emphasis added).

Claim 1

14. In claim 1 the petitioner alleges trial counsel failed to investigate whether the indictments comported with "legal standards" and failed to raise this issue at trial and on appeal. The petitioner complains the name of the grand jury witness is illegible and the indictments were not properly recorded in the trial court.

15. The claim fails to establish deficient performance or prejudice under the demanding Strickland test. Code § 19.2-220 states:

The indictment or information shall be a plain, concise and definite written statement, (1) naming the accused, (2) describing the offense charged, (3) identifying the county, city or town in which the accused committed the offense, and (4) reciting that the accused committed the offense on or about a certain date. See *Walker v. Commonwealth*, 12 Va. App. 438, 442, 404 S.E.2d 394 (1991). "The purpose of an indictment 'is to give an accused notice of the nature and character of the accusations against him in order that he can adequately prepare to defend against his accuser.'" *Walshaw v. Commonwealth*, 44 Va. App. 103, 109, 603 S.E.2d 633, 636 (2004) (quoting *King v. Commonwealth*, 40 Va. App. 193, 198, 578 S.E.2d 803, 806 (2003)). Further, where there is a "variance between the allegations [in the indictment] and the evidence offered in proof thereof," the trial court may amend the indictment "at any time before the jury returns a verdict or the court finds the accused guilty or not guilty, provided the amendment does not change the nature or character of the offense charged." Code § 19.2-231 (emphasis added). Code § 19.2-231 "is remedial in nature and is to be liberally construed in order to achieve the laudable purpose of avoiding further unnecessary delay in the criminal justice process by allowing amendment, rather than requiring

reindictment by a grand jury." *Powell v. Commonwealth*, 261 Va. 512, 533, 552 S.E.2d 344, 356 (2001); see *Dunaway v. Commonwealth*, 52 Va. App. 281, 293, 663 S.E.2d 117, 125 (2008).

16. What is plain from these cases is that the petitioner's complaints about the indictments involved technicalities which, if raised in the trial court, could have been corrected by amendment or reindictment. Accordingly, the petitioner's complaints are technicalities that counsel could have reasonably overlooked, particularly given the serious nature of the many charges and the two-day trial that took place. Whether to make an objection is a tactical decision. See *Evans v. Thompson*, 881 F.2d 117, 125 (4th Cir. 1989). Counsel's decision is presumed to be reasonable and should not be second-guessed post-trial. See *Strickland*, 466 U.S. at 689. "Counsel is not ineffective merely because he overlooks one strategy while vigilantly pursuing another." *Williams v. Kelly*, 816 F.2d 939, 950 (4th Cir. 1987). Indeed, "[o]nce counsel reasonably selects a defense, it is not deficient performance to fail to pursue alternative defenses." *Elmore v. Sinclair*, 781 F.3d 1160, 1171 (9th Cir. 2015).

17. Moreover, the petitioner cannot establish prejudice without regard to his claim. Inasmuch as the remedy, at best, would have been reindictment, he cannot show a reasonable likelihood of a different trial outcome. Accordingly Claim 1 fails to demonstrate either prong of *Strickland* and the claim should be dismissed.

Claim2

18. Regarding claim (2), it appears a speedy trial claim was raised on direct appeal. The substantive claim itself cannot be relitigated here. See *Henry v. Warden, Riverside Regional Jail*, 265

Va. 246, 249, 576 S.E.2d 495, 496 (2003). The petitioner complains his lawyer was ineffective for not consulting him before agreeing to a period of

delay. This claim fails to demonstrate deficient performance.

19. The decisions as to which the defendant's wishes are binding on counsel are few. See *Taylor v. Illinois*, 484 U.S. 400, 417- 18 (1988). A defendant has "the ultimate authority" to determine "whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal." *Jones v. Barnes*, 463 U.S. 745, 751 (1983); see *United States v. Chapman*, 593 F.3d 365, 368 (4th Cir. 2010). Concerning those decisions, an attorney must both consult with the defendant and obtain consent to the recommended course of action. In other matters, a defendant, who has chosen to be represented by counsel must "accept the consequences of the lawyer's decisions...." *Taylor*, 484 U.S. at 418. As this Court has recognized, once a defendant determines to be represented by counsel and counsel is appointed to represent him, counsel has control over the presentation of the case, and it is for counsel to decide the best defense strategy. See *Townes v. Commonwealth*, 234 Va. 307, 320, 362 S.E.2d 650, 657 (1987); *Spencer v. Commonwealth*, 238 Va. 295, 303, 384 S.E.2d 785 (1989).

20. "Numerous choices affecting conduct of the trial, including the objections to make, the witnesses to call, and the arguments to advance, depend not only upon what is permissible under the rules of evidence and procedure but also upon tactical considerations of the moment and the larger strategic plan for the trial." *Gonzalez v. United States*, 553 U.S. 242, 249 (2008). Whether to make an objection or agree to a particular continuance motion was a tactical decision. See *Evans*, 881 F.2d at 125. Counsel's decision is presumed to be reasonable and should not be second-guessed post- trial. See *Strickland*, 466 U.S. at 689. Claim (2) fails to demonstrate counsel's performance was deficient under *Strickland*.

21. Further, the petitioner has failed to show a reasonable likelihood of a different outcome. He has not shown that had counsel objected rather than

agreed to the continuance, the continuance would not have been granted. This failure to affirmatively demonstrate prejudice is fatal to his claim. See *Hedrick v. Warden*, 264 Va. 486, 521, 570 S.E.2d 847, 862 (2002) (finding habeas petitioner had not established deficient performance or prejudice because he failed to provide any evidence to support claim).

22. Accordingly, the petitioner fails to show deficient performance or prejudice under *Strickland* and claim 2 should be dismissed.

Claim 3

23. The petitioner's claim 3 is related to claim 2 and predicated on his belief that the circuit court did not have jurisdiction to enter judgment against him based upon alleged defects in the indictments. Thus, the petitioner argues his conviction and sentence are void. The petitioner's reliance on *Simmons v. Commonwealth*, 89Va. 156, 15 S.E. 386 (1892) and *Commonwealth v. Cawood*, 2 Va. Cas. (4 Va.) 527 (1826) is misplaced. These cases were direct appeals and this Court has expressly held they have no application to a collateral attack to a judgment. *Hanson v. Smyth*, 183 Va. 384, 387-89, 32 S.E.2d 142, 143-44 (1944).

24. In *Hanson*, the defendant challenged his conviction in a habeas corpus proceeding, and alleged that the record did not show that the indictment against him was returned in open court after the grand jury met. This Court found that because an indictment may be waived, it is not jurisdictional. 1st at 390-91, 32 S.E.2d at 144. The Court noted that the current version of Code § 19.2-217 was amended in 1940 to allow a defendant to waive indictment and presentment. *Id.* at 390, 32 S.E.2d at 144. The Court interpreted this amendment as the "clear expression of the legislative policy that the requirement of an indictment in the prosecution for a felony may be waived, and hence is not jurisdictional." *Id.* As a result, the Court held that

"the failure of the record to show affirmatively that the indictment was returned into court by the grand jury is not such a defect as will render null and void the judgment of conviction based thereon." *Id.* at 390-91, 32 S.E.2d at 144.

25. "[T]here is no constitutional requirement that prosecutions for felony be by indictment. The requirement is merely statutory [and] may be waived." *Livingston v. Commonwealth*, 184 Va. 830, 836, 36 S.E.2d 561, 564 (1946) (citation omitted). Code§ 17.1-513 provides that "[t]he circuit courts shall . . . have original jurisdiction of all indictments for felonies." Therefore, the requirement that a felony prosecution be initiated pursuant to an indictment is statutory, not constitutional. Accordingly, petitioner's reliance on *Cawood* and *Simmons* is inapposite for this reason as well.

26. This Court has found that a mere procedural error does not nullify an otherwise valid indictment. See *Reed v. Commonwealth*, 281 Va. 471, 478-80, 706 S.E.2d 854, 858-59 (2011) (finding indictments valid, despite the lack of a signature by a grand jury foreman because the order showed that the indictments were returned in open court as true bills).

27. In *Howard v. Commonwealth*, 63 Va. App. 580, 582-83, 760 S.E.2d 828, 829 (2014), the defendant claimed that the trial court lacked jurisdiction over him because the indictments were not read aloud when they were returned in court, although they were signed by the foreman of the grand jury and an order memorializing those events was subsequently entered by the judge. The Court of Appeals held that when indictments are returned in court, "[r]eading the indictments aloud verbatim is not required for [an] indictment to be valid," what "is important is that the indictment be 'presented' in court." The timing of presentment is not important. *Id.* at 585, 706 S.E.2d at 830. See *Epps v.*

Commonwealth, 66 Va. App. 393, 401, 785 S.E.2d 792, 798 (2016).

28. In the present case, the petitioner was properly indicted because the indictments themselves reflect when the grand jury met and returned a true bill in open court.

29. For these reasons, the petitioner's contentions regarding the signature of the grand jury witness and the recordation of the indictments are, at best, procedural. As the claims fail to raise a substantive violation, they do not invalidate the indictments nor deprive the trial court of its jurisdiction over the petitioner. Epps, 66 Va. App. at 399-401, 785 S.E.2d at 797; see Hanson, 183 Va. at 387-89, 32 S.E.2d at 143-44.

30. Moreover, as previously discussed, in Virginia there is no constitutional requirement that a defendant charged with a felony proceed by indictment. The requirement is only statutory and may be waived. If a defendant may legally waive an indictment and be tried for a felony without any indictment at all, it seems clear that his constitutional rights are not violated by requiring that if he questions the validity of an indictment that is made he shall do so before he goes to trial on a plea of not guilty and is convicted. See *Bailey v. Commonwealth*, 193 Va. 814, 822, 71 S.E.2d 368, 372 (1952); see also *Council v. Smyth*, 201 Va. 135, 139, 109 S.E.2d 116, 119 (1959) ("Since a person charged with a felony may waive indictment by a grand jury and elect to be tried on a warrant or information, the requirement of an indictment is not jurisdictional.").

31. Consequently, "[i]f the court had jurisdiction of the person and the crime charged, and if the punishment imposed is of the character prescribed by law," a prisoner cannot obtain release "from custody for mere irregularities or insufficiency of an indictment no matter how vulnerable to direct attack on motion to quash." *Id.* at 139, 109 S.E.2d at 119.¹

In short, the petitioner cannot collaterally attack his convictions.

32. Finally, the return of the indictments invoked the trial court's subject matter jurisdiction, see *Dennis Moore v. _____*

¹The petitioner also misstates the holding in *Cunningham v. Smith*, 205 Va. 205, 135 S.E.2d 770 (1964). *Cunningham* did not concern the return of an indictment. In *Cunningham* the petitioner claimed his conviction was void because the convictions orders did not show the concurrence of the Commonwealth's Attorney in waiving a trial by jury as required by the Constitution of Virginia. *Id.* at 206, 135 S.E.2d 771. *Cunningham* concluded that compliance with the mandatory provision of the Constitution of Virginia was essential to the trial court's jurisdiction to try the defendant without a jury and that, without compliance, the trial court did not have jurisdiction to try the defendant. *Id.* at 208, 135 S.E.2d at 773. *Commonwealth*, 259 Va. 405, 409, 527 S.E.2d 415, 417 (2000) (Code § 19.2-239 grants circuit court exclusive original jurisdiction for trial of all indictments for offenses committed within their respective circuits and offenses at issue were within statutory grant of authority), and nothing that occurred during the trial proceedings negated the authority of the trial court to render judgment. This Court has also noted that there is a difference between a court not having subject matter jurisdiction and the mistaken exercise of subject matter jurisdiction by a court. While a judgment rendered without subject matter jurisdiction is null and void, a circuit court is a court of general jurisdiction and even if the circuit court erred in taking jurisdiction in a particular case- i.e., exercising its subject matter jurisdiction- its judgment "is not void, but only voidable and cannot be questioned in any collateral proceeding." *Boiling v. D'Amato*, 259 Va. 299, 303, 526 S.E.2d 257, 259 (2000) (citing *Andrews v. Avory*, 55 Va. (14 Gratt.) 229, 236 (1858)).

33. For all these reasons, the petitioner's alleged irregularities provide no basis for relief in this collateral proceeding.

34. The respondent denies each and every allegation of the motion not specifically admitted herein.

35. The petitioner's allegations can be disposed of on the basis of recorded matters, and no plenary hearing is necessary. Cf. *Friedline v. Commonwealth*, 265 Va. 273, 576 S.E.2d 491 (2003); *Yeatts v. Murray*, 249 Va. 285, 455 S.E.2d 18 (1995); *Arey v. Peyton*, 209 Va. 370, 164 S.E.2d 691 (1968).

WHEREFORE, Respondent moves this Court to deny and dismiss the petition as not in proper form, untimely and because the claims are without merit.

Respectfully submitted,

HAROLD W. CLARKE, DIRECTOR DEPARTMENT
OF CORRECTIONS

Leah A. Darron

Senior Assistant Attorney General

Virginia State Bar No. 23823

Office of the Attorney General

202 North Ninth Street

Richmond VA 23219

(804) 786-2071 (telephone) (804) 371-0151 (facsimile)
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CERTIFICATE OF SERVICE

On November 9, 2016, a copy of this Motion to Dismiss was mailed to counsel for petitioner, Dale Jensen, Esquire, 606 Bull Run, Staunton, VA 24401. A copy was also forwarded to counsel via email to djensen@dalejensenlaw.com.

Leah A. Darron

Senior Assistant Attorney General

VIRGINIA:

In the Court of Appeals of Virginia on Wednesday
the 15th day of October, 2014.

/S (Stamp)

Isaiah James Coleman, Appellant, against Record
No. 2355-13-1

Circuit Court Nos. CR12000787-00 through
CR12000787-07 and

CR12001879-16

Commonwealth of Virginia, Appellee

From the Circuit Court of the City of Norfolk

Per Curiam

This petition for appeal has been reviewed by a judge
of this Court, to whom it was referred pursuant to
Code § 17.1-407(C), and is denied for the following
reasons:

I. Appellant contends the trial court erred in denying
his motion to suppress the evidence. Where the
defendant challenges the seizure of evidence by the
police pursuant to a search warrant, he bears the
burden of proving the search was unlawful. See
Lebedun v. Commonwealth, 27 Va. App. 697, 711,
501 S.E.2d 427, 434 (1998).

On December 23, 2011, a magistrate issued a search
warrant for appellant's home at 1613 Conoga Street
in Norfolk. In the affidavit supporting the search
warrant, Detective S. P. Freeman stated: On
12/23/11, RANI Gonzales-Cole ... contacted detectives
and advised that the subject Isaiah James Coleman
who resides at 1613 Conoga Street was bragging

about doing a bank robbery at the Heritage Bank while Cole was at the residence visiting her mother. Rani Cole stated Isaiah Coleman told her he robbed the bank and the bag went off and all he had left was two one-hundred dollar bills he needed to get rid of because it had serial numbers on them and it was bait money. Cole then heard Coleman on the phone stating "I got rid of everything except the two one-hundred dollar bills and I already painted the car green.["] Gonzalez-Cole confirmed she has known Isaiah Coleman for over a year and he resides at the listed residence. Freeman showed Gonzalez-Cole a picture of Coleman and she positively identified him as the person who bragged about doing the bank robbery.

(Image: Respondent's Exhibit A)

At the suppression hearing, Freeman testified that she submitted the search warrant affidavit after she met with Gonzalez-Cole at Gonzalez-Cole's place of employment on December 23, 2011. Freeman was accompanied by her partner, Detective Fedorko. Freeman said Gonzalez-Cole stated she had been in the home when the bank robbery was discussed. Gonzalez-Cole was at her mother's house when she heard appellant talking about a bank robbery. Appellant said he had had a car painted so it would not be recognized. Appellant had showed Gonzalez-Cole some money from the robbery that had been damaged when a dye pack exploded. Freeman said that at their meeting she showed Gonzalez-Cole a single photograph of appellant to confirm his identity.

Gonzalez-Cole testified at the hearing that she telephoned Sergeant Frank Curott after she overheard appellant saying things about a bank robbery. Curott told Gonzalez-Cole he was sending

two detectives, Freeman and Fedorko, to her workplace to find out what she knew about the robbery. Gonzalez-Cole then told Freeman that she had overheard appellant having a telephone conversation about the bank robbery. Gonzalez-Cole denied telling Freeman that appellant talked to her directly about the robbery. Gonzalez-Cole testified that after overhearing appellant on the telephone, she asked him for gas money, but he said he did not have any. She overheard appellant talking about having only \$200 left from the robbery. Gonzalez-Cole said she heard about the bag exploding from someone at the house other than appellant. Gonzalez-Cole denied that Freeman showed her a photograph of appellant when they met on December 23, 2011.

Curott testified Gonzalez-Cole reported that she had overheard appellant talking on the telephone about the bank robbery and that he needed to dispose of a few hundred dollars from the robbery.

On appeal, appellant contends that the search warrant was obtained in violation of *Franks v. Delaware*, 438 U.S. 154 (1978). "To obtain suppression of the fruits of a search under *Franks*, a defendant must establish that the affidavit supporting the search warrant contained a deliberate falsehood or omission that was made with reckless disregard for the truth, that the falsehood or omission was made by a police officer, and that the falsehood or omission negated the basis upon which the probable cause determination was made." *Gregory v. Commonwealth*, 46 Va. App. 683, 694, 621 S.E.2d 162, 167-68 (2005). "Upon such a showing, the defendant is entitled to a hearing to determine whether probable cause was based on 'intentionally incorrect information.'" *Id.* at 694, 621 S.E.2d at 168 (quoting *United States v. Akinkoye*, 185 F.3d 192, 199 (4th Cir. 1999)).

The trial court found that Gonzalez-Cole's testimony that she told Freeman she overheard appellant talking on the phone about the robbery, rather than hearing about it from him directly, was "a distinction without a difference." The trial court credited Freeman's testimony that she had shown Gonzalez-Cole a photograph of appellant at their meeting on December 23, 2011. The trial court further concluded that Gonzalez-Cole's manner of speaking could have caused Freeman to conclude that she was saying appellant had talked to her directly about the robbery. Accordingly, the trial court found no evidence that Freeman intentionally misled the magistrate or demonstrated a reckless disregard for the truth.

We find no basis to conclude the trial court erred in concluding the search warrant was not based upon an affidavit containing deliberate falsehoods or omissions on the part of the police. Therefore, the trial court did not err in denying the motion to suppress.

II. The indictments in this matter were returned against appellant on March 7, 2012. He was held in custody continuously thereafter until his trial, which commenced on June 19, 2013. On appeal, appellant contends that the trial court erred in denying his motion to dismiss because he was denied his statutory right to a speedy trial.

Pursuant to Code§ 19.2-243,

Where a district court has found that there is probable cause to believe that an adult has committed a felony, the accused, if he is held continuously in custody thereafter, shall be forever discharged from prosecution for such offense if no trial is commenced in the circuit court within five

months from the date such probable cause was found by the district court

If there was no preliminary hearing in the district court, or if such preliminary hearing was waived by the accused, the commencement of the running of the five ...month[] period[], ... set forth in this section, shall be from the date an indictment or presentment is found against the accused.

In *Robinson v. Commonwealth*, 28 Va. App. 148, 152, 502 S.E.2d 704, 706 (1998) (quoting *Ballance v. Commonwealth*, 21 Va. App. 1, 6, 461 S.E.2d 401, 403 (1995)), we held, "Under Code§ 19.2-243, the Commonwealth must commence trial within five months, which 'translates to 152 and a fraction days.'" However, the provisions of Code§ 19.2-243 specifically do not apply to any time when appellant was not tried due to a "continuance granted on the motion of the accused or his counsel." Code§ 19.2-243(4).

In the trial court, the Commonwealth conceded that the periods of delay from March 7, 2012 to March_21, 2012 (fourteen days). The record supports these concessions, as the periods of delay were either before an initial trial date was set or were granted over appellant's objection. The dispositive question, therefore, is whether the delay from March 21, 2012 to June 6, 2012 (seventy-seven days) was chargeable to the Commonwealth, thus exceeding the permissible period of delay under Code§ 19.2-243 by three days.

An order signed on April4, 2012 states that the matter was continued, upon the motion of both parties, from March 21, 2012 to June 6, 2012. The

order was signed by defense counsel as "seen and agreed" to permit both parties to prepare for trial.

In *Commonwealth v. Hutchins*, 260 Va. 293, 297-98, 533 S.E.2d 622, 625 (2000), the Supreme Court of Virginia found that where, during the five-month period of limitation contained in Code§ 19.2-243, defense counsel acquiesces and agrees to a continuance and the setting of a trial date, the period of delay "constituted a continuance of the trial date within the intendment of Code§ 19.2-243(4)." Thus, the delay was excluded from the statutorily-prescribed period under Code§ 19.2-243.

Likewise, the record reflects that appellant agreed to the delay of the proceedings that occurred from March 21, 2012 to June 6, 2012, and that period was not chargeable against the Commonwealth, as the trial court found. Therefore, appellant suffered no violation of his statutory right to a speedy trial, and the trial court did not err in denying the motion to dismiss.

This order is final for purposes of appeal unless, within fourteen days from the date of this order, there are further proceedings pursuant to Code§ 17.1-407(D) and Rule 5A:15(a) or 5A:15A(a), as appropriate. If appellant files a demand for consideration by a three-judge panel, pursuant to those rules the demand shall include a statement identifying how this order is in error.

The trial court shall allow court-appointed counsel the fee set forth below and also counsel's necessary direct out-of-pocket expenses. The Commonwealth shall recover of the appellant the costs in this, Court and in the trial court.

This Court's records reflect that Eric P. Korslund, Esquire, is counsel of record for appellant in this matter.

Costs due the Commonwealth by appellant in Court of Appeals of Virginia:

Attorney's fee \$400.00 plus costs and expenses

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:

/S

Deputy Clerk

/S

Mary Jane Hall, Judge

VIRGINIA:

In the Supreme Court of Virginia Held at the
Supreme Court Building in the City of Richmond on
Thursday the 28th day of May, 2015.

Isiah James Coleman, Appellant, against Record
No. 141595

Court of Appeals No. 2355-13-1

Commonwealth of Virginia, Appellee.

From the Court of Appeals of Virginia

Upon review of the record in this case and
consideration of the argument submitted in support
of the granting of an appeal, the Court refuses the
petition for appeal.

The Circuit Court of the City of Norfolk shall allow
Court-appointed counsel the fee set forth below and
also counsel's necessary direct out-of-pocket
expenses. And it is ordered that the
Commonwealth recover of the appellant the costs in
this Court and in the courts below.

Costs due the Commonwealth by appellant in
Supreme Court of Virginia:

Attorney's fee \$500.00 plus costs and expenses

A Copy,

Teste:

Patricia L. Harrington

By:

/S

Deputy Clerk

/S

Mary Jane Hall, Judge

Taylor v. Johnson, 11 Va. S. Ct. UNP102408 (2011)

UNPUBLISHED VIRGINIA

In the Supreme Court of Virginia held at the
Supreme Court Building in the City of Richmond on
Friday the 4th day of November, 2011.

Arthur Dodson Taylor, Jr., Appellant, against
Gene M. Johnson, Director of the Virginia
Department of Corrections, et al., Appellees.

Record No. 102408

Circuit Court No. CL08000336-00

Upon an appeal from a judgment rendered by the
Circuit Court of Pittsylvania County.

Upon consideration of the record, briefs, and
argument of counsel, the Court is of the opinion that
there is reversible error in the judgment of the
circuit court.

Arthur Dodson Taylor, Jr. pled guilty to and was
convicted of aggravated malicious bodily injury
under Code § 18.2-51.2 and abduction under Code §
18.2-47. On July 26, 2006, he was sentenced to 40
years' incarceration with 25 years suspended for his
aggravated malicious wounding conviction and five
years in prison with five years suspended for his
abduction conviction. Taylor did not appeal these
convictions but filed motions for a new trial and for a
modification of his sentence, arguing he had
discovered evidence after his trial regarding his

mental health and his competency to enter guilty pleas. The circuit court denied both motions.

On July 24, 2008, Taylor filed a petition for a writ of habeas corpus, alleging seven claims of ineffective assistance of counsel. Taylor's counsel signed the petition, but Taylor never signed the petition.

On October 1, 2003, the Commonwealth filed a motion to dismiss Taylor's petition, arguing it was time-barred under Code§ 8.01-654(A)(2). The Commonwealth asserted the petition was deficient because it was not signed and verified by Taylor as required under Code§ 8.01-655 and, therefore, was not properly filed. The Commonwealth argued that because no petition was filed within the statutory time limit, any amended or corrected petition would also be time-barred. Taylor responded inter alia that the petition was properly filed by counsel and that the filing of the petition tolled the statute of limitations.

On July 7, 2010, Taylor filed a motion to nonsuit his petition for a writ of habeas corpus. Over the Commonwealth's objection, the circuit court granted the motion for a nonsuit. The Commonwealth subsequently filed a motion to vacate the nonsuit order, arguing that the petition was a nullity because it did not comply with Code § 8.01-655. The Commonwealth reasoned that because the petition was a nullity, the proceeding was not valid and an invalid proceeding cannot be nonsuited. Taylor opposed the motion, arguing that he requested a nonsuit before the case was submitted for a decision on the merits, that the underlying issue of whether the petition could be signed by counsel remained in dispute, and that the Commonwealth failed to properly plead a statute of limitations defense. After

a hearing, the circuit court granted the Commonwealth's motion to vacate the previously entered nonsuit order. Taylor objected on the grounds that he was entitled to a nonsuit pursuant to Code § 8.01-380(A).

Taylor then filed a motion for leave to amend the petition to allow addition of his signature under oath on August 23, 2010. In its final order entered on September 17, 2010, the circuit court denied the motion. The court held that "[t]he failure to initially include the petitioner's signature and verification rendered the current petition deficient when presented to the Court on July 24.

2008. It was not properly filed on that date and cannot 'receive-consideration by the Court.'" Finding that no petition was properly filed within the statutory time limit, the court denied Taylor's motion to amend and dismissed the petition.

The narrow question now before this Court is whether the circuit court erred in concluding that Taylor's petition was a nullity such that no further action could allow it to be considered by the court. The circuit court and Commonwealth mistakenly rely upon our order in *Hayes v. Warden*, Record No. 080401 (July 25, 2008), to support the argument that a petition filed without petitioner's signature made under oath is an invalid legal pleading with no effect and is, therefore, ineligible for a nonsuit or amendment.

In *Hayes*, the petitioner's counsel filed a timely petition for a writ of habeas corpus in this Court that included an unexecuted verification form. Hayes later submitted an endorsed verification form to this Court. The endorsement was not accompanied by a motion to amend his petition. The Commonwealth

responded to Hayes' unsigned petition by filing a motion to dismiss. This Court found that Hayes' petition was not timely filed and dismissed the petition. The Court's order in Hayes did not, however, include a finding that the petition was without legal effect at the time it was filed. Moreover, unlike Taylor, Hayes never filed a motion to take a nonsuit or a motion to amend.

The circuit court erroneously held that Taylor's petition was invalid. On several occasions, we have addressed the circumstances under which a signed pleading is a nullity. We have held "that a pleading, signed only by a person acting in a representative capacity who is not licensed to practice law in Virginia, is a nullity." *Shipe v. Hunter*, 280 Va. 480, 483, 699 S.E.2d 519, 520 (2010) (attorney signing a pleading must be licensed to practice law in this Commonwealth). See also *Landrum v. Chippenham and Johnston-Willis Hospital, Inc.*, 282 Va. 346, 717 S.E.2d 134 (2011) (this day decided) (holding that a supplemental designation of expert witnesses had no legal effect because it was not signed by local counsel); *Aguilera v. Christian*, 280 Va. 486, 489, 699 S.E.2d 517, 519 (2010) (holding that a pleading signed by a representative of a prose litigant is a nullity unless explicitly permitted by statute); *Nerri v. Adu-Gyamji, et al.*, 270 Va. 28, 30-31, 613 S.E.2d 429, 430 (2005) (holding that a pleading signed by an attorney whose license to practice law in the Commonwealth has been administratively suspended is invalid and without legal effect); *Wellmore Coal Corp. v. Harman Mining Corp.*, 264 Va. 279, 283-84, 568 S.E.2d 671, 673 (2002) (notice of appeal signed by an attorney not licensed to practice law in Virginia is invalid and has no legal effect). We have not held, and do not do so today, that a pleading signed on behalf of a client by an attorney licensed to practice in the Commonwealth is a nullity. While a pleading signed by a licensed Virginia attorney may require supplementation and/or amendment before it

can be considered by the Court, it is a valid legal pleading and is not a nullity.² Therefore, because an attorney Licensed to practice law in Virginia signed Taylor's pleading, it was validly filed.

Here, in response to the Commonwealth's motion to dismiss, Taylor initially sought a nonsuit.³ Code § 8.01-380 allows a party to take one nonsuit as a matter of right provided that he does so before the circuit court sustains a motion to strike the evidence or the case has been submitted to the fact finder for a decision. See *Nash v. Jewell*, 227 Va. 230, 237, 315 S.E.2d 825, 829 (1984); *Marrin v. Duncan*, 277 Va. 204, 207, 671 S.E.2d 151, 153 (2009). We have further held that a habeas corpus

petitioner may exercise the statutory right to a nonsuit. See *Daniels v. Warden*, 266 Va. 399, 403, 588 S.E.2d 382, 384 (2003) (habeas statute does not oust operation of a nonsuit statute). Although a nonsuit may not be taken where there is not a valid pending action, because Taylor's pleading was validly filed and he had not previously requested a nonsuit, the circuit court erred in denying his request. *Johnston Memorial Hospital v. Bazemore*, 277 Va. 308, 313-14, 672 S.E.2d 858, 861 (2009); *Nerri*, 270 Va. at 31, 613 S.E.2d at 430.

Accordingly, the judgment of the circuit court is reversed and the case is remanded for further proceedings.

This order shall be certified to the said circuit court.

Justice McClanahan, concurring in part and dissenting in part.

I agree with the majority to the extent it reverses the circuit court's dismissal of Taylor's petition for a writ of habeas corpus. I disagree, however, with (a) the majority's rationale for reversing the circuit court, and (b) its remedy awarded to Taylor.⁴

The threshold issue in this case is whether Taylor's petition was in "substantial compliance" with Code § 8.01-655, as required under the express terms of the statute. In holding the circuit court erred in denying Taylor's motion for a non-suit, the majority decides that Taylor's petition was "valid" under Code § 8.01-655. The majority thus implicitly concludes that Taylor's petition did substantially comply with the statute.⁵ The majority reaches this conclusion though Taylor neither signed the petition nor verified under oath the statements contained in it. Because of those omissions, I do not believe we can hold that Taylor's petition was in "substantial compliance" with Code § 8.01-655.

Code § 8.01-655(A) provides that "[e]very petition filed by a prisoner seeking a writ of habeas corpus must be filed on the form set forth in subsection B." (Emphasis added.) The prisoner's "failure to use such form and to comply substantially with such form shall entitle the court to which such petition is directed to return such petition to the prisoner pending the use of and substantial compliance with such form." Code § 8.01-655(A). This subsection further provides that "[t]he petitioner shall be responsible for all statements contained in the petition and any false statement contained therein, if the same be knowingly or willfully made, shall be a ground for prosecution and conviction of perjury as provided for in § 18.2-434." *Id.*

The statutorily prescribed form upon which the petition must be filed (or a form "substantially" the

same) is then set forth verbatim in subsection 8 of the statute. Code § 8.01-655(B). Compliance with these instructions to the petitioner is a prerequisite that must be met before the circuit court even "consider[s]" the petition:

In order this petition to receive consideration by the [c]ourt, it must be legibly handwritten or typewritten, signed by the petitioner and verified before a notary or other officer authorized to administer oaths....

Since every petition for habeas corpus must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury under § 18.2-434. Petitioners should, therefore, exercise care to assure that all answers are true and correct.

Id. (emphasis added).

That the prisoner must sign his petition and verify his statements under oath, and that he faces prosecution and conviction for perjury for making false statements of a material fact in the petition, are key components of Code § 8.01-655. They are a means of accomplishing one of the statute's primary objectives -- discouraging the filing of frivolous habeas petitions. See Habeas Corpus Proceedings, Report of the Virginia Advisory Legislative Council to the Governor and the General Assembly of Virginia, S. Doc. No.3 (1968).

In the absence of Taylor's petition meeting the basic requirements of personal execution and verification under oath, which are explicitly set forth in the statute as conditions to be met in order "to receive

consideration by the [c]ourt," Code§ 8.01-655(B), I would hold that Taylor's petition was not in substantial compliance with Code § 801-655.

I would also remand this case to the circuit court with instructions for the circuit court to determine, in its discretion, whether to return the petition to Taylor for the purpose of bringing the petition into substantial compliance. In its final order, the circuit court found that Taylor's petition was "deficient" under Code § 8.01-655; that, therefore, no petition "was properly filed within the statutory time limit"; and so "the petition must be denied and dismissed "6 (Emphasis added.) The express terms of the statute, however, provide the circuit court with another remedy -"to return such petition to the prisoner pending the use of and substantial compliance with [the statutorily prescribed] form." Code § 801-655(A) ("The failure to use [the statutorily prescribed] form and to comply substantially with such form shall entitle the court to which such petition is directed to return such petition to the prisoner pending the use of and substantial compliance with such form."). Consequently, though I agree with the circuit court that the petition was "deficient" because it did not comply with the requirements of Code § 8.01 -655, I disagree that the petition "must be denied and dismissed." The circuit court did not recognize or consider the statutory authority it had, in its discretion, to return the petition to Taylor for the purpose of bringing the petition into substantial compliance.

Furthermore, as to the statute of limitations, I would hold that, upon the return of a petition to the petitioner for an opportunity to bring it into compliance (being whatever reasonable time period the circuit court determines in its discretion), the statute of limitations for filing the petition under Code§ 8.01-654(A)(2) would be tolled. That is,

consistent with the express language of Code § 8.01-655(A), the statute of limitations would be tolled while the opportunity for the petitioner to obtain substantial compliance is "pending."

This construction of Code § 8.01-655 is, in my opinion, reflective of the legislative intent embodied in the statute. See *Copeland v. Todd*, 282 Va. 183, 193, 715 S.E.2d 11, (2011) ("Principal among (the) rules [of statutory construction governing our review] is that we determine, and adhere to, the intent of the legislature reflected in or by the statute being construed." (quoting *Virginia Soc'y for Human Life v. Caldwell*, 256 Va. 151, 156, 500 S.E.2d 814, 816 (1998)); *Bell v. Casper*,

282 Va. 203, 210, 717 S.E.2d 783, (2011) ("[O]ur primary objective is 'to ascertain and give effect to legislative intent,' as expressed by the language used in the statute." (quoting *Commonwealth v. Amerson*, 281 Va. 414, 418, 706 S.E.2d 879, 882 (2011))); *Bank of Commonwealth v. Hudspeth*, 282 Va. 216, 221, 714 S.E.2d 566, _ (2011) ("[T]he plain, obvious, and rational meaning of a statute is to be preferred over any curious, narrow, or strained construction" (quoting *Meeks v. Commonwealth*, 274 Va. 798, 802, 651 S.E.2d 637, 639 (2007))).

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FOOTNOTES

¹ There are certain exceptions that allow non-attorneys to file pleadings on behalf of another, but

those exceptions are not applicable here. See Code §§ 16.1-260, 26-106, and 63.2-1901.

2 By its terms, the habeas statute does not require that a petition signed only by the attorney but not the petitioner be considered a nullity. Code § 8.01-654. Tellingly, the statute allows the court to return a petition that does not substantially comply with the requirements of the statute. Clearly, the intent is that the petition can be brought into compliance and thereafter considered by the court. Also, the statute provides that an unsigned petition must be signed before it will be considered by the court. Again, the statute obviously contemplates that once the petition is signed the court may consider it. Both of these provisions plainly indicate that the petition is not a nullity, because a petition that is a nullity cannot be made valid by any means.

3 When the circuit court denied his request for a nonsuit, Taylor asked for leave to amend his petition, which was also denied.

4 The facts in this case are not in dispute. The errors assigned to the circuit court's judgment on appeal present only issues of law regarding the appropriate disposition of Taylor's petition at the initial filing stage under Code § 8.01-655, which are issues we review de novo. See *Parfitt v. Parfitt*, 277 Va. 333, 342, 672 S.E.2d 827, 830 (2009) (explaining that, "if the trial court failed to identify the correct legal standard in [applying the controlling statute in dispute], then it is an issue of law that, like other issues of law, must be reviewed de novo."); see also *Hall v. Commonwealth*, 280 Va. 566, 570, 701 S.E.2d 68, 70 (2010); *Abi-Najm v. Concord Condominium, LLC*, 280 Va. 350, 357, 699 S.E.2d 483, 487 (2010).

5 In deciding to reverse the circuit court's judgment, the majority focuses its analysis on the question of "whether the circuit court erred in concluding that Taylor's petition was a nullity such that no further action could allow it to be considered by the court." The circuit court, in fact, did not conclude that the petition was a "nullity," but rather concluded that the petition was "deficient" under Code § 8.01-655. This conclusion is, in my opinion, tantamount to a holding that the petition was not in substantial compliance with the statute. But regardless of one's view of the circuit court's ruling, this appeal is subject to de novo review. See note 4, *supra*. Therefore, we must decide the threshold issue of statutory construction here presented: whether Taylor's petition was in substantial compliance with Code§ 8.01-655. I depart with the majority in my determination that the petition did not so comply.

6 As likewise explained in the "Written Statement of Facts, Testimony and other Incidents of the Case,":
"The [c]ourt entered a final [o]rder in the case on September 17, 2010. The [c]ourt denied the motion for leave to amend the petition by the petitioner and granted the respondent's motion to dismiss based on the grounds that the petition had not been signed under oath by the petitioner and because the [c]ourt felt that the action was now time barred due to the fact that a petition under oath had not been filed within the statutory Limits of two years."

VIRGINIA:

**In the Supreme Court of Virginia held at the
Supreme Court Building in the City of
Richmond on Wednesday the 16th day of
August, 2017.**

Isaiah James Coleman, No. 1414818, Petitioner,
against Record No. 161402

Harold W. Clarke, Director of the
Virginia Department of Corrections, Respondent.

Upon a Petition for a Writ of Habeas Corpus
Upon consideration of the petition for a writ of
habeas corpus filed October 3, 2016, the amended
petition for a writ of habeas corpus filed October 18,
2016, the rule to show cause, the respondent's motion
to dismiss, and petitioner's opposition to the motion
to dismiss, the Court is of the opinion that the
motion should be granted and the writ should not
issue.

In January 2014, petitioner was convicted in
the Circuit Court of the City of Norfolk of abduction,
conspiracy, robbery, armed burglary, wearing a mask
in public, maliciously discharging a firearm within
an occupied building, and three counts of using a
firearm in the commission of a felony and was
sentenced to sixty-six years' imprisonment with fifty-
three years suspended. Petitioner's appeals to the
Court of Appeals of Virginia and to this Court
culminated unsuccessfully in May 2015. Petitioner
now challenges the legality of his confinement
pursuant to these convictions.

As an initial matter, the respondent contends
the petition "cannot be considered in its current
form" because petitioner has not signed and verified
his amended petition for a writ of habeas corpus and,
thus, the petition does not "substantially comply"
with Code § 8.01-655.

The Court rejects the respondent's contention. Assuming without deciding a habeas petitioner must verify his allegations in compliance with Code § 8.01-655(A)-(B) before this Court can consider them, the Court concludes petitioner has adequately done so. Petitioner verified the allegations in his initial habeas petition but omitted that verification from his amended habeas petition. However, the amended petition is substantively identical to the initial petition in that it raises no new claims, factual allegations, or argument. Accordingly, the Court may properly consider petitioner's claims.

In a portion of claim (A), petitioner contends he was denied the effective assistance of counsel because counsel failed to conduct any investigation to discern whether petitioner's indictments were procedurally proper. As a result, petitioner alleges, counsel neglected to discover jurisdictional defects in petitioner's indictments that petitioner could have pressed at trial or on appeal.

In another portion of claim (A), petitioner contends he was denied the effective assistance of counsel because counsel consented to the Commonwealth's request for a continuance and, thereby, unilaterally waived petitioner's statutory speedy trial right.

The Court holds both portions of claim (A) are untimely under Code § 8.01-654(A)(2), which required petitioner to file his habeas petition "within two years from the date of final judgment in the trial court or within one year from . . . final disposition of the direct appeal in state court . . . , whichever [was] later." The record, including this Court's order refusing petitioner's appeal, demonstrates petitioner's direct appeal in "state court" culminated on May 28, 2015, thus rendering his habeas petition several months late. The Court rejects petitioner's contention that his petition was timely because he filed it within one year of the United States Supreme Court denying his petition for a writ of certiorari on October 5, 2015. Had the General Assembly intended

for the outcome of a petitioner's proceedings in the United States Supreme Court to have any effect on the running of the limitations period under Code § 8.01-654(A)(2), it would have made its wishes more explicit. See Code § 8.01-654.1 (explicitly tying the time-limit applicable to death sentenced prisoners' habeas petitions to the resolution of their proceedings in the United States Supreme Court).

In a portion of claim (B), petitioner contends the trial court lacked jurisdiction to convict him due to deficiencies in his indictments. With respect to all of his indictments save for the one charging him with maliciously discharging a firearm within an occupied building, petitioner alleges trial court records confirm the grand jury was comprised of too many individuals, 14, in violation of Code § 19.2-195. Petitioner complains also that those indictments do not sufficiently identify the supporting witnesses nor do any records reflect that the clerk properly polled the grand jurors.

With respect to his indictment for maliciously discharging a firearm within an occupied building, petitioner alleges no records confirm the indictment's return was recorded in the court's order book or that the grand jury was properly polled. Petitioner claims that, not only do the apparent errors in his indictments violate Virginia law, they also violate his right under the Fifth Amendment to the Constitution of the United States to be tried by indictment, which petitioner argues has been incorporated against the states by virtue of the Fourteenth Amendment.

The Court holds this portion of claim (B) is barred because it is untimely under Code § 8.01-654(A)(2) and because these issues could have been raised at trial and on direct appeal and, thus, are not cognizable in a petition for a writ of habeas corpus. *Slayton v. Pairigan*, 215 Va. 27, 29, 205 S.E.2d 680, 682 (1974), cert. denied 419 U.S. 1108 (1975). Additionally, petitioner has not alleged circumstances that might excuse these procedural

defaults. The record includes indictments for each of petitioner's offenses, and the alleged technical defects in the securing of those indictments do not render petitioner's convictions void. See *Epps v. Commonwealth*, Va.799 S.E.2d 516, 519 (2017).

In another portion of claim (B), petitioner contends the trial court violated his statutory speedy trial right under Code § 19.2-243.

The Court holds this portion of claim (B) is barred because it is untimely under Code § 8.01-654(A)(2) and this issue was raised and decided in the trial court and on direct appeal from the criminal conviction, and therefore, it cannot be raised in a habeas corpus petition. *Henry v. Warden*, 265 Va. 246, 249, 576 S.E.2d 495, 496 (2003).

Accordingly, the petition is dismissed and the rule is discharged.

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Teste:

Patricia L. Harrington, Clerk

By: /S

Deputy Clerk

VIRGINIA SUPREME COURT

ISAIAH JAMES COLEMAN, #1414818,

Petitioner

vs.

HAROLD W. CLARKE, DIRECTOR OF THE
VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent

Case No. 161402

**PETITION FOR REHEARING OF
DISMISSAL OF PETITION FOR WRIT OF
HABEAS CORPUS**

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**PETITION FOR REHEARING OF
DISMISSAL OF PETITION FOR WRIT
OF HABEAS CORPUS**

Pursuant to Va. Sup. Ct. R. 5:20, Isaiah James Coleman (“Coleman”), by counsel, respectfully submits this Petition for Rehearing of the Dismissal of his Petition for Writ of Habeas Corpus dated August 16, 2017 (the “Dismissal”), and in support thereof states the following:

I. INTRODUCTION

Coleman’s Petition for Writ of Habeas Corpus (the “Petition”) was denied primarily because the Dismissal two erroneous contentions.

The first erroneous contention was that a defective grand jury indictment that deprived the Norfolk Circuit Court (the “Circuit Court”) of jurisdiction was merely procedural and was waived. However, in view of current jurisprudence, the

contention that a defective grand jury indictment is procedural is erroneous and Coleman's Petition should have been granted for that reason alone.

The second erroneous contention was that the Petition was "untimely under Code § 8.01-654(A)(2), which required petitioner to file his habeas petition "within two years from the date of final judgment in the trial court or within one year from ... final disposition of the direct appeal in state court ... , whichever [was] later."

However, a proper analysis of the cited language from Code § 8.01-654(A)(2) shows the error in this contention. The statute provides that the one year statute of limitations clock does not begin ticking until there is "final disposition of the direct appeal". It is erroneous to contend that there is a "final disposition of the direct appeal" when such a "final disposition" is subject to reversal by a higher

court. In Coleman's case, his appeal to the United States Supreme Court was not concluded such that there was a "final disposition" until the United States Supreme Court denied Coleman's Petition for Writ of Certiorari October 5, 2015. It is axiomatic that there cannot be a "final disposition" of a case until appeals are exhausted. Had Coleman's Petition for Writ of Certiorari to the United States Supreme Court been granted and his convictions been reversed, it would be absurd to contend such a reversed judgment was a "final deposition".

If the legislature had not wanted the time when an active appeal was being pursued to include an appeal to the United States Supreme Court it would have used different wording to explicitly exclude such appeals. The legislature could have specifically excluded appeals to the United States Supreme Court but did not. The reliance of the

Dismissal on the language of Va. Code § 8.01-654.1 is misplaced because (1) Va. Code § 8.01-654.1 was enacted forty five years after Va. Code § 8.01-654 and the intent of legislators in 1950 cannot be inferred by the language used by a completely different set of legislators forty five years later; and (2). The legislators drafting Va. Code § 8.01-654.1 elected to use very different language than was used in Va. Code § 8.01-654 and elected not to use the phrase “final disposition” and thus used different language concerning appeals to the United States Supreme Court.

Coleman hereby petitions this Court to reconsider its recent ruling and grant his Petition for Writ of Habeas Corpus.

II. ARGUMENT

A. The Defective Grand Jury Indictments

**Deprived the Circuit Court of
Jurisdiction**

The contention of the Dismissal that the defective grand jury indictment of Coleman was a procedural defect that could be waived rather than jurisdictional is erroneous and should be reversed. The reliance of the Dismissal upon a recent case, *Epps v. Commonwealth*, 293 Va. 403, 409, 799 S.E.2d 516, 519 (2017), is misplaced.

As this Court explicitly noted in *Epps*, “Epps did not assign error to the holding of the Court of Appeals that an indictment is not jurisdictional”. *Id.*, 293 Va. at 410. Because no such error was assigned in *Epps*, this Court relied upon a case, *Hanson v. Smyth*, 183 Va. 384, 32 S.E.2d 142 (1944), that Coleman contends has long since been superseded by United States Supreme Court precedent and is no longer valid for the premise that defective grand jury

indictments are merely procedural matters subject to waiver.

Subsequent to *Hanson*, binding United States Supreme Court precedent has superseded the core premise from *Hanson* upon which this Court relied. In *Hanson*, the Virginia Supreme Court opined:

While the Fifth Amendment to the Federal Constitution requires a presentment or indictment in prosecutions under Federal statutes “for a capital, or otherwise infamous crime,” the Virginia Constitution contains no such requirement. Farewell v. Commonwealth, 167 Va. 475, 484, 189 S.E. 321, 325; Pine v. Commonwealth, 121 Va. 812, 835, 93 S.E. 652; Guynn v. Commonwealth, 163 Va. 1042, 1046, 177 S.E. 227. In this State the requirement is merely statutory ... Since the statutory requirement for an indictment in the present case is not jurisdictional, the failure of the record to show affirmatively that the indictment was returned into court by the grand jury is not such a defect as will render null and void the judgment of conviction based thereon.

Hanson, 183 Va. at 390-91.

Thus, the *Hanson* opinion relied upon a premise that the Fifth Amendment to the Federal Constitution did not apply to Virginia under the equal protection clause of the Fourteenth Amendment. However, since *Hanson* was decided, the United States Supreme Court has significantly expanded the application of the Bill of Rights of the Constitution to state law matters under the equal protection portion of the Fourteenth Amendment. For example; in *Griffin v. California*, 380 U.S. 609, 615 (1965); the United States Supreme Court specifically held that the self-incrimination provision of the Fifth Amendment applied to the States by reason of the Fourteenth Amendment.

In 2010, the United States Supreme Court provided a detailed analysis of the progression of application of the Bill of Rights to the States via the

Fourteenth Amendment. *McDonald v. City of Chicago*, 561 U.S. 742, 764-65 (2010). In *McDonald*, it was acknowledged that the Court had shed any reluctance to hold that rights guaranteed by the Bill of Rights met the requirements for protection under the Due Process Clause. It was also acknowledged that the Court had incorporated almost all of the provisions of the Bill of Rights. *Id.* Since the Bill of Rights is not an *ala carte* menu for courts to pick and choose from, any remaining provisions of the Bill of Rights not explicitly applied to states via the Fourteenth Amendment must be incorporated as jurisprudence moves forward. Coleman acknowledges that *McDonald* referenced a case from over 130 years ago concerning grand jury indictments standing for the premise that jurisprudence to date had not incorporated the Fifth Amendment's grand jury indictment requirement.

Id., 561 U.S. at 765 n.13. However, although the case of *Hurtado v. California*, 110 U.S. 516, 519 (1884) stopped short of applying the grand jury provision of the Fifth Amendment to the States via the Fourteenth Amendment, it affirmatively held that the due process requirements of the Fifth and Fourteenth Amendment applied to the states as to indictments. *Id.*, 110 U.S. at 538. The *Hurtado* Court held that:

we are unable to say that the substitution for a presentment or indictment by a grand jury of the proceeding by information, after examination and commitment by a magistrate, certifying to the probable guilt of the defendant, with the right on his part to the aid of counsel, and to the cross-examination of the witnesses produced for the prosecution, is not due process of law.

Id. The *Hurtado* Court did not hold that California could ignore any and all indictment procedures established under California law as this Court did

under Virginia law in Coleman's case. The due process requirement needed to be met under *Hurtado* and to the extent that *Hurtado* has not been superseded for the purposes of incorporating all elements of the Fifth Amendment to the States, Virginia still must meet the due process requirement. That requirement has simply not been met in Coleman's case.

Accordingly, the *Hanson* opinion from 1944, and hence the more recent *Epps* case, is no longer valid for the premise relied upon by the Response or this Court's ruling because it did not reflect the jurisdictional components of the Fifth Amendment applying to Virginia state criminal statutes via the Fourteenth Amendment.

Accordingly, Coleman respectfully requests reversal of the Dismissal.

B. The Petition Was Timely

If statutory language is clear and unambiguous, there is no need for construction by the court; the plain meaning and intent of the enactment will be given it. See, e.g., *Brown v. Lukhard*, 229 Va. 316, 321 (1985).

Here, Va. Code § 8.01-654 states in pertinent part (emphasis added):

A habeas corpus petition attacking a criminal conviction or sentence, except as provided in § 8.01-654.1 for cases in which a death sentence has been imposed, **shall be filed** within two years from the date of final judgment in the trial court or **within one year from either final disposition of the direct appeal** in state court or the time for filing such appeal has expired, whichever is later.

There is no dispute that after this Court denied his appeal, Coleman petitioned the United States Supreme Court for a Writ of Certiorari,

which was not denied until October 5, 2015 (see, e.g., Dismissal at p. 2).

Whether the time for filing a Petition for Certiorari with the United States Supreme Court is within the scope of Va. Code § 8.01-654 appears to be an issue of first impression. Although it does not appear that any Virginia court has construed the phrase “final disposition” in this statute, the underlying legal principles have been explored in analogous federal statutory language for habeas corpus petitions. The federal statute of limitations for inmates seeking habeas corpus relief in state court cases is 28 U.S.C. § 2244, which states in pertinent part, the “limitation period shall run from the latest of ... the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review”. The phrase “the date on which the judgment became

final by the conclusion of direct review or the expiration of the time for seeking such review” is semantically equivalent to the Virginia statutory language of “within one year from either final disposition of the direct appeal in state court or the time for filing such appeal has expired, whichever is later.”

Federal courts have generally held that triggering event for the federal statute of limitations to begin running is either the completion of certiorari proceedings in the United States Supreme Court following completion of direct appeal, or the expiration of the time for filing a Petition for a Writ of Certiorari. See, e.g., *Locke v. Saffle*, 237 F.3d 1269, 1272-73 (10th Cir. 2001) (joining other “circuit courts that have explicitly ruled on the issue of timeless under 28 U.S.C. 2244 (d)(1)(A)”).

In construing a statute, Virginia courts apply

its plain meaning, and courts are not free to add language, nor to ignore language, contained in statutes. *BBF, Inc. v. Alstom Power, Inc.*, 274 Va. 326, 331 (2007). Here, the statutory language of “final disposition of the direct appeal in state court or the time for filing such appeal has expired” is at issue. Clearly this language considered the possibility that appeals could be taken in criminal cases and evidence a desire of the legislature to not include time during which an appeal was available against a convicted person’s ability to file for habeas corpus relief.

Perhaps the clearest way to understand why the statute has the meaning asserted herein is to consider what would have happened if Coleman’s appeal to the United States Supreme Court had been successful and his convictions had been reversed. Under any contrary interpretation of VA

Code § 8.01-654(A)(2), the affirmation of Patterson's conviction by the Virginia Supreme Court represented a "final disposition" even if that "final disposition" was actually reversed total by the United States Supreme Court. Such a view is simply unreasonable and misconstrues the plain statutory language.

The Dismissal relied upon a comparison of statutory language between VA Code § 8.01-654(A)(2) and VA Code § 8.01-654.1. This comparison is inapposite for two separate reasons. First, VA Code § 8.01-654 was enacted in 1950. VA Code § 8.01-654.1 was not enacted until 1995. First, Coleman avers that the intent of legislators in 1950 cannot be inferred by language used by a completely different set of legislators forty five years later. Second, the legislators drafting Va. Code § 8.01-654.1 elected to use very different language than

was used in Va. Code § 8.01-654 and elected not to use the phrase “final disposition” and thus used different language concerning appeals to the United States Supreme Court. If the legislators that drafted and passed Va. Code § 8.01-654 had intended to exclude time for pursuing an appeal to the US Supreme Court, they would have explicitly stated such. Instead, the legislators used the phrase “final disposition”, which necessarily involves an exhaustion of appeals such that there legitimately was a “final disposition” in Coleman’s state court appeal.

Accordingly, the Dismissal erred and Coleman’s Petition should be granted.

III. CONCLUSION

For all of the reasons discussed herein, Coleman requests that this Court reconsider its

denial of his Petition for Writ of Habeas Corpus.

Dated: September 15, 2017
RESPECTFULLY SUBMITTED,

By:

A handwritten signature in black ink, appearing to read "Dale R. Jensen", is written over a light gray rectangular background.

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Certificate

The undersigned counsel certifies:

1. that a copy of the petition for appeal has been e-mailed on September 15, 2017 to all opposing counsel known to Appellant; and
2. that the page count for this Petition is 10.

Dated: September 15, 2017

By:

A handwritten signature in black ink, appearing to read "Dale R. Jensen", is written over a light gray rectangular background.

Dale Jensen

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Certificate of Service

I certify that on September 15, 2017, I e-mailed a true copy of the foregoing document to:

Mark Herring
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Richmond, VA 23219
oagcriminallitigation@oag.state.va.us

Dated: September 15, 2017

By:

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VIRGINIA:

In the Supreme Court of Virginia
held at the Supreme Court Building in
the City of Richmond on Tuesday the
21st day of November, 2017.

Isaiah James Coleman, No. 1414818,
Petitioner,

against Record No. 161402

Harold W. Clarke, Director of the
Virginia Department of Corrections,
Respondent.

Upon a Petition for Rehearing

On consideration of the petition of the
petitioner to set aside the judgment rendered
herein on the 16th day of August, 2017 and
grant a rehearing thereof, the prayer of the
said petition is denied.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /S

Deputy Clerk