

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TREMAINE JUANDAL MABRY,
Petitioner,

V.

COMMONWEALTH OF VIRGINIA,
Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court of Virginia.

PETITION FOR WRIT OF CERTIORARI

RECEIVED
MAR 28 2018
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QUESTION(S) PRESENTED

1. Did the Supreme Court of Virginia err by refusing petitioner's Petition for Appeal, by finding there was no reversible error in the judgment complained of?

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Petition for Appeal.

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APPENDIX C - Decision of the Supreme Court of Virginia, Denying
Petition for Rehearing.

IN THE
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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

This case has not been presented to the federal court.

The opinion of the highest state court to review the merits appears at Appendix-A, to the petition and is unpublished.

The opinion of the Circuit Court of Sussex County appears at Appendix-B, and is unpublished.

JURISDICTION

This case has not been presented to the federal courts to invoke jurisdiction.

The date on which the highest state court decided my case was November 30, 2017. A copy of that decision appears at Appendix-A.

A timely petition for rehearing was thereafter denied on the following date: February 1, 2018, and a copy of the denying rehearing appears at Appendix-C.

No extension of time to file the petition for a writ of certiorari was ever sought in this case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Violation of the Right to Confrontation, pursuant to the Confrontation Clause as prescribed by the 6th Amendment of the United States Constitution, as decided by this Honorable Court in *Melendez-Diaz v. Massachusetts*, 577 U.S. 305 129 S.Ct. 2527 (2009), which established the precedential value causing the former Virginia Statutes § 19.2-187;19.2-187.1, to be declared unconstitutional.

STATEMENT OF THE CASE

Petitioner was tried before a jury on February 25, 2009, in the Circuit Court for the County of Sussex for Distribution of a Schedule II Controlled Substance, in violation of Va. Code § 18.2-248, Case No. CR08-308. Petitioner was found guilty by the jury, and the jury recommended 16 years active incarceration and a \$5,000 fine. On May 20, 2009, petitioner was sentenced to the 16 years incarceration and the \$5,000 fine in accordance with the jury's recommendation. The sentencing order was entered on June 11, 2009. Petitioner filed a Motion to Vacate, Correct, or Set Aside a Conviction which is Void Ab Initio by Independent Action, in the Circuit Court of Sussex County, on February 2, 2017, and said motion was denied on February 8, 2017. Petitioner then filed a petition for appeal to the Supreme Court of Virginia which was refused on November 30, 2017. Petitioner then filed a petition for rehearing to the same court which was denied on February 1, 2018. Petitioner is now timely filing a petition for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

1. The Supreme Court of Virginia did in fact err by refusing, petitioner's, petition for appeal, by finding that there was no reversible error in the judgment complained of, and by doing so conflicts with an already decided important federal question as determined and applied by this Honorable Court in *Melendez-Diaz v. Massachusetts*, 577 U.S. 305 129 S.Ct. 2527 (2009). Petitioner submits the judgment complained of is the Circuit Court of Sussex County's February 8, 2017, order (Appendix-B) in which the Court states, "The Motion filed by the Movant in this proceeding to vacate, correct, or set aside a conviction was this day considered, and upon review of the record in the above case denied." Petitioner submits that there is no way that the record was reviewed as stated, because if it had been it is clear from the Sentencing Order (Exhibit-A) that the petitioner was tried, convicted, and sentenced under the former unconstitutional statutes Va. Code §19.2-187; 19.2-187.1. Petitioner submits the forensic analyst was not present at trial to be cross examined pertaining to the Commonwealth attorney's use of the certificate of analysis, which violated petitioner's right to confrontation under the 6th amendment, in accordance with this Court's decision in *Melendez-Diaz v. Massachusetts*, 577 U.S. 305 129 S.Ct. 2527 (2009), which established the precedential value causing the former Virginia statutes § 19.2-187; 19.2-187.1 to be declared unconstitutional, was decided on June 25, 2009, and petitioner was tried on

February, 25, 2009, sentenced on May 20, 2009, (Exhibit-A).
Petitioner submits the Supreme Court of Virginia was required to Vacate petitioner's conviction and remand for a New Trial, in accordance with the following: *Cypress v. Commonwealth*, 280 Va. 305, 699 S.E. 2d 211 (2010), "Following its decision in *Melendez-Diaz*, the Supreme Court granted the petitions filed by *Briscoe* and *Cypress*, vacated the judgments, and remanded the cases for further proceedings "not inconsistent with the opinion." *Briscoe*, 599 U.S. at 130 S.Ct. at 1316."; *Melendez-Diaz v. Massachusetts*, 577 U.S. 305 129 S.Ct. 2531 (2009) quoting (*Crawford*, 541 U.S. at 54, 124 S.Ct. at 1365), "When a federal constitutional error is involved, a reversal is required."; *Briscoe v. Virginia*, 78 USLW 3434, 130 S.Ct. 1316 (U.S. Va. 2010),"Per Curiam Opinion. We vacate the judgment of the Supreme Court of Virginia and remand the case for further proceedings not inconsistent with the opinion in *Melendez-Diaz v. Massachusetts*, 577 U.S.---, 129 S.Ct. 2527, 174 L.Ed 2d 314 (2009). It is ordered."; *Aguilar v. Virginia*, 559 U.S. 901, 175 L.Ed. 2d 1071 (U.S. Va. 2010), "On petition for writ of certiorari to the Supreme Court of Virginia. Motion for leave to proceed in forma pauperis and petition for writ of certiorari granted. Judgment vacated, and case remanded to the Supreme Court of Virginia for further consideration in light of *Melendez-Diaz v. Massachusetts*, 577 U.S.---, 129 S.Ct. 2527, 174 L.Ed. 2d 314 (2009)."
Petitioner submits it is clear that the Supreme Court of Virginia's refusal of petitioner's, petition for appeal due to no reversible error in the judgment complained of was

arbitrary and capricious when the Supreme Court of Virginia states in Cypress at 699 S.E. 2d 213 (supra), "Thus in light of the decision in Melendez-Diaz, we now hold that the procedure established in former code§ 19.2-187.1 did not adequately safeguard a criminal defendant's rights under the Confrontation Clause. Accordingly, in both Cypress' and Briscoe's trials, the admission into evidence of the certificates of analysis at issue [280 Va. 318] without testimony from the forensic analysts violated the confrontation clause. The respective Circuit Courts erred in admitting the certificates."

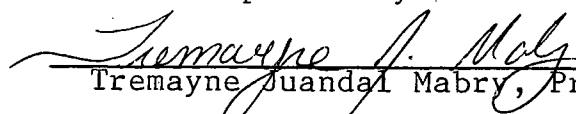
Petitioner submits based on this citation the Supreme Court of Virginia blatantly disregarded granting petitioner the appropriate relief when has suffered the same constitutional deprivation, yet in the case of Cypress and Briscoe the Circuit Court was in error, however in petitioner's case the Circuit Court was not in error. Petitioner submits the two claims for relief he presented in his Motion to Vacate, Correct, or Set Aside a Conviction which is Void Ab Initio by Independent Action were: 1) Movant submits his trial, conviction, and sentence was a direct result of the former Unconstitutional/ law/ statute, Virginia Code § 19.2-187 and 187.1, Making his trial, conviction, and sentence Void Ab Initio.; and 2) Movant submits his Sixth Amendment Confrontation Clause right was violated when he was denied the right to confront the analyst whose name appeared on the certificate of analysis stating that the cocaine used in movant's trial for Distribution of Cocaine was in fact cocaine. Petitioner

submits therefore, there is no other plausible or acceptable reason as to why the Virginia Supreme Court found that there was no reversible error in the judgment complained of outside of just being extremely prejudicial and bias. Petitioner submits he has proved beyond a reasonable doubt by all facts and evidence presented that the Supreme Court of Virginia was in error by upholding the erroneous decision of the Circuit Court for the County of Sussex, and the erroneous decisions of both respective Courts are clearly in conflict with the already decided important federal question as determined and applied by this Honorable Court in Melendez-Diaz v. Massachusetts, 577 U.S. 305 129 S.Ct. 2527 (2009), which clearly outlines the relief that must be granted, and the criteria for the relief, which petitioner meets and is therefore, entitled to the appropriate relief. "not inconsistent with the opinion" of Melendez-Diaz.

CONCLUSION

For all the foregoing reasons, the Petitioner, prays that ~~this~~ Petition for a Writ of Certiorari be granted, and this matter be Vacated and Remanded for a New Trial, "not inconsistent with the opinion" in Melendez-Diaz v. Massachusetts, 577 U.S. ---, 129 S.Ct. 2527, 174 L.Ed. 2d 314 (2009).

Respectfully Submitted,


Tremayne Juandal Mabry, Pro Se

Date: March 19, 2018