

WASHINGTON, DC: IN THE SUPREME COURT OF UNITED STATES

Tremayne Juandal Mabry,
Petitioner,

v.

No.17-8653

Commonwealth of Virginia,
Respondent.

PETITION FOR REHEARING

COMES NOW, Tremayne Juandal Mabry, "hereinafter Petitioner,"
proceeding Pro Se, and Moves this Honorable Court to Grant his
Petition for Rehearing filed pursuant to Supreme Court Rule 44.
In response to the Denial of a Petition for a Writ of Certiorari
petitioner submits the following:

GROUND'S FOR REHEARING

1. The Denial of petitioner's Writ of Certiorari is extremely
prejudicial, constitutes a blatant miscarriage of justice, and
a Denial of the Equal Protection of the Law.

2. Petitioner was convicted in violation of a Constitutional
Law, rendering his conviction Illegal and Void, which cannot be a
legal cause of his Imprisonment.

3. The State Courts clearly disregarded a Controlling
Constitutional Command, which like all Federal Law is binding on
State Courts.

ARGUMENT

1. The Denial of petitioner's Writ of Certiorari is extremely
prejudicial, constitutes a blatant miscarriage of justice, and is
a Denial of the Equal Protection of the Law.

Petitioner submits his case is indistinguishable from this

Courts' precedent set in *Melendez-Diaz v. Massachusetts*, 577 U.S. 305, 129 S.Ct. 2527 (2009), and its progeny. Petitioner submits this Court states in *Melendez-Diaz*, 577 U.S. at 305, "The admission of the certificates violated petitioner's Sixth Amendment right to confront the witness against him." Petitioner submits this Court goes on to state in *Melendez-Diaz*, 577 U.S. at 310, "Our opinion described the class of testimonial statements covered by the Confrontation Clause as follows:" ; "There is little doubt that the documents at issue in this case fall within the "core class of testimonial statements" thus described." Petitioner submits just as in *Melendez-Diaz*, where the admission of the certificates of analysis violated his sixth amendment right, petitioner's Sixth Amendment right was violated in the exact same way. Petitioner submits the interests of justice ~~and the right to~~ the Equal Protection of the Law as guaranteed by the 14th Amendment, requires petitioner to receive the same relief as *Melendez-Diaz*, and its progeny. Petitioner submits his conviction was not final at the time of the *Melendez-Diaz*, decision, and therefore is applicable to petitioner's case. *Teague v. Lane*, 489 U.S. 288, 310, 109 S.Ct. 1060, 1075 (U.S. Ill. 1989), "Unless they fall within an exception to the general rule, new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced." Petitioner submits he was sentenced May 20, 2009, and *Melendez-Diaz*, was decided on June 25, 2009. Petitioner submits even if his conviction was final at the time of the *Melendez-Diaz*, decision he would still be entitled to relief, *Montgomery v. Louisiana*, 577 U.S., 136 S.Ct. 718

(U.S. La. 2016), "a Court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced." ; "A penalty imposed on a state prisoner pursuant to an unconstitutional law is no less void because the prisoner's sentence became final before the law was held unconstitutional." Petitioner submits by this Court denying petitioner's, petition for a writ of certiorari, this Court is doing the exactly what it states is not to be done, which is leaving in place a conviction and sentence imposed in violation of a substantive rule of a constitutional law. Also this Court is relaxing the requirements of the Confrontation Clause, as this Court addressed in Melendez-Diaz, at 577 U.S. 325, "Finally, respondent asks us to relax the requirements of the Confrontation Clause to accomodate the "necessities of trial and adversary process." Brief 59. It is not clear whence we would derive the authority to do so. The Confrontation Clause may make the prosecution of criminals more burdensome, but that is equally true of the right to trial by jury and the privilege against self-incrimination. The Confrontation Clause- like those other constitutional provisions-is binding, and we may not disregard it at our convenience." Petitioner submits this Courts' decision to deny his writ of certiorari is in clear contradiction that the Confrontation Clause is is infact binding and the Court may not disregard it at its convenience. Petitioner submits because his Sixth Amendment right to Confrontation was violated his case must be reversed and remanded just as this Court stated in Melendez-Diaz, at 577 U.S. 329, "The Sixth Amendment does not

permit the prosecution to prove its case via exparte out-of-court affidavits, and the admission of such evidence against Melendez-Diaz was error. We therefore reverse the judgment of the Appeals Court of Massachusetts and remand the case for further proceedings not inconsistent with this opinion." Petitioner submits pursuant to this Courts' decisions the denial of his petition for a writ of certiorari is extremely prejudicial, constitutes a blatant miscarriage of justice, and a denial of the Equal Protection of the Law.

2. Petitioner was convicted in Violation of a Constitutional Law, rendering his Conviction Illegal and Void, which cannot be a legal cause of his Imprisonment.

Petitioner submits he was convicted on February 25, 2009, and sentenced on May 20, 2009, under the former unconstitutional statutes Va. code Ann. §§ 19.2-187 and 19.2-187.1 which were declared unconstitutional as a direct result of this Courts' decision in Melendez-Diaz v. Massachusetts, 577 U.S. 305 (2009), decided June 25, 2009. The Supreme Court of Virginia makes this clear in Cypress v. Commonwealth, 280 Va. 305 (2010), "The Virginia Court of Appeals affirmed the convictions, but the United States Supreme Court Vacated and remanded them for reconsideration in light of its decision in Melendez-Diaz v. Massachusetts. Admitting certificates of analysis, pursuant to former Va. code Ann. §§ 19.2-187 and 19.2-187.1, violated defendants, confrontation rights because (1) were tetsimonial, and (2) letting them call the analysts as witnesses impermissibly relieved the prosecutor's duty to present witnesses and burdened defendants' confrontation rights." ; (at 280 Va. 308), "The specific legal

question we decide on remand is a narrow one: in light of the decision in Melendez-Diaz, did the admission into evidence of certificates of analysis pursuant to former code §§ 19.2-187 and 187.01 violate rights secured by the Confrontation Clause? We conclude that it did." ; (at 280 Va. 317-18), "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 at issue without testimony from the forensic analysts violated the Confrontation Clause. The respective Circuit Courts erred in admitting the certificates. Further, because former code § 19.2-187.1 placed an impermissible burden on Cypress and Briscoe to call the forensic analysts as adverse witnesses and did not adequately protect their Confrontation Clause rights, neither defendant waived his Confrontation Clause objection by failing to utilize the Statutory procedure." Petitioner submits based on this it is undisputable that he was convicted in violation of a Constitutional Law, rendering his conviction illegal and void which cannot be a legal cause of his imprisonment, *Mongomery v. Louisiana*, 577 U.S., 136 S.Ct. 718, 724 (U.S. La. 2016), "A conviction under an unconstitutional law is not merely erroneous, but is illegal and void and cannot be a legal cause of imprisonment." ; *Exparte Seibold*, 100 U.S. 371, 376-377, 25 L.Ed 717 (U.S. Md. 1879), "for a conviction under an unconstitutional law is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment." ; *Bond v. U.S.*, 564

211, 131 S.Ct. 2355, 2367 (U.S. 2011), "A conviction under such a law is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. If a law is invalid as applied to the criminal defendant's conduct, the defendant is entitled to go free." Petitioner submits pursuant to these binding Federal Laws, petitioner should be released immediately from prison, or at the very least granted a New Trial, but there is no legal nor logical reason that his petition for a writ of certiorari should be denied.

3. The State Court clearly disregarded a Controlling Constitutional Command, which like all Federal Law is binding on State Courts.

Petitioner submits the Supreme Court of Virginia clearly knew the appropriate decision required by Federal Law, was to reverse the judgment of the Sussex County Circuit Court and remand petitioner's case for a New Trial. The Supreme Court of Virginia opines in *Cypress v. Commonwealth*, 280 Va. 305, 320 (2010), "For these reasons, we will reverse the judgment of the Court of Appeals affirming Cypress convictions for possession of cocaine with the intent to distribute, second or subsequent offense, vacate the conviction, and remand to the Court of Appeals with directions that the case be remanded to the Circuit Court of Chesapeake for a New Trial if the Commonwealth be so advised." Petitioner submits the Supreme Court of Virginia was clearly aware that it was disregarding a Controlling Constitutional Command pursuant to this Courts' decision in *Melendez-Diaz*, where it states in *Cypress*, at 280 Va. 305, "The Virginia Court of Appeals affirmed the convictions, but

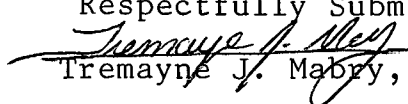
the United States Supreme Court Vacated and remanded them for reconsideration in light of its decision in *Melendez-Diaz v. Massachusetts*. Admitting certificates of analysis, pursuant to former Va. Code Ann §§ 19.2-187 and 19.2-187.1, violated defendants' confrontation rights because (1) were testimonial, and (2), letting them call the analysts as witnesses impermissibly relieved the prosecutor's duty to present witnesses and burdened defendants' confrontation rights." ; (at 280 Va. 317-18), "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 at issue without testimony from the forensic analysts violated the Confrontation Clause. The respective Circuit Courts erred in admitting the certificates. Further, because former Code § 19.2-187.1 placed an impermissible burden on *Cypress* and *Briscoe* to call the forensic analysts as adverse witnesses and did not adequately protect their Confrontation Clause rights, neither defendant waived his Confrontation Clause objection by failing to utilize the Statutory procedure." Petitioner submits the Supreme Court of Virginia states in *Andrews v. Commonwealth*, 280 Va. 231, 263, 699 S.E. 2d 237, 263 (2010), "When a federal constitutional error is involved a reversal is required unless we determine that the error is harmless beyond a reasonable doubt. *Zektaw v. Commonwealth*, 278 Va. 127, 139, 677 S.E. 2d 49, 56 (2009). Accordingly, we must determine "whether there is a reasonable possibility that the evidence complained of might

have contributed to the conviction." *Chapman v. California*, 386 U.S. 18, 23, 87 S.Ct. 824, 17 L.Ed. 2d 705 (1967) (quoting *Fahy v. Connecticut*, 375 U.S. 85, 86-87, 84 S.Ct. 229, 11 L.Ed. 2d 171 (1963))." Petitioner submits the Supreme Court of Virginia knew the error was not harmless based on its analysis, opinion, and decision in *Cypress v. Commonwealth*, 280 Va. 305(2010).

Petitioner submits this Court clearly establishes in *Montgomery v. Louisiana*, 577 U.S. 136 718 (U.S. La. 2016), "States may not disregard a controlling, constitutional command in their own courts. Kennedy, J., joined by Roberts, Ch.J., and Ginsburg, Breyer, Sotomayor, and Kagan JJ." ; "That constitutional command is, like all federal law, binding on state courts. Kennedy, J., joined by Roberts, Ch.J., and Ginsburg, Breyer, Sotomayor, and Kagan JJ." ; "A conviction under an under an unconstitutional law is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. But if the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes. The same logic governs a challenge to a punishment that the Constitution deprives states of authority to impose. A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void. It follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that a violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced. Kennedy J., joined by Roberts, Ch.J., and Ginsburg, Breyer, Sotomayor, and Kagan, JJ."

Kagan, J.J." petitioner submits there is a clear means of reversing his conviction and he is entitled to it. Petitioner submits this Court goes on to state in Montgomery, at 577 U.S., 718, "In adjudicating claims under its collateral review procedures a state may not deny a controlling right asserted under the constitution, assuming the claim is properly presented in the case. Kennedy, J., joined by Roberts, Ch.J., and Ginsburg, Breyer, Sotomayor, and Kagan, J.J." Petitioner submits the Supreme Court of Virginia clearly denied petitioner the controlling right asserted under the Constitution, as applied, and determined by this Court in Melendez-Diaz, v. Massachusetts, 577 U.S. 305 (2010); Chapman v. California, 386 U.S., 18, 23 (1967)(quoting Fahy v. Connecticut, 375 U.S., 85, 86-87(1963). Petitioner submits his claim was properly presented in the case. petitioner submits it is clear that the Supreme Court of Virginia maliciously, arbitrarily, and capriciously disregarded a Controlling Constitutional Command, which like all Federal Law was binding on them as well as the Sussex County Circuit Court. Petitioner submits it would be a grave miscarriage of justice and a gross denial of the equal protection of the law, for his petition for a writ of certiorari to be denied.

WHEREFORE, Petitioner compels this Honorable Court to Grant his Petition for Rehearing, and Grant the petitioner the relief he is entitled to pursuant to the decisions of this Court and what is required pursuant to the Equal Protection of the Law as guaranteed by the 14th Amendment of the U.S. Constitution.

Respectfully Submitted,

Tremayne J. Mabry, Pro Se