

No. _____

25-6201

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

NOV 17 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Frank Paul Ferrara — PETITIONER
(Your Name)

VS.

Commonwealth of Virginia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Frank Paul Ferrara #550163
(Your Name)

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(Address)

Burkeville, Virginia 23922
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Question No. 1: Did the Commonwealth of Virginia violate the guaranteed U. S. Constitutional Right of "equal protection of the laws" (14th Amend.) when the Attorney General's Office disregarded the Code of Virginia statutes and case law for civil commitment purposes?

Question No. 2: Does the behavior, of the Commonwealth of Virginia, by the Attorney General's Office, with regards to the Virginia Sexually Violent Predator Act (SVPA) and Civil Commitment, amount to being punitive action against those subjected to the Act without meeting the eligibility requirements of the Act?

Question No. 3: Should the decision of the Virginia Supreme Court be set aside and the civil commitment case be dismissed or remanded, back to the Circuit Court, for a new trial to better serve the "ends of justice" because this clearly was not "harmless error"?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- Ferrara v. Commonwealth, 299 Va 438, 854 S.E.2d, 652, Virginia Supreme Court, Judgment entered February 25, 2021.
- Ferrara v. Commonwealth, No. 2:22 cv 00172, U.S. District Court for the Eastern District of Virginia. Judgment entered May 28, 2025
- Ferrara v. Commonwealth, No. 25-6546, U.S. Court of Appeals for the Fourth Circuit. Judgment entered September 30, 2025

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Norfolk Division

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☒ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 30, 2025.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Constitution Amendment V	Defined	20
U. S. Constitution Amendment XIV	Defined	7
Code of Virginia § 37.2-901	Defined	20
Code of Virginia § 37.2-903	Defined	7
Code of Virginia § 37.2-904	Defined	21, 22
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STATEMENT OF THE CASE

This petition is a challenge to the U. S. Supreme Court's ruling that civil commitment is not punitive in nature. I believe that, the Virginia Center for Behavioral Rehabilitation (VCBR), is punitive in nature based on the facts that follow.

When the Attorney General (AG) violates established Constitutional Law, State Law and established case law, in order to place individuals in a civil commitment facility, it has to be declared punitive in nature. I was not eligible for civil commitment, therefore, my civil commitment was punitive in nature.

There is abuse of discretion, by the courts and the Attorney General. There is the need for justice in this case. This Court should review this petition to provide the "ends of justice" in this situation.

This case is advanced, through this petition, in as clear, simple and unambiguous language as I can articulate.

Background

At the time that I was subjected to the SVPA, I was incarcerated for a simple technical probation violation. The violation was reported as attending worship services at the Kingdom Hall of Jehovah's Witnesses, as a registered sex offender, without an approved chaperone. This was my third probation violation. It was my third time incarcerated in the VDOC system and my third time being evaluated for civil commitment, by the Commonwealth. However, this was the only time that a petition was filed against me for civil commitment.

Once I was incarcerated, my name was placed on the Director's database for CRC review. This action was illegal due to the fact that I was not incarcerated for an active sentence for a sexually violent offense. It is my contention that my name was not removed from the database, in January 2011, when I was released from the custody of the VDOC for all of my charges, including my sexually violent offense.

I was civilly committed, illegally, and sent to the VCBR for secure inpatient treatment, on November 5, 2019. According to the Attorney General and the court, I lacked the volitional control, to remain in the community, because Dr. Carpenter diagnosed me with pedophilic disorder, in January 2018.

After my arrival, at VCBR, I was evaluated, by Dr. D. Brown, and she determined that I did not meet the required elements and DSM criteria to be diagnosed with pedophilic disorder. This diagnosis was the same determination that was reached by Dr. Hastings, the expert for the Commonwealth, in both of his evaluations, in 2010 and 2016.

I entered the treatment program and was half-heartedly engaged in the treatment because I believed that I was illegally civilly committed. It was my contention that I was not eligible for civil commitment based on both of Dr. Hastings' evaluations. I even wrote a letter to the Attorney General's Office, prior to the petition being filed, that explained why I believed that I was not eligible for civil commitment. My letter was ignored and I was civilly committed.

My primary diagnosis, after being civilly committed for pedophilic disorder, and, after having the pedophilic disorder diagnosis removed, is exhibitionistic disorder. This disorder is a non-violent, non-contact sex offense diagnosis. Its main symptom is the exposure of one's genitalia to unsuspecting victims. In my case, I expose myself to physically mature females.

When I exhibited the symptom of this disorder - indecent exposure - I was promptly arrested, charged and convicted, while at VCBR for secure inpatient treatment for exhibitionistic disorder. This is a mental illness that I was first diagnosed with, by Dr. Hastings, in 2010. I was released from the VDOC, in 2011, without a petition being filed against me. I re-offended, in 2013, arrested, charged and convicted of indecent exposure and a probation violation. I was incarcerated in the VDOC for a non-violent, non-contact sex offense, with a probation violation, and I was released, in 2016, without a petition being filed for civil com-

mitment against me, after being evaluated for civil commitment, by Dr. Hastings,

However, I question the rationale behind my civil commitment because it was determined that I lack volitional control, which is why I had to be forcibly removed from the community. But, in order to be convicted of indecent exposure, it must be proven that I "intentionally" exposed myself to my victim. This is not possible if I lack volitional control due to my mental illness or personality disorder of exhibitionistic disorder. To do anything "intentionally" means that I made a choice, a decision, to engage in that behavior. My being civilly committed means that I am not capable of making a choice or to engage in proper decision making processes.

If I lack volitional control, then, civil commitment is correct, but, indecent exposure is not. However, if I "intentionally" exposed myself, then, indecent exposure is correct, but, civil commitment is not. The Commonwealth cannot say that, on one hand I lack volitional control, in order to civilly commit me, and, on the other hand, while I am civilly committed, state that I have volitional control to prosecute me for intentionally (volitional control) exposing myself. It cannot be both ways at the same time.

Prosecution for a criminal offense is punitive in nature and is not sound therapeutic practices nor treatment. I realized, early on in the VCBR program, that I would only receive treatment if I held myself accountable and responsible for my own behavior. I cannot rely on the staff here to provide me with treatment, only further punishment due to my mental illness.

This petition encompasses much more, then, just me and my situation. It has far reaching ramifications that deal with the legal requirement of eligibility criteria for CRC review, the Director's database inclusion and removal of one's name from the database, all in connection with the punitive nature of the civil commitment procedures in the Commonwealth of Virginia. I believe that there is at least forty percent and, may be, as high as sixty percent, of those residents housed in this facility that do not meet the eligibility criteria to be civilly committed.

Analysis

Question No. 1: Did the Commonwealth of Virginia violate the guaranteed U.S. Constitutional Right of "equal protection of the laws" (14th Amend), when the Attorney General's Office disregarded the Code of Virginia statutes and case law for civil commitment purposes?

In this case, the laws of the Commonwealth were violated when I was civilly committed, as well as many others at VCBB, at a time, when I was not eligible for civil commitment based on the statutes and cases in Virginia.

I was incarcerated for a technical probation violation, not for an active sentence for a sexually violent offense nor in violation of any State or Federal statute. This is a statutorily mandated requirement in order to be eligible for civil commitment.

CDV § 37.2-903(A) states: "The Director shall establish and maintain a database of each prisoner in his custody who is (i) incarcerated for a sexually violent offense or (ii) serving or will serve concurrent or consecutive time for another offense in addition to time for a sexually violent offense... (b) A prisoner who is serving or will serve concurrent or consecutive time for other offenses in addition to his time for a sexually violent offense shall remain in the database until such time as he is released from the custody or supervision of the Department of Corrections or Virginia Parole Board for all of his charges." (pertinent part).

Fourteenth Amendment U.S. Constitution: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (in part).

Townes v. Commonwealth, 269 Va. 234, 609 S.E.2d. 1 (3-3-2005), the Court stated: "The Commonwealth's contention that the language of these statutes does not limit the application of the SVPA to those prisoners who are currently serving a sentence for a sexually violent offense as defined by Code... ignores the present tense of that language. Grammatically, the phrase "who is incarcerated for a sexually violent offense" simply does not purport to include prisoners incarcerated on offenses other than statutorily defined sexually violent offenses. The Commonwealth contends, however, that this Court should accept the Commonwealth's interpretation of these statutes because to do otherwise would frustrate the purpose of the SVPA. We disagree... Contrary to the Commonwealth's interpretation, when strictly construed, the clear and unambiguous language of Code... requires that a prisoner must be serving an active sentence for a sexually violent offense as defined by Code... at the time he is identified as being subject to the SVPA."

Rhoten v. Commonwealth, 286 Va. 262, 750 S.E.2d 110, 10-31-2013, "750 S.E.2d. 114 - We note that evaluation is triggered, under the Act, by incarceration for a sexually violent offense and impending release from incarceration."

Jaccard v. Commonwealth, 268 Va. 56, 597 S.E.2d. 30 (2004), "597 S.E. 2d. 31..." the Court of Appeals held that "a probation violation is not itself a criminal conviction... we are of the opinion that a probation revocation is not a criminal conviction."

Fountain v. Commonwealth, 64 Va. App. 51, 59 (2014) / quoting Lee Cnty. v. Town of St. Charles, 264 Va. 344, 348 (2003)), "... when the General Assembly has used words that have a plain meaning, courts can not give those words a construction that amounts to holding that the General Assembly meant something other than that which it actually expressed."

The facts are clear and unambiguous in this matter. I was incarcerated serving an active sentence for a sexually violent offense from October 1996 until January 2011. At no other time, in my criminal history, was I serving an active sentence for a sexually violent offense.

During that period of incarceration, I was evaluated for civil commitment, by Dr. Mark Hastings, on October 4, 2010. Dr. Hastings concluded that I did not meet the statutory criteria for commitment as a sexually violent predator. The Attorney General agreed with this assessment and released me from the custody of the Department of Corrections for all of my charges, in January 2011. At this time, the Attorney General surrendered the option of civilly committing me until the next time that I became incarcerated, serving an active sentence for a sexually violent offense, as mandated by COV § 37.2-903(A), Townes and Rhoten.

It is apparent, from the fact that I was evaluated, after re-incarceration, in 2016, that my name was not removed from the database, as mandated in COV § 37.2-903(A)(b).

It is apparent, that upon my release from the custody of the Department of Corrections, in October 2016, my re-incarceration, in April 2017, for my technical probation violation and along with my subsequent civil commitment, in September 2019, that my name was never removed from the database, at any time after it was included on it.

The fact that the Attorney General has had me evaluated on three (3) separate occasions, when I was only incarcerated once for an active sentence for a sexually violent offense, shows that the Attorney General has violated COV § 37.2-903(A) and established case law.

The fact that during my first two (2) incarceration periods the Attorney General did not seek to petition the court for civil commitment, while I was incarcerated for a sexually violent offense and a non-violent sex offense (respectively). However, he files a petition for civil commitment, after I am incarcerated for only a technical probation violation, without a violation of the criminal code. This shows that the Attorney General violated my Fourteenth Amendment U.S. Constitutional Right to "equal protection of the laws", as well as, the COV § 37.2-903(A) and Virginia case law (Townes, Rhoten, Jaccard and Fountain).

What the Attorney General has accomplished, in this matter, is exactly what the Commonwealth

The Attorney General engaged in "gamesmanship" and manipulation in the civil commitment trial in order to gain the advantage in the adversarial process. His scheme was to prevent me from utilizing Dr. Hastings, as my expert witness, to refute his expert witness, Dr. Carpenter. This was accomplished by misrepresentation of the material fact that Dr. Hastings was the Commonwealth's expert, not an expert that was "appointed to assist" me.

The Attorney General promoted that the circuit court was required to bar Dr. Hastings' testimony and reports based on the statute COV § 37.2-906(D). The circuit court agreed with the Commonwealth's interpretation of the statute, however, I did not. I held on to my belief that I maintained the legal right, by statute COV § 37.2-908(C), to utilize Dr. Hastings, as an expert witness for me, without having to cooperate with Dr. Carpenter.

Ultimately, the circuit court barred Dr. Hastings from testifying, barred me from utilizing his reports and barred me from telling the jury that I was once incarcerated for a sexually violent offense and released by the Attorney General, without a petition for civil commitment being filed against me.

This gamesmanship gave the Attorney General full advantage, at the civil commitment trial, by taking away from me my only witness and blocking the only person that could refute the testimony and report of Dr. Carpenter. This behavior of the Attorney General did, in fact, violate COV § 18.2-498.3, "Misrepresentation prohibited", which, if proven, is a Class 6 Felony conviction. I believe that the facts speak for themselves and are presented here for your consideration:

COV § 18.2-498.3, Misrepresentation prohibited. "Any person, in any commercial dealing in any matter within the jurisdiction of any department or agency of the Commonwealth of Virginia, or any local government within the Commonwealth or any department or agency thereof, who knowingly falsifies, conceals, misleads or covers-up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent

statement or entry, shall be guilty of a Class 6 Felony."

COV § 18.2-490.2. Definitions, when used in this article the following terms mean:

1. "Person" includes any natural person, any trust or association of persons, formal or otherwise, or any corporation, partnership, company or other legal or commercial entity;

2. "Commercial dealing" shall mean any offer, acceptance, agreement or solicitation to sell, or offer to sell or distribute goods, services or construction, to the Commonwealth of Virginia, or any local government within the Commonwealth or any department or agency thereof.

Based on the definitions set out above, the Attorney General and Dr. Carpenter both qualify as being "person" on multiple levels. The arrangement between the Attorney General and Dr. Carpenter also qualifies as a "Commercial dealing" because Dr. Carpenter is a "person" that was subcontracted, by the Commonwealth, to provide "services" of sexually violent predator evaluations for those individuals that the Attorney General determined needed to be not compatible with society, to be not released back into the community.

Simply put, the Commonwealth of Virginia, did solicit the services of Dr. D. Carpenter, as an expert evaluator of sexually violent predators, as was the case with Dr. Hastings before him, in 2010 and 2016. Dr. Carpenter did accept the offer to provide (sell) his services to the Commonwealth. This was completed by the mutual agreement between the Attorney General and Dr. D. Carpenter. Their agreement, the offer and acceptance of the offer, consisted of the type of services to be provided and the compensation for the provision of those services.

Now, because this "commercial dealing" was conducted with the sole purpose of ensuring that I was civilly committed, my civil commitment trial, then, qualifies as the "any matter" in the statute.

Therefore, when Dr. Carpenter falsified his report by claiming that I had the diagnosis of pedophilic disorder, when he knew that I did not and the Attorney General utilized that

ination of the Commonwealth's expert, Dr. Carpenter, or make reference to in argument or opening statement, hearsay facts or opinion contained in prior evaluations conducted by Dr. Mark Hastings without first laying the requisite foundation; and 2) Respondent, Respondent's counsel and Respondent's witnesses shall not offer evidence or argument that Respondent previously served a period of incarceration in the VDOC for a sexually violent offense but prior to his release from VDOC the Commonwealth did not file a petition to civilly commit Respondent as a sexually violent predator without first approaching the Bench, outside the presence of the jury, and having the Court rule on the matter's admissibility. The transcript indicates that the circuit court relied on Code § 37.2-906(D) in excluding Dr. Hastings' reports and preventing Dr. Hastings from testifying.

For these reasons, we conclude that the bar on expert evidence found in Code § 37.2-906(D) applies in probable cause hearings, not commitment hearings. Therefore, the trial court in the present proceeding ERRED in concluding that Code § 37.2-906(D) barred the respondent from introducing evidence at his commitment hearing. Furthermore, Code § 37.2-907(A) does not apply to exclude Dr. Hastings' testimony and reports because it bars the testimony from an expert "appointed to assist the respondent" when the respondent has failed to cooperate with the Commonwealth's expert. Code § 37.2-907(A). Dr. Hastings was an expert for the Commonwealth who was previously tasked with evaluating Ferrara. He was not an expert for the respondent."

The Attorney General knew that Dr. Hastings was not appointed to assist me in the process, therefore, he was qualified to be my witness at the commitment trial. Prior to the commitment trial commencing, the Attorney General had all of the following information, as well

as the statute: 1. Notice of Mental Health Evaluation Form... 5. If you still refuse to cooperate with the interview by the expert appointed by the CRC, the court shall admit evidence of your refusal and shall bar you from introducing your own expert psychiatric and psychological evidence; any expert appointed to assist you shall not be permitted to testify at trial nor shall their report be admissible.

2. Dr. Carpenter's report dated 01/25/2018, on Page 2 of 29, under "Sources of Information"... 5. Sexually Violent Predator Evaluation for the CRC completed by Mark E. Hastings, Ph.D., dated 03/22/2016
6. Sexually Violent Predator Evaluation for the CRC completed by Mark E. Hastings, Ph.D., dated 10/04/2010."

3. Dr. Carpenter's report dated 01/25/2018, on Page 29 of 29, under "Summary and Conclusion"... Mark E. Hastings, Ph.D., completed SVP evaluations for the CRC on 10/04/2010 and 03/22/2016 for Mr. Ferrara. In both instances Dr. Hastings concluded that Mr. Ferrara did not meet the statutory criteria for commitment as a Sexually Violent Predator."

As previously noted, the Justices of the Supreme Court of Virginia, confirmed what was already known, by the Attorney General, months prior to the commencement of the commitment trial and still the Attorney General engaged in his gamesmanship and manipulation of the material facts to make sure that he gained the advantage in the commitment trial. The Attorney General violated Code § 18.2-498.3; § 37.2-903(A) and the Fourteenth Amendment, as noted previously. He manipulated the circuit court by misleading the representation of Code § 37.2-906(D), § 37.2-907(A) and ignoring § 37.2-908(C).

COV § 37.2-906(D)... In the event that a respondent refuses to cooperate with the mental health examination required by § 37.2-904 or fails or refuses to cooperate with the mental health

examination following rescission of his refusal pursuant to this subsection, the court shall admit evidence of such failure or refusal and shall bar the respondent from introducing his own expert psychiatric and psychological evidence. (pertinent part).

COV § 37.2-907(A)... However, if the respondent refused to cooperate with the mental health examination required pursuant to § 37.2-904 or failed or refused to cooperate with the mental health examination following rescission of a refusal pursuant to § 37.2-906, any expert appointed to assist the respondent shall not be permitted to testify at trial nor shall any report of any such expert be admissible. (pertinent part).

COV § 37.2-908(C)... IF he meets the qualifications set forth in subsection B of § 37.2-904 or 37.2-907, any expert witness may be permitted to testify at trial as to his diagnosis, his opinion as to whether the respondent meets the definition of a sexually violent predator, his recommendation as to treatment, and the basis for his opinions. (pertinent part)

As previously noted, by the Justices and confirmed by them, Codes §§ 37.2-906(D) nor 37.2-907(A) do not include Dr. Hastings in the bar against experts testifying and § 37.2-908(C) makes it clear that "any expert" includes Dr. Hastings, therefore, he could have still been allowed to testify at trial.

All of the above noted information shows that the Attorney General did abuse his authority when he pursued the barring of Dr. Hastings' testimony and evidence from the trial.

As shown, the Attorney General had prior knowledge of the testimony and evidence that Dr. Hastings could provide if he was allowed to appear at the commitment trial because he had prior information from Dr. Hastings' SVP evaluations. The Attorney General could not allow Dr. Hastings to tell the jury or the court that, in his opinion, I did not meet the statutory criteria for

The Justices of the Court stated that I had the key to unlock the use of Dr. Hastings' testimony. I only had to give up my right to remain silent and my right to not cooperate, in order to exercise my right to present Dr. Hastings and his reports.

The Court stated that I was being stubborn in my denial and called it "gamesmanship." This is incorrect. The truth is much more simpler than that. I read and understood what the statute stated, I knew that I had the legal right to present Dr. Hastings because he was never appointed to assist me in this matter. This was the reason that I never requested to have an expert appointed to assist me. I was confident in my interpretation of the statute and I was correct.

However, instead of being rewarded, for correctly interpreting the statute, with a new commitment trial, I was punished by being civilly committed under the guise of it being "harmless error". My punishment is the possibility of life without release.

I will show, in the forthcoming information, that the Justices did engage in their own brand of "gamesmanship". I will accomplish this task by utilizing their own statements in this matter.

Ferrara v. Commonwealth, 299 Va 438, 449-51, 854 S.E.2d 652, it states:

"Consistent with this line of authority, we have held, specifically in the sexually violent predator context, that where a prisoner facing civil commitment remains adamant in his refusal to cooperate with the Commonwealth's expert, due process certainly would not require the court to afford the prisoner an undue advantage by permitting him to present evidence based on a personal interview and examination by his expert, while he is simultaneously denying the Commonwealth's expert the ability to form his diagnosis in the same way. Hood v. Commonwealth, 280 Va 526, 540-41, 701 S.E.2d 421 (2010)."

After being advised of the consequences of refusing to cooperate, Ferrara persisted. The predictable consequences of his refusal to cooperate neither deprived him of a fair trial nor violated due process. Ferrara held the key to un-

lock the evidence from Dr. Hastings. He chose to keep it in his pocket. ...
We conclude that any error by the circuit court in apprehending the source
of its authority to exclude evidence from Dr. Hastings was harmless. We
reach this result for a number of compelling reasons. First, the respondent
in a sexually violent predator commitment proceeding is required to sub-
mit to an examination. Code § 37.2-904. This respondent repeatedly refused
to do so, even with the benefit of counsel. There is no suggestion that
his lack of cooperation stemmed from being indisposed physically or psy-
chologically, or from some other valid reason. As a matter of basic fair-
ness, courts generally will not permit a litigant to engage in gamesman-
ship by refusing to cooperate with the other party's expert while tending
evidence from their own expert. ... In addition, the legislature has ex-
pressed a clear policy of excluding evidence in sexually violent predator
proceedings when a respondent refuses to cooperate. See e.g., Code §§ 37.2-
904, -906, -907. ... Finally, the trial court did, in fact, allow Dr. Hastings'
reports to be mentioned as impeachment evidence. If the Commonwealth
refused to abide by its obligations to turn over evidence in discovery or fla-
grantly disregarded its duty to disclose exculpatory evidence and offered
no explanation aside from a stubborn refusal, there is little likelihood
it would be permitted to introduce evidence of the same kind it will-
fully withheld. In the face of all of this, it is hard to imagine a trial
court exercising its discretion in any way other than the way this trial
court did, which was to exclude these reports as substantive evidence
and to bar Dr. Hastings from testifying."

As the preceding questions revealed:

1. Dr. Hastings was not an appointed expert to assist me;
2. The bar contained in Code §§ 37.2-906 and -907, did not include Dr. Hastings;

3. Dr. Hastings was not excluded from testifying because he was the Commonwealth's expert;

4. Code § 37.2-904 does not "require" me to cooperate, that would violate COV § 37.2-901(3), my right to remain silent; and

5. The implied belief that I was withholding evidence, while attempting to present the same evidence, is incorrect.

The truth is that Dr. Carpenter had all of the same evidence that I was attempting to present. Dr. Hastings was a colleague of Dr. Carpenter. They provided the same services, for the Commonwealth, civil commitment evaluations of eligible prisoners for a price.

Therefore, I contend that the utilization of the "harmless error" doctrine has no merit and should not be allowed to stand. All of the reasons for the determination of "harmless error" were refuted by the earlier statements of the Court when explaining how the lower court erred. It cannot be held that Dr. Hastings was legally allowed to testify due to not being "an expert appointed to assist the respondent" and, in the same breath, state that I could not be allowed to present "evidence from their own expert" because I refused to cooperate. The Court contradicts itself.

COV § 37.2-901, Civil proceeding; rights of respondents; discovery.

In hearings and trials held pursuant to this chapter, respondents shall have the following rights:

3. To remain silent or to testify;

5. To present evidence and to cross-examine witnesses;

I contend that to allow myself to be evaluated by Dr. Carpenter would have violated my right to remain silent because I would, effectively, have been testifying about my mental health and personal behavioral traits. I would also be giving up my Constitutional Right against self-incrimination under the Fifth Amendment.

U. S. Constitution Amendment V: No person shall... be compelled in any criminal case to be a witness against himself... (pertinent part).

However, I would like to point out why I seek redress of this injustice, in accor-

dance with the Code of Virginia § 37.2-905.1 Substantial compliance.

COV § 37.2-905.1 Substantial compliance. The provisions of §§ 37.2-903, 37.2-904, and 37.2-905 are procedural and not substantive or jurisdictional. Absent a showing of Failure to follow these provisions as a result of gross negligence or willful misconduct, it shall be presumed that there has been substantial compliance with these provisions.

I have already addressed the violations of COV § 37.2-903 and how it was violated when I was civilly committed while serving an active sentence for a technical probation violation not a sexually violent offense at that time. It was also addressed that it is my contention that my name was not removed from the database after my release from the custody of the VDOC for all of my charges, in accordance with COV § 37.2-903(A)(6).

I cannot state definitively that the "failure to follow (this) provision" was due to "gross negligence or willful misconduct". I will leave that determination to the Justices of this Honorable Court, who are infinitely wiser than I am when it comes to legal matters. If it were my decision to make, I would state that they both apply in this case.

COV § 37.2-904. CRC assessment of prisoners or defendants eligible for commitment as sexually violent predators; mental health examination; recommendation

A. Within 180 days of receiving from the Director the name of a prisoner or defendant who has been assessed by the Director pursuant to § 37.2-903, the CRC shall (i) complete its assessment of the prisoner or defendant for possible commitment pursuant to subsection B and (ii) forward its written recommendation regarding the prisoner or defendant to the Attorney General pursuant to subsection C.

B. CRC assessments of eligible prisoners or defendants shall include a mental health examination, including a personal interview, of the

21.

ly 50 days. The CRC had approximately 130 days left to complete the statutory requirements of the assessment. However, the CRC chose to utilize Dr. Carpenter's incomplete evaluation. Why?

22.

Perhaps it was because I avoided civil commitment twice before after I cooperated with Dr. Hastings. He opined that I did not meet the statutory criteria for civil commitment as a sexually violent predator, after each of his assessments in 2010 and 2016, before Dr. Carpenter opined that I did in 2018.

That fact could account for the rationale of the CRC, to have Dr. Carpenter conduct this third (3rd) evaluation, instead of Dr. Hastings. Dr. maybe, Dr. Carpenter was the CRC's "Yes man" when they needed someone committed beyond the statutory criteria. He stated that I did meet the statutory criteria for civil commitment as a sexually violent predator and he did it without fulfilling the statutory requirements of a legal assessment. (See COV837.2-904B).

He diagnosed me with pedophilic disorder, which Dr. Hastings, before him and Dr.'s Dr. Brown and M. Sjolinder, after him, all agreed that I did not meet the DSM requirements for a diagnosis of pedophilic disorder. That diagnosis was the sole reason for my being civilly committed, for the Attorney General to file the petition for commitment and the reason why the Attorney General could not allow Dr. Hastings to testify, challenging Dr. Carpenter's opinion.

As can be seen by the facts and information contained in this document, there has been "gross negligence or willful misconduct" on many levels and by many individuals involved in this matter. The only person involved who has not violated the SVPA statutes or engaged in "gamesmanship," was me.

I did not need to engage in such behavior because the law was on my side. I was correct in my interpretation of the statutes for the inclusion of my witness to testify at the commitment trial. I should have been granted, my request, a new trial, a fair trial, but I was not. I should have been allowed to present my witness and my evidence, to a jury of my peers, in a truly adversarial confrontation with the Commonwealth's witness and evidence. I was denied this basic right.

Instead, I was abused further by those individuals or entities that possessed

If all of the above mentioned facts were not enough, the Virginia Supreme Court went on record to state, basically, that if I would have given up my right to remain silent, my right against self-incrimination and my right to not cooperate with the Commonwealth's expert, then, the circuit court would have allowed me to exercise my right to present witnesses and evidence. Since when do I have to give up one set of rights, to be allowed to exercise a different set of rights, especially if they all work together towards the "ends of justice", due process and the fairness of the adversarial process? They are all guaranteed rights.

All of these issues were determined, by the Virginia Supreme Court, to be nothing but "harmless error" and unworthy of a new commitment trial, as I requested.

I was locked up, from October 1996 until January 2011, serving an active sentence of fifteen (15) years for a sexually violent offense. I was released after fourteen (14) years and three (3) months, after being evaluated, for the Commonwealth, by Dr. Hastings, in October 2010, and without a petition being filed to civilly commit me as a sexually violent predator. This was the only time that I was legally eligible for commitment under the SVPA.

I was locked up, from July 2013 until October 2016, serving an active sentence for a non-sexually violent sex offense and a probation violation. I was released after three (3) years and three (3) months, after being evaluated, a second time, for the Commonwealth, by Dr. Hastings, in March 2016, and without a petition being filed to civilly commit me as a sexually violent predator. I was not legally eligible for the review process for commitment under the SVPA.

I was locked up, from April 2017 until April 2018, serving a sanction sentence for a technical probation violation, not a criminal conviction. I was not released because I was illegally evaluated, by Dr. Carpenter, for the Commonwealth, for a third time, in January 2018, and a petition for civil commitment was illegally filed when I was not eligible for review nor SVP Status, under the Act, at that time. I am still incarcerated, with no release in sight, under the guise of "harmless error".

REASONS FOR GRANTING THE PETITION

I have supplied compelling information for this Honorable Court to examine.

It is my contention that the ends of justice require that this case be remanded back to the circuit court for re-trial or dismissal.

It is my contention that because many of the provisions of the SVPA have been violated by the Commonwealth, under the guise of civil commitment eligibility, that this proceeding was, in fact, punitive in nature.

I have shown that the Attorney General did conceal material facts and mislead the court to gain the advantage, at trial, by having Dr. Hastings' testimony and reports barred from presentation. This was in violation of COV§ 18.2-49B.3.

I have shown that the Justices of the Virginia Supreme Court did cover up and conceal the error of the circuit court, under the guise of "harmless error." I have proven it to be a meritless application of the "harmless error" doctrine based on their reasons for the invocation of that doctrine.

It is my contention, which has been the case since the onset of these proceedings, in January 2010, that I was not eligible for civil commitment as a sexually violent predator, at that time, nor at any time, after my release from the VDOC, in January 2011.

It is my contention that over half of the residents that are being held in this facility, under the guise of being civilly committed, as sexually violent predators, were not eligible for the CRC review, at the time that they were subjected to the SVPA. My contention is based on the same facts contained in this document.

I have exhausted all of my avenues to redress this blatant disregard for the U.S. Constitution, the Code of Virginia statutes and my rights pertaining to them both. I have written with as much articulation as I can muster to make my position known to this Honorable Court and PRAY that this Court will GRANT my petition.

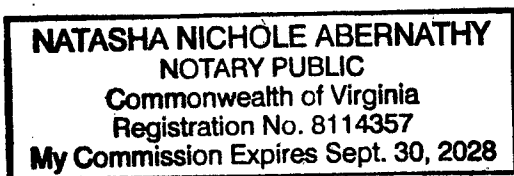
CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Frank Paul Ferraro

Date: 11-3-2025



Natasha Abernathy
11-3-25