

Record No. 200267

In The Supreme Court of Virginia

BRIAN DAVID HILL,
Petitioner/Appellant,

vs.

COMMONWEALTH OF VIRGINIA,
Appellee/Respondent.

Petition for Appeal From the Circuit
Court of the City of Martinsville

**PETITION FOR REHEARING OR
REHEARING EN BANC**

Brian David Hill
Pro Se Appellant
Ally of QANON
*Former USWGO Alternative News
Reporter*
310 FOREST STREET, APARTMENT 2
MARTINSVILLE, VIRGINIA 24112
Tel.: (276) 790-3505
E-Mail: No Email

U.S.W.G.O.

Friend of justice



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JusticeForUSWGO.wordpress.com

PETITION FOR REHEARING

Pursuant to Rule 5:20 of the Supreme Court of Virginia, Petitioner Brian David Hill ("Petitioner") respectfully petitions this Court for an order (1) granting rehearing, (2) vacating the Court's December 21, 2020 order denying or refusing the Petition for Appeal, and (3) re-disposing of this case by granting the Petition for Appeal, vacating the final judgment, and remanding to the Circuit Court of Martinsville, Virginia for further consideration to keep uniformity with the Circuits including older or newer U.S. Supreme Court established case law authorities such as *Schlup v. Delo*, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995) (the "Schlup issue"), *Bousley v. United States*, 523 U.S. 614, 622 (1998), *Murray v. Carrier*, 477 U.S. 478, 485 (1986); *Wainwright v. Sykes*, 433 U.S. 72, 87 (1977), and *Juniper v. Zook*, 876 F.3d 551, 556 (4th Cir. 2017), for the purpose of determining whether the Circuit Court's judgment of denying and dismissing Petitioner's Writ of Habeas Corpus petition should be reformed to keep uniformity in the Supreme Courts including this Supreme Court of Virginia and other appellate courts' rulings **that actual innocence claims cannot be procedurally barred at all, that a Petitioner for Writ of Habeas Corpus may not be procedurally barred upon a claim of actual innocence**, that it was appropriate to file, that the

Circuit Court as well as this Court had jurisdiction to act upon a Petition for Appeal and a Habeas Corpus petition of a Petitioner when claiming “actual innocence,” and compel the Circuit Court to order an evidentiary hearing and relevant discovery in regards to pending claims of actual innocence and other grounds connected with actual innocence that can also apply when the actual innocence exception is argued and filed before the Court.

Mr. Hill submits that the Writ Panel of Justices had erred in refusing the “Petition for Appeal” after Brian Hill had given oral argument on December 1, 2020 in regards to his Petition for Appeal, his Reply Brief in response to the Commonwealth, and upon the record in the originating case in the Circuit Court of Martinsville under case no. CL 19000331-00.

Mr. Hill had appropriately applied the U.S. Supreme Court’s Constitutional questions in regards to allowing Writ of Habeas Corpus petitions normally procedurally barred by either a statute of limitations or by any other procedural bar. Brian was entitled to relief as a matter of law and as a matter of right. The highest Supreme Court of the United States had already ruled multiple times in regards to barred Habeas Corpus petitions, that a petition cannot be denied or dismissed outright

upon any procedural reasoning or statute as procedurally barred in any way when (1) Actual Innocence carries a Constitutional weight and grants jurisdiction to an Court in filing an already-defaulted petition or claim by any procedural ground which may include the requirement that Petitioner be under State Custody.

The decision of the Writ Panel of this Court contradicts decades of controlling and authoritative case law precedent set by the United States Supreme Court and even persuasive case law of the U.S. Court of Appeals for the Fourth Circuit, also in Richmond, Virginia. The issues raised in his oral argument on December 1, 2020, Petition for Appeal are of a majorly considerable issues that cannot be resolved in the lower court anymore without the Supreme Court of Virginia remanding the case back to the Circuit Court to considering granting Petition for the Writ of Habeas Corpus upon an evidential showing after relevant discovery that Brian David Hill is factually innocent of his charge and conviction of indecent exposure under Virginia Code 18.2-387. Actual Innocence can also include lack of intent, statute not violated.

He seeks rehearing on the important Constitutional issues raised in his Petition for Appeal, his reply brief to the Commonwealth's response, as well as within the record itself. Pertaining to whether

Actual Innocence can overcome all procedural hurdles including the requirement that a Habeas Corpus Petitioner be under state custody such as imprisonment or probation. When Petitioner is serving Federal Supervised Release, he is required not to violate any state, federal, or local law otherwise he can face revocation of his supervision, and additional term of Supervised Release as a sentence. The record of the Writ of Habeas Corpus had already demonstrated that Petitioner's supervised release was already revoked as a result of his Virginia State charge of indecent exposure on September 21, 2018, his conviction in the General District Court on December 21, 2018, as well as the withdrawal of appeal on November 15, 2019 due to ineffective assistance of counsel.

The U.S. Constitution actually requires all Courts to entertain Writ of Habeas Corpus petitions that would normally be procedurally barred including time barred only upon a showing of actual innocence, factual innocence.

Unless Petitioner is granted relief by this Court, he will permanently be required to serve an additional 4 or 5 years of Supervised Release as a direct result of the State Criminal Charge of indecent exposure under Va. Code. 18.2-387 and conviction. He will also be required to pay legal costs billed to him in the Circuit Court when doing

such violates Title 42 U.S. Code § 407 Assignment of Benefits. So, he will also suffer unlawful stealing of his SSI money by the Commonwealth. This can all be stopped if Brian is acquitted of his conviction.

GROUND FOR RELIEF

As grounds for this petition for rehearing, petitioner states the following:

1. Petitioner filed the (1) Writ of Habeas Corpus on November 18, 2019, (2) timely filed Notice of Appeal on November 20, 2019, (3) Petition for Appeal entry date on February 19, 2020, (4) Reply to Brief in Opposition on March 30, 2020, and (5) the Oral Argument of Petitioner on December 1, 2020 before the Writ Panel.
2. The basis for requesting relief by granting the Petition for Appeal is entirely based upon guaranteed Constitutional remedy for normally procedurally barred petitions for Writs of Habeas Corpus. Even the Supreme Court of Virginia must respect the decisions of SCOTUS, the highest Supreme Court of the United States (“SCOTUS”) as the main legal authority for court case law involving all Courts of the United States of America over all matters concerning the U.S. Constitution by the Fourteenth Amendment of the U.S. Constitution pertaining to Federal Supremacy and requirement of Due Process for all State Courts,

requirement of Equal Protection under the Laws. If the Supreme Court rules that Federal Writs of Habeas Corpus shall be permitted and jurisdiction exists for claims of Actual Innocence, that all State Courts including State Supreme Courts must also respect Constitutional case law authorities from the same U.S. Supreme Court. The decision by the Writ Panel on December 21, 2020 to refuse the petition for appeal contradicts the multiple case laws of the highest Supreme Court. All State Governments must abide by the Federal Supremacy Clause otherwise a State is acting as a confederacy.

3. The Constitutional issues here that the Writ Panel of this Court failed to consider was the U.S. Const. Eighth Amendment's prohibition on cruel and unusual punishments inflicted. It was an opinion from SCOTUS that when a Court will not allow Habeas Corpus relief and refuse a Petition for Appeal or Appealability, when the (1) "Actual Innocence" claim is invoked, then this Court and the Writ Panel is allowing the cruel and unusual punishments to be inflicted upon Petitioner stirring from his State Criminal Conviction in sheer violation of the 8th Amendment's prohibition. It isn't just the state custody issue here, if Brian cannot be adjudicated innocent by any Virginia Court simply because he is not serving a State Sentence and is not in State Custody, then Petitioner is

to have no recourse for any relief in proving that he did not violate the conditions of his Supervised Release by the U.S. Probation Office for his Federal Sentence if the Circuit Court finds Petitioner actually innocent of his conviction, thus his supervised release sentence will permanently be extended and his Federal Imprisonment of up to 9 months would be justified against this innocent man. Not to mention the Circuit Court being allowed to forcefully make an SSI Dependent pay thousands of dollars in legal fees for his wrongful criminal conviction when Petitioner only lives off of his Federal Social Security Disability Benefits pursuant to Title 42 U.S. Code § 407. That is cruel and unusual punishment inflicted by Federal Probation and the Circuit Court due to the wrongful State Conviction when no remedy to overturn a wrongful conviction is allowed, when SCOTUS said actual innocence allows remedy.

4. The Panel argued in their reasoning that “he was not in custody or under any type of probation or suspended sentence from his indecent exposure conviction.” That is not true when him being revoked of Supervised Release as a direct result of his State Conviction had increased his term of Supervised Release which he is serving and was serving when the Writ of Habeas Corpus was filed. So he is serving more of a sentence directly caused by the State case.

5. The case law of SCOTUS makes it clear that this Court and the Circuit Court does have jurisdiction to entertain and consider Habeas Corpus petitions normally procedurally barred on the ground of (1) Actual Innocence. See *Bousley v. United States*, 523 U.S. 614, 622 (1998) “Where a defendant has procedurally defaulted a claim by failing to raise it on direct review, the claim may be raised in habeas only if the defendant can first demonstrate either “cause” and actual “prejudice,” *Murray v. Carrier*, 477 U.S. 478, 485 (1986); *Wainwright v. Sykes*, 433 U.S. 72, 87 (1977), or **that he is “actually innocent,”** *Murray*, *supra*, at 496; *Smith v. Murray*, 477 U.S. 527, 537 (1986).” *United States v. Fugit*, 703 F.3d 248, 253-54 (4th Cir. 2012) **“A procedural default, however, may be excused in two circumstances: where a person attacking his conviction can establish (1) that he is “actually innocent” or (2) “cause” for the default and “prejudice” resulting therefrom. Id. at 622, 118 S.Ct. 1604. While a successful showing on either actual innocence or cause and prejudice would suffice to excuse the default”.**
6. The compelling issues brought up in paragraphs 1-5 constitutes “intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented” sufficient to warrant rehearing of the order refusing Petitioner’s Petition for Appeal. The

granting of the petition in this case maintains the uniformity between the Supreme Courts of the states and the U.S. Supreme Court as well as uniformity between the Circuits. Petitioner's petition raised substantial and compelling issues requiring intervention by this court to prevent a rift and rebellion against the U.S. Supreme Court by State Supreme Courts making contradicting case law decisions. Petitioner, therefore, requests that the Court grant rehearing of his petition and grant his petition because he had raised a Constitutional challenge. Even this Supreme Court must follow the U.S. Supreme Court case laws of a Constitutional nature under the Federal Supremacy Clause. This Court has jurisdiction, as well as the Circuit Court of Martinsville to entertain a Habeas petition on Actual Innocence.

CONCLUSION

For the foregoing reasons, petitioner Brian David Hill prays that this Court (1) grant rehearing of the order denying and refusing his petition for Appeal in this case, (2) vacate the Court's December 21, 2020 order refusing Petition for Appeal, and (3) grant the petition for Appeal, vacate the judgment and remand to the Circuit Court for further consideration of Petitioner's Actual Innocence claim to keep in uniformity with

SCOTUS for the purpose of determining whether the Circuit Court should have entirely denied and dismissed the petition for writ of habeas corpus, or whether it should have been denied or granted in part or if at all.

Respectfully filed with the Court, this the 30th day of December, 2020.

Dated:

December 30, 2020

Respectfully submitted,


Signature

Brian D. Hill

Brian David Hill
Pro Se Appellant
Ally of QANON
Former USWGO Alternative News
Reporter
310 FOREST STREET, APARTMENT 2
MARTINSVILLE, VIRGINIA 24112
Tel.: (276) 790-3505
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JusticeForUSWGO.NL/pardon

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CERTIFICATE OF TRANSMISSION AND SERVICE

Pursuant to Rule 5:20(c)(1), On December 30, 2020, Due to the conditions of Brian David Hill's Supervised Release not allowing me to access the internet, I filed this Petition with the Court by having my Mother and Assistant Roberta Hill through rbhill67@yahoo.com emailing a PDF file of this Petition to scvpfr@vacourts.gov. Also, on December 30, 2020 a copy of the email and Petition that I had filed through my Assistant Roberta Hill had filed a PDF copy of this Petition on the following, via email, at the email address indicated:

Rachel Lynsie Yates (Esq.)

Assistant Attorney General

Office of the Attorney General

900 East Main Street

Richmond, Virginia 23219

(804) 786-2071

(804) 371-0151 (fax)

service@oag.state.va.us and mailoag@oag.state.va.us

Dated:

December 30, 2020

Respectfully submitted,

Brian D. Hill
Signed

Brian D. Hill

Brian David Hill

Pro Se Appellant

Ally of QANON

Former USWGO Alternative News
Reporter

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MARTINSVILLE, VIRGINIA 24112

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U.S.W.G.O.



**CERTIFICATE OF COMPLIANCE
WITH WORD OR PAGE COUNT LIMIT**

I certify that this Petition, excluding the cover page, table of contents, table of authorities and certificates, contains 10 pages or less according to the page count feature of Microsoft Word 2010. I had counted the pages that are not excluded and determined that the Petition for Rehearing or Rehearing En Banc is exactly nine (pages). This is pursuant to Rule 5:20(c)(1) “must not exceed the greater of 10 pages or a word count of 1,750 words”, are of 14-size font, New Century Schoolbook.

Dated:

December 30, 2020

Respectfully submitted,


Signed

Brian D. Hill

Brian David Hill

Pro Se Appellant

Ally of QANON

Former USWGO Alternative News
Reporter

310 FOREST STREET, APARTMENT 2

MARTINSVILLE, VIRGINIA 24112

Tel.: (276) 790-3505

E-Mail: No Email

JusticeForUSWGO.NL/pa

