

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 24th day of September, 2020.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective immediately.

Amend Rule 5A:5(b) as follows:

Rule 5A:5. Original Proceedings.

* * *

(b) *Petition for a Writ of Actual Innocence.* — (1) **Scope.** — Any person convicted of a felony or any person who was adjudicated delinquent by a circuit court of an offense that would be a felony if committed by an adult, may file in the Court of Appeals a petition under Code § 19.2-327.10 *et seq.* seeking a writ of actual innocence based on nonbiological evidence.

* * *

(4) **Filing Fee.** — The petition must be accompanied by either (i) a \$50.00 filing fee, or (ii) an *in forma pauperis* affidavit demonstrating that the petitioner cannot afford the filing fee. An affidavit seeking *in forma pauperis* status shall list all assets and liabilities of petitioner, including the current balance of any inmate account maintained by the correctional facility.

* * *

(9) **Copies.** — An original and any attachments to the petition, the Commonwealth's response, and the petitioner's reply, if any, shall be filed with the Court of Appeals.

* * *

Amend Part 5A, Appendix of Forms, Form 10 as follows:

**PETITION FOR A WRIT OF ACTUAL INNOCENCE
BASED ON NONBIOLOGICAL EVIDENCE**

THE COURT OF APPEALS OF VIRGINIA

(FULL NAME OF PETITIONER AND
PRISONER NO., IF APPLICABLE)

Record No. _____
(TO BE SUPPLIED BY THE CLERK OF THE COURT OF APPEALS)

v.

Commonwealth of Virginia
(RESPONDENT)

(PETITIONER'S ADDRESS)

Pursuant to the provisions of Chapter 19.3 of Title 19.2 of the Code of Virginia, I,

NAME OF PETITIONER

hereby petition this Court for a WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE. In support of this petition, I state under oath that the following information is true:

1. On _____, I was convicted or adjudicated delinquent in the

_____ Circuit Court of the following offense(s):
JURISDICTION (CITY/COUNTY)

Description of Felony Offense	Virginia Code	Circuit Court Case No.	Plea
_____	_____	_____	_____
_____	_____	_____	_____

2. I am innocent of the offense(s) that are the subject of this petition.

3. My claim of innocence is based upon the following evidence:

[] ATTACHED ADDITIONAL SHEET(S)

4. Check all that apply:

[] (a) This evidence was previously unknown or unavailable to either me or my attorney at the time the conviction(s) or adjudication(s) of delinquency became final in the circuit court; and/or

[] (b) This evidence was not subject to scientific testing because _____

5. This evidence became known or available to me on _____
DATE

6. The circumstances under which the evidence was discovered were

[] ATTACHED ADDITIONAL SHEET(S)

7. Check all that apply:

(a) This evidence could not have been discovered or obtained by the exercise of diligence before the expiration of 21 days following entry of the final order(s) of conviction or adjudication of delinquency by the court; and/or

(b) The testing procedure was not available at the time the conviction(s) or adjudication(s) of delinquency became final in the circuit court.

8. The evidence upon which I base my claim is material and, when considered with all of the other evidence in the record, will prove that no rational trier of fact would have found me to be guilty or delinquent beyond a reasonable doubt of the charge(s) described above because

ATTACHED ADDITIONAL SHEET(S)

9. In support of this petition, I have attached the following documents:

ATTACHED ADDITIONAL SHEET(S)

10. I understand that this petition must contain all relevant allegations of facts that are known to me at this time.

11. I understand that it must include all previous records, applications, petitions, and appeals and their dispositions related to this/these conviction(s) or adjudication(s) of delinquency, as well as a copy of any documents or evidence in support of the facts that I assert above.

12. I understand that if this petition is not complete, this Court may dismiss the petition or return the petition to me pending the completion of such form.

13. I understand that I am responsible for all statements contained in this petition.

14. I understand that any knowingly or willfully made false statement shall be a ground for prosecution and conviction of perjury as provided for in Virginia Code § 18.2-434.

15. Counsel. Check the appropriate box.

I am being represented by an attorney on the filing of this petition. My attorney's name and address are

I am not being represented by an attorney on the filing of this petition.

16. Exemption from filing fee. Check box below if claiming *in forma pauperis* status and seeking to file this petition without payment of fees.

I claim *in forma pauperis* status and I request that this Court accept this petition without the payment of filing fees. I affirm under oath that I am eligible for *in forma pauperis* status. My assets amount to \$ _____ (which sum includes my institutional inmate account which has a balance of \$ _____), and my liabilities amount to \$ _____.

17. Request for counsel. Check box below if claiming eligibility for court-appointed counsel and requesting appointment of counsel.

I am requesting that the Court appoint counsel to represent me in this action. I affirm under oath that I am unable to pay for an attorney to represent me in this action, as set forth in item No. 17 above.

Based on the above, I petition this Court pursuant to the provisions of Chapter 19.3 of Title 19.2 of the Code of Virginia for a Writ of Actual Innocence Based on Nonbiological Evidence.

DATE SIGNATURE OF PETITIONER

Commonwealth/State of _____

City County of _____

Subscribed and sworn to/affirmed before me on this date by the above-named person.

DATE

NOTARY PUBLIC

My commission expires: _____

DATE

SIGNATURE OF ATTORNEY (IF APPLICABLE)

VIRGINIA STATE BAR NUMBER

Pro se (self- represented) petitioners: You are required to send copies of the PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE and all attachments to the Commonwealth's Attorney of the jurisdiction where the conviction(s) or adjudication(s) of delinquency occurred and to the Attorney General of Virginia by certified mail. You must complete the form entitled Court of Appeals Form CAV-104, CERTIFICATE OF MAILING- PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE.

Petitioners represented by counsel: You are required to serve copies of the PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE and all attachments on the Commonwealth's Attorney of the jurisdiction where the conviction(s) or adjudication(s) of delinquency occurred and on the Attorney General of Virginia. You must include the forms entitled Court of Appeals Form CAV-103CA, ACCEPTANCE OF SERVICE OR RETURN OF SERVICE BY THE COMMONWEALTH'S ATTORNEY- PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE and Court of Appeals Form CAV-103AG, ACCEPTANCE OF SERVICE OR RETURN OF SERVICE BY THE ATTORNEY GENERAL- PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By:


Deputy Clerk