

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 4th day of October, 2018.

Present: All the Justices

Monte O'Brien Walton, Appellant,

against Record No. 171078
Circuit Court No. CL16-1647

Harold Clarke, Director, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Richmond.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that there is reversible error in the judgment of the Circuit Court of the City of Richmond.

On April 11, 2016, Monte O'Brien Walton ("Walton") filed a petition for a writ of habeas corpus in the circuit court. In an order entered on May 6, 2016, the circuit court found that Walton's habeas petition did not substantially comply with the requirements under Code § 8.01-655(B) and granted Walton 30 days to amend his petition.*

Walton mailed his amended habeas petition to the circuit court on June 3, 2016. However, on April 4, 2017, Walton received a letter stating that the circuit court had not received the amended petition. Although Walton provided evidence that he had mailed the petition to the circuit court on June 3, 2016, the circuit court found that Walton failed to file an amended petition in a timely manner and dismissed his petition without prejudice in an order dated May 5, 2017.

* Under the circuit court's order, the amended petition was due to the circuit court on June 5, 2016. However, as June 5, 2016 was a Sunday, Walton had until the following day, June 6, 2016, to file his amended petition.

Walton timely noted his appeal. After the record was transmitted to the Supreme Court, the circuit court clerk was able to locate Walton's amended habeas petition and subsequently transmitted it to the Supreme Court as an addendum to the record. The amended petition was postmarked June 3, 2016 and had been stamped as received by the circuit court clerk's office on the morning of June 6, 2016.

A circuit court abuses its discretion when its decision is "based on an incorrect factual basis." *Whitaker v. Heinrich Schepers GMBH & Co. KG*, 276 Va. 332, 338, 661 S.E.2d 828, 830 (2008). As the record clearly supports Walton's assertion that his petition was, in fact, timely filed, the circuit court abused its discretion in dismissing his habeas petition. Accordingly, the judgment of the circuit court dismissing the habeas petition is reversed and the matter is remanded to the circuit court for further proceedings.

This order shall be certified to the Circuit Court of the City of Richmond.

A Copy,

Teste:

A handwritten signature in black ink that reads "Paul L. Hanning". The signature is written in a cursive style with a stylized "P" and "H".

Clerk