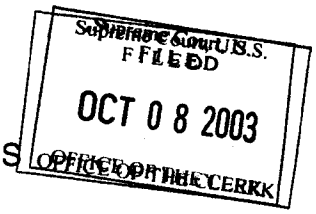
No. 03-7843 **ORIGINAL**

IN THE

SUPREME COURT OF THE UNITED STATES



#255292
In Re: HARRY BROCKWELL — PETITIONER
(Your Name)

vs.

WARDEN POWHATAN
CORRECTIONAL CENTER — RESPONDENT(S)

ON PETITION FOR A WRIT OF HABEAS CORPUS

4TH Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF HABEAS CORPUS

HARRY BROCKWELL, #255292
(Your Name)

POWHATAN CORRECTIONAL CENTER
(Address)

STATE FARM, VIRGINIA 23160
(City, State, Zip Code)

(Phone Number)

CLAIMS

All of the following claims are based on ineffective assistance of counsel and are governed by the United States Supreme Court's interpretation, in Strickland v. Washington, 466 U.S. 668.

This Honorable Court will find that the following claims; although under ineffective assistance of counsel, involve failure to follow state law and procedure, willfully and intentionally concealing exculpatory evidence and lieing about the evidence in order to obtain a conviction by fraud and deception.

CLAIM (1) DENIAL OF EXCULPATORY EVIDENCE THRU THE INEFFECTIVE ASSISTANCE OF COUNSEL.

This petitioner states he was denied due process of law by the Commonwealth, deliberately withholding exculpatory evidence. This concerns the gun powder residue sample for the petitioner's face, which the Commonwealth failed to test. See TR. 2/line 173. If this sample had been tested, it would have shown that, the petitioner

JURISDICTIONAL STATEMENT

28 USC 1651 WRITS.

(A) The Supreme Court and all courts established by Act of Congress issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 USC 2241 POWER TO GRANT THE WRIT.

(A) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(C-3) The writ of habeas corpus shall not extend to a prisoner unless he is in custody in violation of the constitution or laws or treaties of the United States.

This petitioner firmly states that he is in fact, incarcerated contrary to the Bill Of Rights and the United States Supreme Court determination thereof.

This petitioner seeks review of the final order denying his Writ Of Habeas Corpus on 12/16/02 Record# 1:02-CV-230-AM, by the U.S. District Court at Alexandria Va. without an evidentiary hearing.

Notice Of Appeal was then filed and received by the clerk of the 4th Cir. Court Of Appeals on 12/30/02 and forwarded to the Federal District Court at Alexandria, Va. On 3/10/03 a Motion To Proceed In Forma Pauperis on appeal was granted, and the Certificate Of Appealability was denied.

Informal briefs were filed on 1/21/03 in the 4th Cir. Court Of Appeals

and was denied on May 29, 2003 Record# 03-6108, then a petition for Rehearing and Rehearing Enbanc was filed on June 9, 2003 and was denied in the 4th Cir, Court Of Appeals on July 22, 2003 Record # 03-6108. There was no adjudication on the merits.

All state remedies have been exhausted.

STATEMENT OF THE CASE

Petitioner was convicted on November 6, 1997 in the Circuit Court, in Yorktown, Virginia of the alleged violation of Virginia Code § 18.2-30 and § 18. 2-32, First Degree Murder and section § 18.2-53.1 Use Of A Firearm In The Commission Of A Felony.

On the evening of November 6, 1996, a call was placed to 911, prompting officers' from the Poquoson Police Department to Poquoson Avenue in the City Of Poquoson TR 1/lines 44-45. This call was placed at approximately 7:30 p.m. by the petitioner, Harry Brockwell, who stated that his wife had just killed herself. (TR.1/line 77). The dispatcher received the call and directed petitioner to see if his wife Mary Brockwell was breathing and/or concious. (TR. 1/line 79). At that point, the conversation between petitioner and the dispatcher ended.

Sargent Ronald Howell and Officer Ronald Evans, were the first officers' on the scene, and arrived around 7:40 p.m. (TR. 1/line 87). Sargent Howell testified, that upon entering the house, he found Mary Brockwell lying on the floor with a .22 calibre pistol lying in plain view on the bed beside her body. At the point, Sargent Howell called the emergency medical technicians into the house and gave the weapon to Officer Evans to clear. (TR. 1/line 97). Officer Evans exited the house and asked Deputy Allred to help remove the cartridges from the weapon. A total of nine cartridges were removed from the magazine and one cartridge was removed the chamber.

Thomas Jordan, a paramedic, for the City Of Poquoson, was among the emergency medical technicians who attempted to resuscitate Mary Brockwell. Jordan testified that Mary Brockwell was lying face up

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

OCT 20

HARRY BROCKWELL,	)	
	)	
Petitioner,	)	
	)	
v.	)	CIVIL ACTION NO. 02-230-AM
	)	
	)	
DIRECTOR, DEPT. OF CORRECTIONS	)	
	)	
Respondent.	)	

O R D E R

This matter is before the Court on petitioner's motion for a certificate of appealability. On August 12, 2003, petitioner filed a motion to reconsider judgment pursuant to Fed. R. Civ. P. 60(b). By Order dated September 2, 2003, this Court denied petitioner's motion because it merely reiterated previous arguments. On September 30, 2003, petitioner filed a Notice of Appeal and the instant motion. For the reasons stated in the Order dated September 2, 2003, petitioner's request for a certificate of appealability must be denied.

Accordingly, it is hereby

ORDERED that petitioner's motion for a certificate of appealablity is **DENIED**.

The Clerk is DIRECTED to forward a copy of this Order to petitioner. In addition, pursuant to Rule 22 of the Federal Rules of Appellate Procedure, the Clerk is DIRECTED to send this Order, the