

VIRGINIA:

IN THE COURT OF APPEALS

TERENCE JEROME RICHARDSON,

S/K/A

TERRENCE JEROME RICHARDSON,

Petitioner,

v.

Record No. 0361-21-2

COMMONWEALTH OF VIRGINIA,

Respondent.

**MOTION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEF AND EXHIBITS**

COMES NOW the Commonwealth of Virginia, by her undersigned counsel, and moves this honorable Court pursuant to Rules of the Supreme Court of Virginia 5A:2 and 5A:5 to grant her leave to file a supplemental brief and exhibits in support thereof. In support of the motion, the Commonwealth states as follows:

1. On February 4, 2022, the Commonwealth filed a five-page letter detailing multiple reversals of the positions it previously advanced in its November 1, 2021 Answer. Those position changes include:
 - a. The Commonwealth no longer joins in the petition for writ of actual innocence. Code § 19.2-327.10:1.

b. The Commonwealth no longer concedes that Petitioner's acquittals of certain federal offenses are "evidence" properly before this Court. Code § 19.2-327.11(A)(iii).

c. The Commonwealth no longer concedes that Petitioner's acquittals of certain federal offenses are "material." Code § 19.2-327.11(A)(vii).

d. The Commonwealth no longer concedes that Petitioner has carried his burden to prove that certain previously unknown evidence "could not, by the exercise of diligence, have been discovered or obtained before the expiration of 21 days following entry of the final order of conviction . . . by the circuit court." Code § 19.2-327.11(A)(vi)(a).

e. The Commonwealth no longer concedes that Petitioner has carried his burden to prove that the previously unknown evidence is "material." Code § 19.2-327.11(A)(vii).

f. The Commonwealth no longer concedes that Petitioner has carried his burden to prove that the previously unknown evidence, "when considered with all of the other evidence in the current record, will prove that no rational trier of fact would have found proof of guilt or delinquency beyond a reasonable doubt. Code § 19.2-327.11(A)(vii).

2. The Commonwealth desires to brief the Court regarding the legal and factual rationales for the positions stated herein and in its February 4, 2022 letter, as well as to proffer any additional evidence in support thereof. Code § 19.2-327.11(C) (“The [Attorney General’s] response may contain a proffer of any evidence pertaining to the guilt or delinquency or innocence of the petitioner that is not included in the record of the case . . . “).

3. Pursuant to Rule 5A:2(a)(1) of the Rules of the Supreme Court of Virginia, the Commonwealth represents that it has contacted Petitioner’s counsel requesting consent to the instant motion; Petitioner opposes the instant motion.

WHEREFORE, for the reasons stated, the Commonwealth, by her undersigned counsel, moves this Court to grant her leave to file a supplemental brief and exhibits in support thereof, and for any other relief deemed appropriate by the Court in its discretion.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA,
Respondent herein

JASON S. MIYARES,
Attorney General of Virginia

/s/ Brandon T. Wroblewski

By: _____
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CERTIFICATE OF SERVICE

On February 7, 2022, a copy of the foregoing Motion for Leave to File Supplemental Brief and Exhibits was filed with the Clerk of this Court using the VACES system pursuant to Rules 1:17 and 5A:1(c), and contemporaneously emailed to Jarrett Adams, Esquire at jadams@jarrettadamslaw.com, and Michael HuYoung, Esquire, mhuyoung@barnesfamilylaw.com, counsel for petitioner.

/s/ Brandon T. Wrobleski

Brandon T. Wrobleski
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