

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.

**OPPOSITION TO THE COMMONWEALTH OF VIRGINIA’S MOTION TO
CONTINUE ORAL ARGUMENT**

TERENCE JEROME RICHARDSON, S/K/A TERRENCE JEROME RICHARDSON (“Mr. Richardson” or “Petitioner”) opposes the Commonwealth of Virginia’s (“the Commonwealth” or “Respondent’s”) Motion to Continue the Oral Argument scheduled in this matter for February 8, 2022 at 9:30 a.m. In support of his Opposition to the Respondent’s Motion, Petitioner states as follows:

I. INTRODUCTION

After an extensive four (4) year investigation by Petitioner’s counsel which uncovered several pieces of exculpatory evidence (“New Exculpatory Evidence”) which was wrongfully withheld from the Mr. Richardson in violation of *Brady v. Maryland*,

thereby rendering Petitioner's guilty plea involuntary, Mr. Richardson filed his Petition for a Writ of Actual Innocence on April 6, 2021 ("the Petition").

The grounds for the Petition are the New Exculpatory Evidence and the fact that Mr. Richardson was acquitted of the murder of Officer Gibson by a federal jury following a trial. Mr. Richardson's Petition was joined by the previous Commonwealth which filed its Answer on November 1, 2021 ("Commonwealth's Answer" or "Answer"). On behalf of the previous Commonwealth, the now disbanded Conviction Integrity Unit ("CIU") filed an Answer following its lengthy, thorough and independent investigation that spanned over six (6) months. The Answer explicitly requests the Court grant Mr. Richardson petition for a writ of actual innocence or in the interim, order an evidentiary hearing to explore the innocence further. *See Answer*, p. 1.

Oral argument before this court was set for February 8, 2022, per the Court's order on January 11, 2022. Now, following a change in administration and the termination of the entire staff of the CIU of the previous Attorney General's Office, the current Commonwealth files a motion to continue the hearing with no reasonable cause. In its moving papers, the Commonwealth does not provide any facts or legal argument in support of its motion. In addition, there is nothing in its motion or the record that suggests that the Commonwealth cannot adequately prepare for the oral argument on February 8, 2022.

The Court should deny the current Commonwealth's Motion for a sixty (60) day continuance because it would unduly delay and prejudice the granting of Mr. Richardson's Petition for writ of actual innocence, which also would continue Mr. Richardson's twenty (20) plus year wrongful incarceration.

II. BACKGROUND

As the Court is aware from Mr. Richardson's filed Petition and the previous Commonwealth's Answer, Mr. Richardson pled guilty to state murder charges on December 8, 1999, on the advice of counsel and because he faced the possibility of being sentenced to the death. Mr. Richardson was later indicted and tried for the same murder in federal court and subsequently acquitted by the federal jury trial on June 13, 2001, for the murder of Officer Gibson. Nevertheless, Mr. Richardson was sentenced to life imprisonment – based on a sentence enhancement that cited the state court guilty pleas as judicial admissions of guilt.

Following investigation by current counsel, which uncovered the New Exculpatory Evidence and blatant *Brady* violations by state authorities during the state proceedings, Mr. Richardson filed his Petition that is currently before this court.

After a change in administration, and without any cause, the current Commonwealth now requests a sixty (60) day continuance in order to “review the records” despite the previous Commonwealth's position that the Petition should be granted.

III. ARGUMENT

A. The Interests of Justice Requires that the Commonwealth's Motion Be Denied and that Oral Argument Proceed on February 8, 2022

Rule 5A:A(10) of the Rules of the Supreme Court of Virginia provides that “[u]nless otherwise directed by this Court, oral argument will only be allowed on the final decision whether to grant or deny the writ under Code § 19.2-327.13.” The oral argument scheduled

on February 8, 2021, was granted in order for the Court of Appeals to make the final decision whether to grant or deny the writ. In this case, Mr. Richardson's Petition and the Commonwealth's Answer joining Mr. Richardson's petition is unequivocal: Mr. Richardson should be granted a writ of actual innocence or allowed to have an evidentiary to further support his claim. To deny Mr. Richardson his hearing on February 8, 2022 would be a travesty of justice.

Given the plethora of evidence that supports Mr. Richardson's petition for a writ of actual innocence, any further delay would result in a manifest injustice. Note that Mr. Richardson's state court conviction is only a starting point for him to be released from prison as he was sentenced to life in prison by a federal court on the basis of his state court plea to involuntary manslaughter. Thus, any further delay in the proceedings would further harm Mr. Richardson.

B. The Commonwealth Has Not Established a Good Cause for the 60 Day Continuance

The Rules of the Virginia Supreme Court provides that petitions for the issuance of writs of actual innocence are not subject to Rule 5:7 of the Rules of the Supreme Court. *See* Rule 5A:5. Counsel for Petition could not find a specific rule governing continuance requests in petitions for writs of actual innocence. Therefore, Petitioner refers to the requirement of "good cause" found in other contexts. *See* Rule of the Virginia Supreme Court Rule 7A:14(a) Continuances Granted for Good Cause ("Continuances should not be granted except by, and at the discretion of, a judge for good cause shown, or unless otherwise provided by law"); *see also Price v. Commonwealth*, 24 Va. App. 785, 788, 485

S.E.2d 655, 656 (1997) (good cause required by Article III(a) to commence trial after 180 days); *Delgado v. Commonwealth*, 16 Va. App. 50, 53, 428 S.E.2d 27, 29 (1993); Rules of the Virginia Supreme Court Rule 3. Uniform Pretrial Scheduling Order Section IX (“Continuances will only be granted by the court for good cause shown”).

Specifically, in the trial context, good cause has been shown, when both parties agree to the continuance. *Delgado v. Commonwealth*, 16 Va. App. 50, 53, 428 S.E.2d 27, 29 (1993). Good cause is also shown when a defendant’s attorney endorsed the continuance of a trial in order for the attorney to have thirty days to adequately prepare for trial. *Price v. Commonwealth*, 24 Va. App. 785, 790, 485 S.E.2d 655, 657 (1997). In contrast, the failure to properly prepare its case is not a good cause for nolle prosequi. *Battle v. Commonwealth*, 12 Va.App. 624, 631 n. 2, 406 S.E.2d 195, 198 n. 2 (1991) (the Court of Appeals reversing the convictions and dismissing the indictments when the trial court granted the prosecutor’s request for a continuance without good cause). Here, the Commonwealth’s motion for a continuance has no cause stated and should be denied.

In its moving papers, the Commonwealth lays forth insufficient facts and no caselaw in support of its request for a 60-day continuance. The sum of the Attorney General’s moving papers consists of simply that the Attorney General’s file on the matter is voluminous (¶¶ 15-16); an improper statement that the investigation conducted by the Attorney General was actually a “joint” investigation with Petitioner (¶ 1); that the assigned counsel has “several other upcoming briefing and hearing deadlines” (¶ 17); and irrelevant mentions that the Petitioner had previously consented to continuance requests by the Commonwealth (¶¶ 7-8). None of these reasons warrant a delay of the hearing date of

February 8, 2021.

The previous Commonwealth's filed Answer clearly sets forth its position and summarizes the results of its thorough and impartial investigation. In its seventy-eight (78) page Answer, the previous Commonwealth argues that the federal jury trial and federal jury acquittal constitutes newly discovered evidence, previously unavailable to Mr. Richardson, which is absolutely material and establishes that no rational trier of fact would have found proof of Mr. Richardson's guilt beyond a reasonable doubt with this record. *See Answer*, pp. 68-75. Specifically, the Commonwealth wrote "[t]here is no stronger proof that no rational trier of fact would have found proof of Mr. Richardson's guilt than the verdict of the federal jury, a rational trier of fact tasked with assessing Mr. Richardson's guilt of the same homicide that is the basis of his state conviction." *Id.* at 74-5. Should the Court disagree with this position, the Commonwealth believes that an evidentiary hearing is warranted to determine the weight of evidence presented by Mr. Richardson, including the materiality of Ms. Shannequia Gay's statement and the photo lineup. *Id.* at 75.

The current Commonwealth cannot now use the change in administration to request more time to prepare for the hearing. The failure to properly prepare is not a good cause for a continuance, *see Battle v. Commonwealth, supra*. Here, the Commonwealth need only review the Answer and annexed Exhibits in order to prepare for oral argument. The Commonwealth is representing that it would like to review the entire investigatory file and other documents in order to prepare for the hearing; however, the Commonwealth is simply requesting more time in what appears to be an attempt to find a way to refute the previous Commonwealth's prior position and impeach itself solely because the Answer was filed by

the previous administration.

IV. CONCLUSION

WHEREFORE, the previous Commonwealth's Answer was filed after a very thorough and impartial investigation – and the current Commonwealth cannot be permitted to reverse its position based on the same evidence. for the reasons stated, moves this Court to deny the request for a sixty (60) day continuance of the oral argument in this matter.

Respectfully submitted,

TERENCE JEROME RICHARDSON
Petitioner

By: /s/ Jarrett Adams, Esquire
Lead Counsel

By: /s/ Michael HuYoung, Esquire
Local Counsel

CERTIFICATE OF SERVICE

On January 28, 2022, a copy of the foregoing Motion to Continue Oral Argument 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 the Theophani K. Stamos, Special Counsel to the Attorney General For Cold Cases, Investigations, and Actual Innocence, tstamos@oag.state.va.us; Brandon T. Wroblewski, Special Assistance to the Attorney General for Investigations, bwroblewski@oag.state.va.us; and the Office of the Attorney General for Virginia, oagcriminallitigation@oag.state.va.us, counsels for the Commonwealth of Virginia.

/s/ Jarrett Adams, Esq.
