

**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 TO CONTINUE ORAL ARGUMENT**

COMES NOW the Commonwealth of Virginia, by her undersigned counsel, and moves this honorable Court to grant a 60-day continuance of the oral argument scheduled in this matter for February 8, 2022 at 9:30 a.m. In support of the motion to continue, the Commonwealth states as follows:

**I. PROCEDURAL HISTORY**

1. Prior counsel for the Commonwealth and counsel for the Petitioner conducted a lengthy investigation into this matter that resulted in significant development of the record. Upon information and belief, the joint investigation between counsel for the Commonwealth and the Petitioner extends back to

approximately December 2020, several months prior to the Petitioner's initial filing in this Court in April 2021.

2. Petitioner's counsel filed the initial petition for writ of actual innocence on or about April 6, 2021.

3. On June 3, 2021, this Court ordered the Office of the Attorney General to respond to the petition for writ of actual innocence within 60 days.

4. The investigation into this matter by the former Conviction Integrity Unit under previous Attorney General Herring [hereinafter "CIU"] has been ongoing since Petitioner's initial filing. The CIU investigation continued after this Court's June 3, 2021 order directing the Attorney General to respond.

5. In recognition of the voluminous records and investigative materials developed by both parties, prior counsel for the Commonwealth moved this Court for three (3) extensions of time within which to file the Commonwealth's answer to the petition for writ of actual innocence.

6. It is unclear whether counsel for the Petitioner joined in the Commonwealth's initial request for an extension of time within which to file its answer, but nonetheless, on July 27, 2021, this Court granted the Commonwealth such an extension and set the due date for the Commonwealth's answer on September 1, 2021. Review of CIU files and correspondence shows that the CIU

investigation into this matter was ongoing and was actively generating new evidence between June 2021 and September 2021.

7. On August 25, 2021, the Commonwealth again moved this Court for an extension of time within which to file its answer. Petitioner's counsel did not object to the extension. This Court granted the Commonwealth an extension until October 1, 2021 to file its answer. Review of CIU files and correspondence shows that the CIU investigation into this matter was ongoing and was actively generating new evidence between August 2021 and October 2021.

8. On September 27, 2021, the Commonwealth again moved this Court for an extension of time within which to file its answer. Petitioner's counsel did not object to the extension. This Court granted the Commonwealth an extension until October 31, 2021 to file its answer. Review of CIU files and correspondence shows that the CIU investigation into this matter was ongoing and was actively generating new evidence during October 2021.

9. The Commonwealth filed its answer on November 1, 2021. Review of CIU files and correspondence shows that the CIU investigation into this matter generated some new evidence since November 1, 2021, including as late as December 27, 2021.

10. On or around December 15, 2021, oral argument in this case was set for February 8, 2022 by the agreement of prior counsel for the Commonwealth and counsel for the Petitioner.

11. On January 15, 2022, the administration of Attorney General Jason S. Miyares took office; as a result, all three counsel for the Commonwealth in this matter, Emilee Hasbrouck, Esq., Alphonso Simon, Esq., and Seth Shelley, Esq., are no longer with the Attorney General's Office. The CIU no longer exists in the Office of the Attorney General, and all actual innocence matters are now being handled by new personnel, including the undersigned.

## **II. SCOPE OF THE INVESTIGATION PREDATING CURRENT COUNSEL'S INVOLVEMENT**

12. Undersigned counsel obtained access to most prior records maintained by the CIU on or about January 25, 2022. Undersigned counsel still does not have access to all briefs and notices filed by prior counsel in the instant matter, as well as in several other pending matters. Efforts are underway to obtain these necessary documents from opposing counsel or this Court's clerk's office.

13. Undersigned counsel estimates that the CIU investigation in this matter encompasses at least sixteen (16) witness interviews, including audio recordings and transcripts, as well as over 5,000 pages of transcripts, photographs, and other documents.

14. In an “Unopposed Motion for Extension of Time” filed on September 27, 2021, prior counsel for the Commonwealth represented to this Court that the CIU had reviewed the following documents while preparing its answer: “the available files and court records; the transcripts from [Petitioner’s] December 8, 1999 plea hearing and March 8, 2000 sentencing hearing in the Circuit Court for Sussex County; and the trial transcript from [Petitioner’s] June 4-13, 2001 trial in the United States District Court for the Eastern District of Virginia...The [CIU] has also reviewed documents that were previously provided to the Office of the Attorney General by [Petitioner’s] counsel prior to the filing of the petition. The [CIU] also reviewed 3,983 pages of materials from the U.S. Attorney’s Office for the Eastern District of Virginia. The [CIU] also reviewed additional documentation it received from one of the investigators in the state criminal prosecution, and the additional documentation received from [Petitioner’s] counsel and from the U.S. Attorney’s Office.”

15. Additionally, the Commonwealth’s “Exhibits to Her Answer to the Petition for a Writ of Actual Innocence,” filed November 1, 2021, contain 1,329 pages of documents.

16. Undersigned counsel respectfully submit that while they are working overtime to read and acquaint themselves with every page of the several thousands of pages of records reviewed by prior counsel for the Commonwealth in this matter,

it will be impossible to gain a full understanding of all documents and evidence reviewed, as well as the effect of the said evidence on the positions articulated by prior counsel in the briefing in this case, prior to the previously scheduled oral argument date of February 8, 2022.

17. Undersigned counsel also have several other upcoming briefing and hearing deadlines requiring them to conduct similar reviews of multi-thousand-page trial and appellate records.

18. In order to fully evaluate the positions adopted by prior counsel for the Commonwealth, the Commonwealth respectfully submits that a continuance of the oral argument for 60 days is necessary.

19. 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 to continue oral argument. Petitioner's counsel opposes the instant motion.

WHEREFORE, for the reasons stated, the Commonwealth, by her undersigned counsel, moves this Court to order a 60-day continuance of the oral argument in this matter, 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. Wrobleski  
By: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

On January 27, 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 Jarrett Adams, Esquire at jadams@jarrettadamslaw.com, and Michael HuYoung, Esquire, mhuyoung@barnesfamilylaw.com, counsel for petitioner.

/s/ Brandon T. Wrobleski

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