

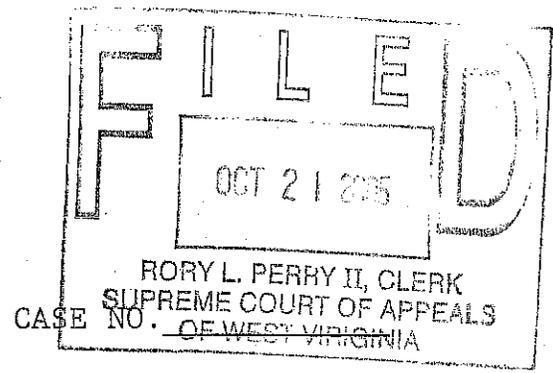
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IN THE WEST VIRGINIA
SUPREME COURT OF APPEALS

RICHARD LEE HATFIELD

VERSUS

CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA



A PETITION FOR A WRIT
OF MANDAMUS

Submitted Pro Se by:

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TABLE OF CONTENTS

	<u>PGS.</u>
INDEX OF CASES/AUTHORITIES CITED.....	ii-vii
PURPOSE OF THIS WRIT OF MANDAMUS.....	1
THE PURPOSES OF THE WRIT OF HABEAS CORPUS.....	1-2
GENERAL PURPOSES OF WRITS OF MANDAMUS.....	2-3
HISTORY OF PETITIONER'S CASE.....	3-9
LEGAL ARGUMENTS.....	9-24
WRIT OF MANDAMUS.....	9-11
HABEAS CORPUS, SUSPENSION CLAUSE AND THE DUTY OF THE COURT.....	11-18
DELAY AS PREJUDICIAL TO PETITIONER- PRISONER.....	19-21
DELAYS AS PREJUDICIAL TO FREE SOCIETY.....	21-24
SUMMARY/RELIEF SOUGHT.....	24-26
CERTIFICATE OF SERVICE.....	27
EXHIBITS:	
Docketing Sheet for this Habeas Corpus.	
Documents showing No Notice Ever Sent to Petitioner Informing Him of Refusal of Direct Appeal.	
Documentation of prison/jail overcrowding: Newspaper article.	

INDEX OF CASES AND AUTHORITIES CITEDPGS.

WRIT OF MANDAMUS

(1) County Court v Brammer, 68 W Va 25, 69 SE 450 (1910).....	9
(2) Cross v W.Va. Cent. & P.R.Co., 35 W Va 174, 12 SE 1071 (1891).....	10
(3) Dillon v Bare, 60 W Va 513, 56 SE 390 (1906).....	10
(4) Dunlevy v Co. Ct., 37 W Va 513, 35 SE 956 (1900).....	10
(5) Gardner v Bailey, 128 W Va 337, 36 SE 2d 215 (1945).....	9
(6) Johnson v Rogers, 917 F.2d 1283 (10th 1990).....	11
(7) Peoples National Bank v Burdett, 69 W Va 369, 71 SE 399 (1911).....	10
(8) Snyder v Callaghan, 168 W Va 265, 284 SE 2d 241 (1981).....	10
(9) State ex rel Burgett v Oakley, 155 W Va 276, 184 SE 2d 318 (1971).....	9
(10) State v Garvin, 139 W Va 845, 82 SE 2d 612 (1954).....	9 10
(11) State ex rel Judy v Kiger, 153 W Va 764, 172 SE 2d 579 (1970).....	11
(12) State ex rel Matheny v County Court, 47 WVa 672, 35 SE 959 (1900).....	9
(13) State ex rel McCamic v McCoy, 166 W Va 572, 276 SE 2d 534 (1981).....	10
(14) United States v Wiggins, 50 F Supp 2d 512, (Va. 1999).....	10
(15) West Virginia Code §§53-1-1 through 53-1-12.....	9
(16) West Virginia Consitution, Art.III, §3 (1872).....	11

HABEAS CORPUS, THE SUSPENSION CLAUSE, AND THE COURT'S DUTY

(1) Adams v Circuit Court, 173 W Va 448, 317 SE 2d 808 (1984).....	12
(2) Allen v Newsome, 795 F.2d 934 (11th 1984).....	13
(3) American Bar Association Standards Relating To Court Delay Reduction (in W.Va. Trial Rules).....	15

(4)	AntiTerrorism and Effective Death Penalty Act of 1996.....	13
(5)	Black's Law Dictionary.....	12
	.....	13
(6)	Bowen v Johnston (1939) 306 US 19, 83 L Ed 455, 59 S Ct 442.....	13
	.....	16
(7)	Braden v Judicial Court of Kentucky (1972), 410 US 484, 35 L Ed 2d 443, 93 S Ct 1123.....	17
(8)	Breasele v Bradley, 582 F.2d 5, (5th 1978).....	13
(9)	Buchanan v Buchanan, 170 Va. 485, 197 SE 426 (1938).....	12
(10)	Burrow v Hoskin, 742 F.Supp. 966 (M.D. Tenn. 1990).....	13
(11)	Case v Nebraska (1965) 381 US 336, 14 L Ed 2d 422, 85 S Ct 1486.....	17
(12)	Code of Judicial Conduct, Canon 3B(8), (in West Virginia Trial Rules).....	15
(13)	Coleman v Thompson (1991) 501 US 722, 115 L Ed 2d 640, 111 S Ct 2546.....	17
(14)	DeLacey v Antoine, 34 Va.(7 Leigh) 438 (1836).....	12
(15)	Douglas v California (1963) 372 US 353, 9 L Ed 2d 325, 82 S Ct 1209.....	17
(16)	Ex parte Bollman, 8 US (4 Cranch) 75, 2 L Ed 554 (1807).....	13
(17)	Ex parte Royall (1886) 117 US 241, 29 L Ed 868, 6 S Ct 734.....	16
(18)	Fay v Noia (1963) 372 US 391, 9 L Ed 2d 837, 83 S Ct 822.....	11
	.....	12
	.....	13
	.....	14
(19)	<u>Federal Habeas Corpus Practice and Procedure</u> , 4d, Hertz and Liebman, 2001, LexisNexus.....	13
	.....	17
(20)	Gallegos v Colorado (1962) 370 US 49, 8 L Ed 325, 82 S Ct 1209.....	17
(21)	Grayley v Workman, 176 W Va 103, 341 SE 2d 850 (1986).....	15
(22)	Harris v Champion, 938 F.2d 1062 (10th 1991).....	12
	.....	16
(23)	Harris v Kuhlman, 601 F Supp 987, (E.D. N.Y.1985).....	16

(24) Harris v Nelson (1969) 394 US 286, 22 L Ed 2d 281, 89 S Ct 1082.....	11 13 17
(25) Johnson v Nanny, 194 W Va 623, 461 SE 2d 129 (1995).....	15
(26) Johnson v Rogers, 917 F.2d 1283 (10th 1990).....	15
(27) Jones v Delo, 56 F.3d 878 (8th 1995).....	10
(28) Lance v McCoy, 34 W Va 416, 12 SE 748 (1890).....	11
(29) McClellan v Young, 421 F.2d 690 (6th 1970).....	12
(30) Moore v Deputy Commissioner, 946 F.2d 236 (3rd 1991).....	16
(31) Odsen v Moore, 445 F.2d 806, (1st 1971).....	16
(32) Rhodes v Leverette, 160 W Va 781, 239 SE 2d 136 (1977).....	14
(33) Rose v Lundy (1982) 455 US 509, 71 L Ed 2d 379, 102 S Ct 1198.....	16
(34) Schneckloth v Bustamonte (1973) 412 US 218, 36 L Ed 2d 854, 93 S Ct 2041.....	14
(35) Shamblin v Hey, 163 W Va 396, 256 SE 2d 435 (1979).....	12
(36) Smith v Bennet (1961) 365 US 708, 6 L Ed 2d 39, 81 S Ct 895.....	16
(37) Smith v Kansas, 356 F.2d 654 (10th 1966).....	12
(38) State ex rel Burgett v Oakley, 155 W Va 276, 184 SE 2d 318 (1971).....	11
(39) State v Lowry, 42 W Va 205, 7 SE 27 (1896).....	17
(40) State v Miller, 197 W Va 588, 476 SE 2d 535 (1996).....	17
(41) State v Neuman, 179 W Va 580, 371 SE 2d 77 (1988).....	14
(42) State v Osakalumi, 194 W Va 758, 461 SE 2d 504 (1995).....	14
(43) State v Reuff, 29 W Va 751 (1887).....	12
(44) Storey v Kindt, 26 F.3d 402 (3rd 1994).....	15
(45) VanBuskirk v Wilkinson, 216 F.2d 735, (9th 1954).....	12

(46) Walker v Vaughn, 53 F.3d 609 (3rd 1995).....	14
(47) Wardius v Oregon (1973) 412 US 470, 37 L Ed 2d 82, 93 S Ct 2208.....	13
(48) West Virginia Code §§ 53-4-1, 53-4A-3.....	12 17
(49) West Virginia Constitution Art.III §4.....	11
§6.....	12
(50) West Virginia Trial Court Rules.....	14 15

DELAYS AS PREJUDICIAL TO PETITIONER/PRISONER

(1) Braden v Judicial Court of Kentucky (1973) 114 US 564, 35 L Ed 2d 443, 93 S Ct 1123.....	19
(2) Brown v Allen (1953) 344 US 443, 97 L Ed 469, 73 S Ct 397.....	19
(3) Burdine v Johnson, 87 F Supp 2d 711 (S.D. Tex. 2000).....	20
(4) Declaration of Independence of 1776.....	20
(5) Ex parte Royall (1886) 117 US 241, 29 L Ed 868, 6 S Ct 734.....	19
(6) Fay v Noia (1963) 372 US 391, 9 L Ed 2d 837, 83 S Ct 822.....	19
(7) Loe v United States, 545 F Supp 662 (E.D. Va. 1982).....	21
(8) Murray v Carrier (1986) 477 US 478, 91 L Ed 2d 397, 106 S Ct 2639.....	19
(9) Organic Laws of the United States of America (U.S.C.A. vol. 1).....	20
(10) Phillips v Vasquez, 56 F.3d 1030 (9th 1995).....	20
(11) Sanders v United States (1963) 373 US 1, 10 L Ed 2d 148, 83 S Ct 1068.....	19
(12) State ex rel Bailey v D.O.C., 213 W Va 563, 584 SE 2d 197 (2003).....	20
(13) United States Constitution, Preamble.....	20
(14) United States ex rel Kulick v Kennedy, 157 F.2d 811 (2nd 1964).....	19
(15) United States v Reason, 549 F.2d 309 (4th 1977).....	21
(16) United States v Walker, 537 F.2d 1192 (4th 1977).....	21

(17) Wales v Whitney (1885) 114 US 564, 29 L Ed 277, 5 S Ct 1050.....	19
(18) Wood v Zahradnick, 475 F Supp 556 (E.D. Va. 1979).....	20

DELAYS AS PREJUDICIAL TO A FREE SOCIETY

(1) Blacksburg v Beam, 104 S.C. 146, 88 SE 441.....	22
(2) Bowie v Commonwealth of Nor. Marianna Islands, 230 F.3d 1083 (9th 2001).....	23
(3) Brady v Maryland (1963) 373 US 83, 10 L Ed 2d 215, 83 S Ct 1194.....	22
(4) Drake v Kemp, 762 F. 2d 1449 (11th 1985).....	22
(5) Draper v United States (1959) 358 US 307, 3 L Ed 2d 327, 79 S Ct 329.....	22
(6) Driver v Hinnant, 356 F.2d 761 (4th 1966).....	24
(7) Budd v California (1966) 385 US 909, 17 L Ed 2d 138, 87 S Ct 209.....	24
(8) Gall v Parker, 231 F.3d 265 (6th 2000).....	22
(9) Hardy v United States (1964) 375 US 277, 11 L Ed 2d 331, 84 S Ct 424.....	21
(10) Mapp v Ohio (1961) 367 US 643, 6 L Ed 2d 1081, 81 S Ct 1684.....	22
(11) Olmstead v United States (1928) 277 US 438, 72 L Ed 944, 48 S Ct 564.....	22
(12) Phillips v Vasquez, 56 F.3d 1030 (9th 1995).....	22
(13) State v Hinkle, 200 W Va 280, 489 SE 2d 257 (1996).....	23
(14) Strickland v Washington (1984) 466 US 668, 80 L Ed 2d 674, 104 S Ct 2052.....	23
(15) Townsend v Sain (1963) 373 US 293, 9 L Ed 2d 770, 83 S Ct 745.....	21
(16) United States v Bollman, 24 F.Cas. 1189 (C.C.D.C. 1807).....	22

SUMMARY AND RELIEF SOUGHT

(1) Carter v Bordenkircher, 159 W Va 717, 226 SE 2d 136 (1977).....	24
--	----

(2)	Doyle v Ohio (1976) 426 US 610, 49 L Ed 2d 91, 96 S Ct 2240.....	25
(3)	Holy Bible, The (King James Authorized Version) Isaiah 59:15,16.....	26
(4)	Johnson v McKenzie, 160 W Va 385, 235 SE 2d 138 (1977).....	25
(5)	Kimmelman v Morrison (1986) 477 US 365, 91 L Ed 2d 305, 106 S Ct 2574.....	25
(6)	Rheurark v Shaw, 628 F.2d 297 (5th 1980).....	26
(7)	Rhodes v Leverette, 160 W Va 781, 239 SE 2d 136 (1977).....	24
(8)	United States v Johnson, 732 F.2d 379 (4th 1984).....	26
(9)	United States v Nixon (1974) 418 US 683, 41 L Ed 2d 1039, 94 S Ct 3090.....	25

THE PURPOSE OF THIS WRIT OF MANDAMUS

This Petition for a Writ of Mandamus is proffered to the West Virginia Supreme Court of Appeals to compel the Circuit Court of Cabell County, West Virginia, to either grant him swift vindication of his Constitutional rights in Habeas Corpus, or else to summarily release the body of the prisoner due to extraordinary dereliction on the part of the State in the processing of his Habeas Petition.

THE PURPOSES OF THE WRIT OF HABEAS CORPUS

The "Great Writ", also a "Constitutional Writ", is a prompt, swift, imperative, efficacious remedy for a citizen of this State and of this country who has been illegally incarcerated, i.e., convicted and held in custody contrary to the "law of the land", either the West Virginia or the United States Constitution.

The Writ of Habeas Corpus is designed to hold the government accountable to the judiciary for a man or womans' imprisonment, and as such is a protection against tyranny, oppression, and lawlessness in high places, a protection for the people and the government of, by, and for the people, from destruction at the hands of tyrants who have thrown off the restraints of the Constitution. The Writ of Habeas Corpus thus protects those God-given rights and freedoms so cherished by a civilized society, and the Suspension Clause in both state and federal Constitutions clearly forbids either delay or impairment in what is mandated to be a swift vindication of Constitutional rights.

Habeas Corpus thus protects the freedoms of all people.

The stakes are extremely high in Habeas Corpus, as not only is individual freedom at stake, but also the very existence of our form of government, the reputation of both the judiciary and the executive branches of government, the integrity of the judicial system and the preservation of the rule of law, and that obedience to just laws which is the very bond of society. For the government or the courts to be allowed to use their great power, loaned as a sacred trust to them by the people, to harm and to abuse both the people and the system which created these agencies, is an intolerable and deadly cancer, a great tyranny, an abhorrent and dangerous fraud cloaked in hypocrisy. And like cancer, to tolerate unconstitutional practices by the courts and the government is to assure the total corruption and death of a free, happy, and prosperous society.

Thus, should the Writ of Habeas Corpus never be suspended, i.e., delayed, or impaired in any way.

GENERAL PURPOSE OF THE WRIT OF MANDAMUS

This extraordinary writ is also a "Constitutional Writ" in West Virginia, and the purpose invoked here by Petitioner Hatfield is to compel the Circuit Court of Cabell County to do their duty to afford the Petitioner swift vindication of his Constitutional rights in Habeas Corpus, or else to release the body of the Petitioner.

Petitioner has a clear right to speedy vindication of his Habeas Corpus Petition mandated by the Suspension Clause of both State and Federal Constitutions, and United States Supreme Court and West Virginia Supreme Court case law clearly define that there

is no higher duty of a Court than to maintain the Writ of Habeas Coprus both unsuspended and unimpaired. The double mandate here is to both swiftness, and to a full and fair hearing on the issues, and a prompt and just findings of fact and conclusion of law, and the ultimate release of the illegally detained prisoner forthwith.

HISTORY OF PETITIONER HATFIELD'S CASE

RICHARD LEE HATFIELD WAS ARRESTED ON JUNE 26, 1999, charged with the homicide of Jack Adkins, in Huntington, West Virginia. Both had been drinking alcohol together at the Copa Bar, and Mr. Adkins drove Mr. Hatfield to his home in he early morning hours of June 26th, where they both went inside.

Several hours later, Mr. Hatfield called "911" to inform them of a homicide at his residence. Later, Mr. Hatfield denied any recollection of the homicide or of the telephone call. Mr. Adkin's autopsy showed a near-lethal level of alcohol, and multiple burst lacerations of the scalp from blunt trauma which resulted in exsanguination. Also, there were superficial lacerations of the neck which spared the great vessels, i.e, were not deep enough to penetrate even the jugular veins, which lie directly under the skin in the neck, let along the deeper and more critical carotid arteries. My. Hatfield was seen holding a curved electrician's knife when police came to his home after his call.

The autopsy of Mr. Adkins also showed signs of a struggle, with bruises on the forearms and skin under the finger nails.

Mr. Adkin's empty wallet was found out in his truck, and there

was a blood splotch out on the porch leading out to the truck. My Hatfield did not own a vehicle, having long before lost his license due to his chronic alcoholism.

Patrons at the Copa Bar had seen Mr. Adkin's wallet was full of money before they left the bar.

At no time was an examination for criminal responsibility performed on Mr. Hatfield, i.e., no 30-day defense-oriented psychiatric exam. Neither were the complete medical-Psychiatric records on Mr. Hatfield ever obtained by his counsel. Hatfield was confined in jail from the day of his arrest June 26, 1999. On December 19, 2000, nearly eighteen months after his arrest, Mr. Hatfield was found guilty of second degree murder. No experts testified on his behalf. The state used a blood splatter expert and a Pathologist. No murder weapon was ever found, although there was some speculation regarding a "Mickey Mouse can". He was sentenced February 8, 2001, to 40 years in Penitentiary, second degree murder.

Mr. Hatfield's Direct Appeal was time-extended by Order of the Court, and not submitted until February 15, 2003, roughly three years and eight months after his arrest. The substance of the Appeal was failure of the State to prove cause of death (i.e., did Mr. Adkins die from alcohol intoxication?), denial by Court of Defendant's medical and psychiatric records, discovery rules violations based on DNA evidence and the blood-splatter expert's qualifications, improper use of collateral evidence, and prosecutorial misconduct in commenting on Defendant's exercise of his right to remain silent.

The direct appeal was refused by this Court June 25, 2003, exactly four years after Mr Hatfield's arrest, No. 030347.

Petitioner would digress here a moment to point out that in

West Virginia, Ineffective Assistance of Counsel issues are not allowed on direct appeal, so that Petitioner had to wait four years from the time of his arrest to address this issue on collateral attack in Habeas Corpus.

Petitioner's Appeal Counsel never bothered to inform him of the fact that his direct appeal had been refused. Only after Mr. Hatfield was transferred from Mt. Olive to Huttonsville, and enlisted the help of a law clerk with a doctorate in Medicine, was it finally discerned that his direct appeal had been refused, and his medical-psychiatric records obtained (many of which had never been secured by trial counsel), and on March 18, 2004, a Petition for a Writ of Habeas Corpus under W. Va. Code §53-4A-1 was mailed in to the Circuit Court of Cabell County. An Addendum was mailed in after receiving the rest of petitioner's trial transcript and more medical-psychiatric records.

The gist of Petitioner's Habeas Corpus Petition is based on Ineffective Assistance of Counsel in failing to discern the need for a defense-oriented examination for criminal responsibility by an appropriate physician well-versed in the chronic and acute effects of alcoholism. Mr. Hatfield has a life-long history of severe alcoholism, and in fact had had hospitalizations which not only diagnosed Acute Alcohol-Induced PSYCHOSIS, but also severe, global bodily damage from the ravages of chronic malnutrition and alcoholism. Mr. Hatfield's memory of his life in general and of the crime in particular, and even of his trial, is virtually non-existent, in keeping with his history of severe alcoholism and Thiamine deficiency and a logically deducted diagnosis of Wernicke's Encephalopathy, or even a Korsakoff's Psychosis. These were never discerned

by the Defendant's counsel, and thus never developed or used at trial. Defendant's counsel never even obtained the records that showed a previous alcohol-induced Psychosis, a complete defense to crime. Even the Organic Brain Syndrome suggested by Mr. Hatfield's other severe alcohol complications and by his history and by his amnesia, could provide an "Unconsciousness" Defense, also a complete defense, all ignored and never presented by counsel.

Petitioner's state Habeas not only alleged the above facts, but also submitted copies of Mr. Hatfield's never-before-revealed psychiatric admission for Acute Alcohol-induced Psychosis, as well medical records showing treatment with injectable Thiamine and numerous severe organic complications of chronic alcoholism.

The above alone could support a finding not only of an illegal conviction, but of actual innocence, and of the conclusion that the Court was punishing sickness.

Even more pertinent is the fact that there was an Alternative Perpetrator Defense that was never investigated or used by counsel, and that, in fact, it appears that this alternative perpetrator did in fact commit the crime, and not the Petitioner. Petitioner was arguably too weak from his nutritional deficiencies and organic complications of severe chronic alcoholism, as borne out by his medical records, to have beat a man to death. There was no motive. It should be inferred that the Defendant was just as intoxicated as the deceased at the time of the homicide, i.e., a near-lethal alcohol level. The Defendant had no signs whatsoever of having been in an altercation.. His electrician's knife was never found to have any blood or tissue on the blade. The deceased had a very long criminal history of arrests for drug-related charges and even for

attempted murder. Mr. Hatfield's doors were found unlocked and one even ajar by the police, and there was a blood transfer out on the porch and an empty wallet found in Mr. Adkin's truck and an alternative perpetrator who saw Mr. Adkins open his money-laden wallet at the Copa Bar, and who had subsequently disappeared.

In any event, Mr. Hatfield's Habeas Petition not only states facts which, if proven, would afford him relief, but the facts point to actual innocence, both as to mens rea and to the act. After writing the Circuit Court monthly on his Habeas case with no response, Mr. Hatfield, on September 22, 2004, submitted to the West Virginia Supreme Court of Appeals a "Petition for a Writ of Mandamus; To Compel Circuit Court To Appoint Counsel and Afford Other Procedures Necessary For a Writ of Habeas Corpus". This was assigned Supreme Court No. 041947, Hatfield v Ferguson. This was refused as moot March 9, 2005, because the Circuit Court of Cabell County appointed counsel in Petitioner's habeas action for the first time in October, 2004, case. No. 04-C-254.

Petitioner sent copies of his transcripts and entire file to Christina L. Smith, Esq., as soon as he received word of her appointment, over seven months after Petitioner's Habeas was filed. Counsel never visited him until March 2005, a full year after the Habeas was filed. Without doing any investigation beyond what the Petitioner himself filed with the Court in his Habeas Petition, or the records sent her, Ms. Smith filed a nevertheless satisfactory Amended Habeas Corpus Petition the same month, and then precipitously withdrew from his case. The Court promptly assigned Krista Conway as counsel, and Petitioner immediately contacted her, and she responded April 1, 2005, that she was reviewing all necessary items

and would meet with the Petitioner shortly.

Ms. Conway has done no investigations, contacted no experts, and never met with the Petitioner despite his frequent pleas with her for the same. On July 1, 2005, Petitioner Hatfield moved the Court in Cabell County to remove Ms. Conway and appoint counsel who was well versed in the medical complexities of this type of case and who would enlist the appropriate experts and move this Habeas Corpus promptly to a full and fair hearing, and findings of fact and conclusion of law.

On August 17, 2005, Petitioner again moved the Court for "Swift Vindication of Petitioner's Constitutional Rights, with Pleadings".

On September 20, 2005, Petitioner sent to the Circuit Court of Cabell County "Another Plea to the Court for Appointment of New Counsel and Swift Vindication of Constitutional Rights in Habeas Corpus".

To summarize, Petitioner Hatfield, who has made an initial prima facie showing of actual innocence for the crime charged, has been continually incarceration since June 26, 1999. To no fault of his own, apparantly largely due to difficulty in obtaining trial transcripts, his direct appeal was never submitted until February 15, 2003. Also to no fault of the Petitioner, his appellate counsel never informed him of the status of his direct appeal, and he first learned of its refusal in February 2004. He promptly, within a month, filed a Habeas Corpus Petition, and yet, to no fault of his own, no full and fair hearing, no findings of fact or conclusion of law, and no release from this oppressive and unjust confinement has been forthcoming.

Thus has Petitioner, as of the time of the filing of this second Mandamus Writ with the West Virginia Supreme Court of Appeals, been incarcerated for six years and four months, and his Habeas Corpus Writ has languished in state court for one year and seven months (nineteen months) with no order of release.

It is not the goal of the Petitioner to rain down recriminations upon anyone. It is his goal, however, to compel the oppressor to set him free, and to compel the Courts to obey and respect the Constitution and to honor and value the God-given freedoms which that Constitution is designed to protect.

Surely there should be even less tolerance for suspension and impairment of Habeas Corpus where the prisoner has alleged facts which show actual innocence and gross miscarriage of justice in addition to an illegal conviction and detention.

PERTINENT LEGAL ARGUMENTS

THE WRIT OF MANDAMUS

The Writ of Mandamus is a "constitutional writ", as is the Writ of Habeas Corpus (State ex rel. Burgett v Oakley, 155 W Va 276, 184 S.E. 2d 318 (1971)).

Mandamus lies pursuant to West Virginia Code §53-1-1 through §53-1-12. It is an appeal of right (Co. Court v Brammer, 68 W.Va. 25, 69 SE 450 (1910)), an appeal to the conscience of the Court having jurisdiction to hear it (Gardner v Bailey, 128 W Va 337, 36 SE 2d 215 (1945)), a civil writ (State ex rel Matheny v Co. Court, 47 W.Va. 672, 35 SE 959 (1900)), prospective in application, to command performance (State v Garvin, 139 W Va 845, 82 SE 2d 612 (1954)).

Mandamus involves a certain urgency, regarding the interests

of the public as well as third persons involved, as well as the promotion of substantial justice (Garvin, supra). A right or rights are involved, and a duty sought to be enforced, which duties are clear and certain, and there are no other adequate, specific and timely remedies available (Garvin, supra).

For a Writ of Mandamus to issue, at least three elements must co-exist; (1) a clear right in the plaintiff or relator to relief sought, (2) a legal duty on the part of the respondent to the thing which the relator seeks to compel, and (3) absence of another adequate remedy at law (Garvin, supra).

Courts inquire whether irreparable harm will result if immediate action is not taken (United States v Wiggins, 50 F.Supp. 2d 512 (Va. 1999). Mandamus lies to protect civil rights (Cross v W.Va. Cent. & P.R. Co., 35 W Va 174, 12 SE 1071 (1891)). It may be used to challenge Constitutionality questions (State ex rel McCamic v McCoy, 166 W Va 572, 276 SE 2d 534 (1981)).

Courts will not allow remedies to be defeated by mere pretexts or evasion of duty (Dillon v Bare, 60 W Va 483, 56 SE 390 (1906)).

Where there is a question of alternative remedies by law, these must be fully commensurate with the necessity and rights of the party under all circumstances of the particular case (Dunlevy v Co. Court, 37 W Va 513, 35 SE 956 (1900)). Undue delay through other avenues judge them not equally beneficial, convenient, and effective, so that mandamus will lie (Snyder v Callaghan, 168 W. Va. 265, 284 SE 2d 241 (1981)). Delays involved in other remedies may be too prejudicial and injurious (Peoples National Bank v Burdett, 69 W Va 369, 71 SE 399 (1911)).

Writs of Mandamus lie to restrain excesses and to quicken negligence and to obviate the denial of justice by inferior courts (State ex rel Judy v Kiger, 153 W Va.764, 172 SE 2d 579 (1970); West Virginia Constitution Art. III, §3 (1872)).

Specifically, the 10th Circuit United States Court of Appeals granted a Writ of Mandamus due to a 14 month delay in a Habeas Corpus Writ in Johnson v Rogers, 917 F.2d 1283 (10th 1990), relying on the Suspension Clause and United States Supreme Court and lower federal court case law.

HABEAS CORPUS, THE SUSPENSION CLAUSE, AND THE COURT'S DUTY

West Virginia Constitution, Art. III, §4, "The privilege of the writ of habeas corpus shall not be suspended".

This is a "constitutional writ", which is "...highly esteemed and appreciated by the intelligent and patriotic of all free, well-regulated governments, and the absence and denial of [the writs of habeas corpus, mandamus and prohibition] as remedies to the citizen has ever been a source of well-founded grief and lamentation by the same class in governments of oppression and despotism". (State ex rel Burgett v Oakley, 184 S.E. 2d 318 (W.Va. 1971).

"The writ of habeas corpus is always ready, prompt and adequate to vindicate personal liberty" (Lance v McCoy, 34 W Va 416, 421, 12 SE 748 (1890)).

"There is no higher duty of a Court under our Constitution than the careful processing and adjudication of Petitions for a Writ of Habeas Corpus..." (Harris v Nelson (1969) 394 US 286).

"There is no highter duty than to maintain it unimpaired and unsuspended (Fay v Noia (1963) 372 US 391), as a "prompt and effi-

cacious remedy", a "Swift and imperative remedy". "Surely no fairminded person will contend that those who have deprived of their liberty without due process of law ought nevertheless to languish in prison" (Fay v Noia, supra, 372 US at 870).

"The aim of Habeas Corpus is a justice that is swift and summary" (Buchanan v Buchanan, 170 Va. 485, 197 SE 426 (1938)).

~~Habeas Corpus must be granted "forthwith" (W. Va. Code, §53-4-1, §53-4A-3, and Art. III, §6 of West Va. Constitution).~~ "Forthwith", according to Black's Law Dictionary, means "immediately".

The final hearing upon a Writ of Habeas Corpus is not to be delayed (DeLacy v Antoine, 34 Va. (7 Leigh) 438 (1836); State v Reuff, 29 W Va 751 (1887)).

The mechanics of a formal hearing may be such that an orderly disposition of the case [of Habeas Corpus] cannot occur in less than several weeks, or even several months (Shamblin v Hey, 163 W Va. at 339, 256 SE 2d 435 at 437 (1979)).

An eight month delay in Habeas Corpus is "unreasonable" (Adams v Circuit Court, 317 SE 2d 808 (W. Va. 1984)).

The Appendix in Fay v Noia, supra, quotes federal statutes which mandated a hearing in Habeas Corpus within a matter of days of submission of the Writ.

Habeas Corpus is a speedy remedy entitled to preferential consideration to ensure expeditious hearing and determination (Van Buskirk v Wilkinson, 216 F.2d 735 (9th 1954); McClellan v Young, 421 F.2d 690 (6th 1970)).

A one year delay in state habeas corpus manifests ineffective state process, per the widely cited Smith v Kansas, 356 F.2d 654 (10th 1966), as well as Harris v Champion, 938 F.2d 1062 (10th 1991).

and also *Breaseale v Bradley*, 582 F.2d 5 (5th 1978), and *Burrow v Hoskin*, 742 F Supp 966 (M.D.Tenn. 1990). Even the one year statute of limitations imposed by the AEDPA of 1996, which assumes prejudice to the government by a one year delay (see *Allen v Newsome*, 795 F. 2d 934 (11th 1984)(connecting petitioner delays with dismissal at the bequest of the government)...even this one year statute of limitations begs for a reciprocal obligation on the part of the state, per the arguments in *Wardius v Oregon* (1973) 412 US 470 (statute is unconstitutional which sanctions criminal defendant for failing to comply with alibi notice requirement without also requiring the same of the government), such that the end-point of Habeas Corpus, the release of the prisoner if warranted, should be accomplished within one year of filing of the Petition.

Not only should the Writ of Habeas Corpus not be suspended (i.e., delayed, the plain meaning of the word "suspend" according to Black's Law Dictionary), but it must not be "impaired", either. (*Fay v Noia* (1963) 372 US 391; *Harris v Nelson* (1969) 394 US 286; *Smith v Bennett* (1967) 365 US 708; *Bowen v Johnston* (1939) 306 US 19). "For if the means be not in existence, the privilege [of the writ] itself would be lost, although no law for its suspension should be enacted" (*Ex parte Bollman*, 8 US (4 Cranch) 75, 95 (1807) (as quoted by Hertz and Liebman in Federal Habeas Corpus Practice and Procedure, 4d, 2001, LexisNexis, §5.2c, page 178, who themselves further declare, "As the Supreme Court has recognized for centuries, an unconstitutional suspension of the Writ of Habeas Corpus can occur by indirection as well as by direction". See also §7.2).

It is the "solemn duty of [state] courts, no less than federal ones, to safeguard personal liberties and consider federal

claims in accord with federal law" (Schneckloth v Bustamonte (1973) 412 US 218, 259, J. Powell, concurring).

The right or privilege of Habeas Corpus is even more absolute in West Virginia (Rhodes v Leverette, 160 W Va 781, 239 SE 2d 136 at 140 (1977)). Similarly, there is a higher standard of due process protection mandated by the West Virginia Constitution than that of the federal Constitution (State v Neuman, 179 WV 580, 371 SE 2d 77 (1988); State v Osakalumi, 194 W Va 758, 461 SE 2d 504 (1995)). Habeas Corpus is itself the "vindication of due process" (Fay v Noia supra).

In any event, the Writ must not be impaired, much less suspended or delayed. This is part of the supreme duty of Courts in upholding the Suspension Clause of the Constitution. Therefore, even court-appointed or other habeas attorneys must be monitored and supervised by the Courts to assure that they, too, neither suspend nor impair the Great Writ.

Thus, inexcusable delay may be imputed to the state or to the court due to "disinterest on the part of court-appointed counsel and a failure on the part of the court to require them to provide minimally effective representation", so held the 3rd Circuit in Walker v Vaughn, 53 F.3d 609 (3rd 1995), at 614. Petitioner Hatfield emphasizes here that he is not arguing from the 6th Amendment of the U.S. Constitution. Rather, he is arguing from the Suspension Clause as interpreted by the U.S. Supreme Court and lower courts.

Also in support of this are the West Virginia Trial Court Rules, 2005 vol, page 794, speaking of the lawyers responsibilities, their "duty to uphold the legal process", and at 795, emphasizing that the "...ultimate authority over the legal profession is vested

largely in the courts". On page 875, "...a lawyer is an officer of the court and has an independent duty to the judicial system which serves both the lawyer and the client".

This concept is highlighted by Canon 3B(8) of the Code of Judicial Conduct, under the West Virginia Trial Rules, 16, Time Standards, "A judge shall dispose of all judicial matters promptly, efficiently and fairly", and also by Sect. 2.5 of the American Bar Association Standards Relating to Court Delay Reduction, stating that "the court, not the lawyers or litigants, should control the pace of litigation".

The West Virginia Supreme Court in *Johnson v Nanny*, 194 W.Va. 623, 461 SE 2d 129 (1995), held that this very Canon, *supra*, places an affirmative duty on circuit court Judges to manage the progress of cases. Similarly, in *Graley v Workman*, 176 W Va 103, 341 SE 2d 850 (1986), this Court also reinforced the principle that judges have an affirmative duty to render timely decisions on matters properly submitted within a reasonable time following their submission.

Back to Habeas Corpus delays, in *Story v Kindt*, 26 F.3d 402 (3rd 1994), a case dealing with ineffective state process due to delay as an exception to the exhaustion requirement, the state tried to impute, unsuccessfully, delay to the petitioner, where the delay was attributable to the failure of three court appointed attorneys to comply or comply in a timely manner with orders to file petitions, a delay due in large part to seriously deficient docket management procedure.

Johnson v Rogers, 917 F.2d 1283 (10th 1990), a mandamus in a habeas delay, gave many citations to support the notion that a busy court docket cannot justify delay in habeas corpus.

Similarly, in *Moore v Deputy Commissioner*, 946 F.2d 236 (3rd 1991), another exception-to-the-exhaustion doctrine case, at 241, "while counsel was appointed for Moore, he did not diligently prosecute the matter and it thus appears that the state petition is still pending".

~~Harris v Champion, 938 F.2d 1062 (10th 1991), also held that delay caused by state public defenders office was delay forced upon an inmate by reason of his indigency, and could be attributed to the state for purpose of habeas exhaustion requirement, particularly as the inmate had not personally caused delays or condoned them.~~

Harris v Kuhlman, 601 F Supp 987 (E.D.N.Y. 1985), at 993, states, "The obligation to monitor its own officers and procedures is constitutionally imposed and a recognized obligation on New York State Courts", in the context of habeas corpus and ineffective state process.

Likewise, the First Circuit in *Olsen v Moore*, 445 F.2d 806 (1st 1971), noted that the petitioner had tried for three years to spur his court appointed counsel and the courts to action, without success, such that state remedies were thus not adequate or effective to protect his federal constitutional rights.

"We repeat, 'there is no higher duty than to maintain it unimpaired' (*Bowen v Johnston*, 306 US 19), and unsuspending, save only in the cases specified in our Constitution" (*Smith v Bennett* (1961) 365 US 708). And state courts are "...equally bound to guard and protect rights secured by the Constitution" (*Ex parte Royall* (1886) 117 US 241, 251)(quoted in *Rose v Lundy* (1982) 455 US 509 at 515).

"There is a need to preserve the Writ of Habeas Corpus as a

swift and imperative remedy in all cases of illegal restraint and confinement" (Braden v Judicial Court of Kentucky (1972) 410 US 484). "The procedure should be swift and simple and easily invoked" (Case v Nebraska (1965) 381 US 336).

Petitioner Hatfield would again emphasize that in his case, he had to come to the West Virginia Supreme Court last year to spur the Cabell County Court into action. The United States Supreme Court in Harris v Nelson (1969) 394 US 286, stated that once a petition for a writ of habeas corpus is filed, if it is meritorious, "...the writ must be awarded forthwith", and if the Petitioner is entitled to an evidentiary hearing, "it must be ordered promptly". As already argued above, the same language is used in the West Virginia Code §53-4A-3.

The fact that in West Virginia, Ineffective Assistance of Counsel claims, not to mention other claims such as Speedy Trial and many Prosecutorial Misconduct claims, cannot be litigated on direct appeal, per State v Miller, 476 S.E. 2d 535, 558 (W.Va. 1996), and that this rule in effect makes the "state collateral review...the first place a prisoner can present a challenge to his conviction" and thus whenever "a state collateral proceeding may be considered" the prisoner's "'one and only appeal'" (dicta in Coleman v Thompson (1991) 501 US 722, quoting from Douglas v California (1963) 372 US 353, at 357). This principle is pointed out by Hertz and Liebman in Federal Habeas Corpus Practice and Procedure, 4d, 2001, §7.2a, pages 322-23. This rule automatically results in appreciable delay in vindication of certain crucial Constitutional rights. Again, Petitioner Hatfield is not interested in casting disparagement or recriminations, but this fact should make

even less tolerable further delays in state courts.

Another factor that should make delay and impairment of habeas corpus remedy even less tolerable is the fact that the Petitioner has presented allegations, which, if true, would not only afford him relief, but would support his actual innocence.

There is an "abhorrence of illegal confinement" (*Gallegos v Colorado*(1962) 370 US 49). How much stronger language should be employed where an actually innocent person is illegally confined, and has been confined since June 1999, and tried to get relief through Habeas Corpus since March 2004, which was the earliest he could present his claims to due to delays in his appellate procedure and notification of the refusal of his appeal which were beyond his control?

Indeed, "the innocent should never be convicted" (*State v Lowry*, 42 W Va 205, 213, 7 SE 27 (1896)).

Incapacity to possess mens rea constitutes actual innocence (*Jones v Delo*, 56 F.3d 878, 882-83 (8th 1995)). Also, the evidence for an actual alternative perpetrator in Petitioner's case is strong enough to suggest actual innocence in regards to actus reus.

This Court is already quite aware of the problems with overcrowding in West Virginia prisons and Regional Jails, a problem that clearly implicates the admonition in the Constitution against cruel and unusual punishment. For the Courts to tolerate delays and impairments in the vindication of a prisoner's Constitutional rights, who has likely not only been illegally convicted but who is quite likely actually innocent, while at the same time subjecting that man or woman to cruel and unusual punishment, is shocking and outrageous and unconscionable in a civilized society.

DELAYS AS PREJUDICIAL TO THE PETITIONER/PRISONER

Habeas Corpus acts "...by compelling the oppressor to release his constraints" (Wales v Whitney (1885) 114 US 564)(quoted in Braden v Judicial Court of Kentucky (1973) 410 US 484).

Conventional notions of finality have no place where life and liberty are at stake, and infringement of Constitutional rights is alleged (Sanders v United States (1963) 373 US 1).

Habeas Corpus is "... to prevent forfeiture of life and liberty in flagrant defiance of the Constitution. Cf. United States v Kennedy, 157 F.2d 811, 813" (J. Black's dissent in Brown v Allen (1953) 344 US 443 at 552-554, later followed by the majority in Fay v Noia (1963) 372 US 391).

The "root principle" underlying the Great Writ "is that government in a civilized society must always be accountable for an individual's imprisonment; if the imprisonment does not conform to the fundamental requirements of the law, the individual is entitled to his immediate release" (Murray v Carrier (1986) 477 US 478, Brennan and Marshall, JJ, dissent at 516. JJ Stevens and Blackmun, concurring in this case, 477 US at 500, emphasized that "the central mission of the Great Writ should be the substance of 'justice'", and at 504, such principles as comity and finality must in appropriate cases, "yield to the imperative of correcting a fundamentally unjust incarceration".

Again, Habeas Corpus acts "to restore to liberty any person who is held in custody, by whatever authority, in violation of the Constitution of the United States" (Ex parte Royall (1886) 117 US 241, at 249.

As the Declaration of Independence states, which is considered

an "Organic Law" of the United States of America (U.S.C.A.), in 1776, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness". Similarly, the Preamble to the United States Constitution states, "...and to secure the Blessings of Liberty to ourselves and our Posterity...".

The West Virginia Supreme Court has likewise stated that "Our federal and state constitutions do not give liberty to people; they protect a free people from deprivation of their God-given freedom by governments". (State ex rel Bailey v D.O.C., 213 WVa 563, 584 SE 2d 197 (2003)).

Thus do prisoners "suffer irreparable harm every day he is imprisoned in violation of the Constitution, and remedying such harm is the very essence of the Writ of Habeas Corpus" (Burdine v Johnson, 87 F Supp 2d 711, 712 (S.D.Tex. 2000)).

Also, "the opportunity for a fair trial diminishes as each day passes (Phillips v Vasquez, 56 F.3d 1030 (9th 1995), at 1036.

Indeed, in Wood v Zahradnick, 475 F Supp 556 (E.D.Va. 1979), in a scenario similar to Hatfield's, where Wood had no recollection of the crime, which was out-of-character for him and where there was no attempt to conceal, and large amounts of alcohol and heroine had consumed, and no defense-oriented exam for responsibility was obtained, and where in Habeas Corpus an expert had suggested that Wood might have suffered from pathologic alcoholic intoxication (but Wood, unlike Hatfield, had no previous diagnosis of Alcohol-induced psychosis, making Hatfield's case much stronger)... the Court in Wood, relying upon United States v Reason 549 F.2d

309 (4th 1977), concluded that a seven year delay in Wood's case could make it now impossible for a determination of responsibility to be made by a §3006A(e) expert, and if that expert now came forth with that conclusion, then the only just recourse was to bar re-trial, because now "his opportunity to prove an insanity defense would be hampered to a substantial degree", and "would be a deprivation of due process" (at 559, and also a holding of this Court).

Again, Mr. Hatfield has been continuously incarcerated since June 26, 1999. He never had any defense-oriented examination for responsibility conducted over the requisite time period (e.g. a 30 day minimum) as required by the 4th Circuit (see, e.g., United States v Walker, 537 F.2d 1192 (4th 1977); Loe v United States, 545 F.Supp. 662 (E.D.Va. 1982)). His conviction should be not only declared void as unconstitutional, but retrial should be barred. Why further delay justice here? Why further delay this man's release from custody?

DELAYS AS PREJUDICIAL TO OUR FREE SOCIETY

Petitioner Hatfield was "denied the tools of the contest" at his trial and now, again, in Habeas Corpus, has been effectively denied the "tools of the contest", which, as the U.S. Supreme Courts stated in Hardy v United States (1964), offends fairness and equity and endangers the basic integrity of a free community (375 US at 340, n.9).

Habeas Corpus is to safeguard the liberty of all persons (Townsend v Sain (1963) 373 US 293).

"We ought to be on our guard lest our zeal for public

interest lead us to overstep the bounds of the Constitution, for although we may thereby bring one criminal to punishment, we may furnish the means by which a hundred innocent persons may suffer" (United States v Bollman, 24 F.Cas.1189, 1192 (C.D.C. 1807) J. Cranch, dissent)(quoted in Gall v Parker, 231 F.3d 265, 336-37 (6th 2000) a prosecutorial misconduct case).

"Nothing can destroy a government more quickly than its failure to observe its own law, or worse, its disregard for the charter of its own existence" (J. Clark in Mapp v Ohio (1961) 367 US 643).

"The existence of the government will be imperiled if it fails to observe the law scrupulously" (Olmstead v United States (1928) 277 US 438).

"Delaying retrial in such cases...risks the perpetuation of a monumental injustice should retrial ultimately result in an acquittal" (Phillips v Vasquez, 56 F.3d 1030 (9th 1030) at 1036).

Our system of justice suffers when any accused is treated unfairly (Drake v Kemp, 762 F.2d 1449 (11th 1985), J. Johnson, concurring, in context of Brady v Maryland (1963) 373 US 83).

"Obedience to the law is the bond of society" (Blacksburg v Beam, 104 S.C. 146, 148, 88 SE 441, LRA 1916E 714)(quoted by J. Douglas in his dissent in Draper v United States (1959) 358 US 307, at 339). "It is better that the guilty shall escape, rather than another offense shall be committed in the proof of guilt".

"The authentic majesty of our Constitution derives in large measure from the rule of law---principle and process---instead of person. Conceived in the shadow of an abusive and unanswerable tyrant who rejected all authority save his own, our ancestors

wisely birthed a government not of leaders, but of servants of the law". (Bowie v Com. of No. Mar. Isl., 236 F.3d 1083 (9th 2001)).

While many of the above cases refer to prosecutorial misconduct, and the major thrust of Petitioner Hatfield's case in one of Ineffective Assistance of Counsel, there are nevertheless significant prosecutorial misconduct arguments in his case, and even ineffective assistance of counsel is imputed to the state, as per *Strickland v Washington* (1984) 466 US 668, and, as argued above, the delays and impairments in the Habeas Corpus proceedings are ultimately imputed to the Court. Again, Petitioner emphasizes that he is not throwing around recriminations and blame, but rather he endeavors to appeal to the conscience of this Court that a manifest injustice has been done in his case, and he has, an an arguably innocent man, suffered incarceration since June 1999, and to no fault of his, has never had any of his post-conviction claims fully and fairly addressed by any court of law in this state.

In *State v Hinkle*, 200 W Va 280, 489 SE 2d 257 (1996), a defendant's brain disorder and apparant blackout were such that he could not be convicted unless the State proved beyond a resonable doubt that his act was voluntary, and that he acted in reckless disregard for the safety of others. Again, the organic effects of many years of severe alcoholism and malnutrition, especially a Thiamine deficiency, were totally overlooked in Hatfield's case, despite a recent hospitalization showing numerous severe complications of his alcoholism, not to mention a previous diagnosis of Alcohol-induced Psychosis! Petitioner Hatfield's legal clerk at Huttonsville Correctional Center practiced medicine for 25 years, was Board Certified in Family Practice and Geriatrics,

was exposed to far more alcoholism complications during his Residency in Charlotte, N.C. for three years and a three year stint on the second largest Indian Reservation in the nation... saw far more of the effects of chronic and acute alcoholism than the average West Virginia practitioner will ever see, and he had both the training and experience to verify that Hatfield's allegations are entirely factual and true.

"Our morality does not permit us to punish for illness" and "We do not impose punishment for involuntary conduct", so states JJ Fortas and Douglas in their dissent to denial of certiorari in *Budd v California* (1966) 385 US 909, and referencing *Driver v Hinnant*, 356 F.2d 761 (4th 1966).

SUMMARY AND RELIEF SOUGHT.

Ordinarily, the only remedy in such Mandamus cases would be to compel the Circuit Court of Cabell County to swiftly vindicate the Petitioner's Constitutional rights by appointing counsel well versed in the type of issues present in Hatfield's case.

However, given all of the above-argued circumstances of this case, Petitioner also requests that this Court follow its previous rulings in *Rhodes v Leverette*, 160 W Va 781, 239 SE 2d 136 (1977). *Rhodes* made reference to *Carter v Bordenkircher*, 159 W Va 717, 226 SE 2d 711 (1976), a case where on the surface there did not (unlike Hatfield's case), even appear to be reversible prejudicial error in his appeal. Nevertheless, this was weighed against a showing of actual prejudice to the relator by delay in obtaining the appeal.

Rhodes, supra, also referenced Johnson v McKenzie, 160 W Va 385, 235 SE 2d 138 (1977), where constitutional rights to appeal were so inordinately frustrated by the state's inaction that it would be meaningless to require further steps to be taken to allow an appeal, so that the relief was unconditional discharge, the highest relief he could obtain if successful on an appeal.

Hatfield has been continuously incarcerated since June 1999, and the fact of his previous alcohol-induced psychosis, and the fact of his severe alcoholism with numerous organic complications, not to mention a powerful alternative perpetrator defense, all have been suppressed for all of this time. We are not speaking of mere prejudicial error here, but of actual innocence, and of a delay in illuminating the truth in his case of over six years.

The adversary system must have the assurance that its judgments rest upon a complete illumination of a case, a complete presentation of all relevant evidence, per Doyle v Ohio (1976) 426 US 610, quoting United States v Nixon (1974) 418 US 683.

The right to effective assistance of counsel is a fundamental right of a criminal defendant, and assures the fairness and legitimacy of our adversarial process (Kimmelman v Morrison (1986) 477 US 365).

Hatfield has been without alcohol since June 1999, and has been on a normal diet also during all of this time. He had worked hard to rehabilitate his damaged mind and body, in Bible studies, and even in studies of the original biblical languages of Greek and Hebrew! Although he continues to have a huge memory deficit for most of his past, there is no way that a contemporaneous exam for criminal responsibility could in any way reach the true state

of Mr. Hatfield's mind on the night of the homicide in question in June of 1999, after suffering from years of severe alcoholism and nutritional/vitamine deficiencies well known to cause organic brain syndromes and even a form of psychosis, and where his medical records show multiple major and life-threatening complications of chronic alcoholism, and where his psychiatric records show a previous diagnosis of Alcohol-induced Psychosis. And did Mr. Hatfield even commit the homicide? Or was he merely a highly impaired spectator with no capacity to remember, himself also at a lethal level of alcohol, as was the victim, at the time of the homicide?

Especially in view of the well-known overcrowding in West Virginia prisons and Regional jails, contrary to the 8th Amendment, surely the only just recourse, given all of the circumstances of Mr. Hatfield's case, is to release him with a bar to retrial.

To do otherwise would only promote more delay. "The cancerous malady of delay, which haunts our judicial system by postponing the rectification of wrong and the vindication of those unjustly convicted, must be excised from the judicial process at every stage" (Rheuark v Shaw, 628 F.2d 297 (5th 1980))(quoted in United States v Johnson, 732 F.2d 379 (4th 1984)).

"And the Lord saw it, and it displeased Him that there was no judgement...and wondered that there was no intercessor."
(Isaiah 59:15,16, King James Version of Holy Bible).

The above is true and correct to the best of my knowledge and belief.



Richard Lee Hatfield

IN THE WEST VIRGINIA SUPREME
COURT OF APPEALS

Richard Lee Hatfield

versus

Case No. _____

Circuit Court of Cabell County

CERTIFICATE OF SERVICE

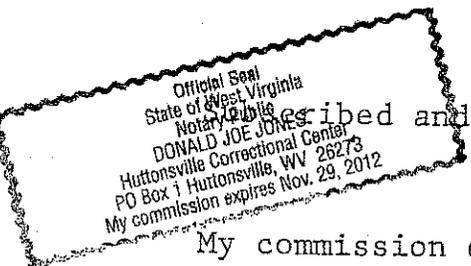
Petitioner Hatfield affirms that on this 20th day of October, 2005, he mailed a complete copy of the enclosed "Petition for a Writ of Mandamus" to:

- (1) Adell Chandler, Cabell County Circuit Clerk, P.O. Box 545, Huntington, W. Va. 25710-0545.
- (2) The Honorable Alfred E. Ferguson, care of Circuit Court of Cabell County, P.O. Box 545, Huntington, W. Va. 25710-0545.
- (3) Office of the Attorney General for the State of West Virginia, Room E-26, Ground Floor, Main Unit, State Capitol, 1900 Kanawha Blvd. E., Charleston, W. Va. 25305.

Mailed, postage prepaid, from the prison post-office at Huttonsville, W. Va.

Richard Lee Hatfield

Richard Lee Hatfield
#28813, Dorm #3
H.C.C., Box One
Huttonsville, W.Va. 26273



Subscribed and sworn to me this 20 day of October, 2005.

Donald Joe Jones

My commission expires on Nov. 29 2012.