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IN THE SUPREME COURT OF THE VIRGIN ISLANDS  
DISTRICT OF ST. CROIX

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SCT-CIV-2021-0011

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JALANI WILLIAMS,

Appellant,

v.

PEOPLE OF THE VIRGIN ISLANDS, BUREAU OF CORRECTIONS, BY  
DIRECTOR WYNNIE TESTAMARK

Appellees.

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APPEAL FROM THE SUPERIOR COURT OF THE  
VIRGIN ISLANDS

DIVISION OF ST. CROIX

Re: Super. Ct. No. SX-20-MC-00055

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**APPELLANT'S BRIEF**

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Dated: October 7, 2021

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## TABLE OF CONTENTS

<u>TABLE OF CASES AND AUTHORITIES</u> .....	3
<u>STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION</u> .....	4
<u>STATEMENT OF RELATED CASES AND PROCEEDINGS</u> .....	4
<u>STATEMENT OF ISSUES PRESENTED</u> .....	4-5
<u>STANDARD OF REVIEW</u> .....	5
<u>STATEMENT OF CASE</u> .....	5-7
<u>STATEMENT OF THE FACTS</u> .....	7-9
<u>ARGUMENT</u> .....	9-16
1. Whether the lower court erred in denying Appellant’s Petition for Writ of Habeas Corpus by Person in Prison for failure to present a prima facie case for habeas corpus relief under Title 5, Section 1302 of the Virgin Islands Code.	
2. Whether trial counsel rendered ineffective assistance by failing to object to evidence or invited error critical to a finding of guilt.	
<u>CONCLUSION</u> .....	16
<u>CERTIFICATE OF BAR MEMBERSHIP</u> .....	17
<u>CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, TYPE STYLE REQUIREMENTS AND WORD COUNT</u> .....	17
<u>CERTIFICATE OF SERVICE</u> .....	18

**TABLE OF CASES AND AUTHORITIES**

<b><u>CASES</u></b>	<b><u>PAGES</u></b>
<i>Baker v. Barbo</i> , 177 F.3d 149, 154 (3d Cir. 1999).....	14
<i>Berry v. Morton</i> , 100 F.3d 1089, 1094 (3d Cir. 1996).....	13
<i>Brady v. Maryland</i> , 373 U.S. 83(1963) .....	15
<i>Donavan v. Gov’t of V.I.</i> , 2013 V.I. LEXIS 21, *6-7 (Super. Ct. Mar. 25, 2013).....	9
<i>Johnson v. United States</i> , 520 U.S. 461, 466–67, 117 S. Ct. 1544, 1549, 137.....	5
<i>Miller v. Alabama</i> , 567 U.S. ____, 132 S. Ct. 2455 (2012).....	7
<i>Phillips v. People</i> , S. Ct. Crim. No.2007–037, 2009 WL 707182, at *3 (V.I. Mar. 12, 2009).....	5
<i>Sanchez v. Gov’t</i> , 921 F. Supp. 297, 300 (D.V.I.App.Div.1996).....	5
<i>St. Thomas–St. John Bd. of Elections v. Daniel</i> , 49 V.I. 322, 329 (V.I. 2007).....	5
<i>Strickland v. Washington</i> , 466 U.S. 668, 687, 104 S. Ct. 2052 (1984).....	13,14
<i>Rivera-Moreno v. Government of the Virgin Islands</i> , 61 V.I. 279, 311 (V.I. 2014).....	11
<i>Ward v. People of the Virgin Islands</i> , 58 V.I. 277 (V.I. 2013).....	4
<i>Williams v. People of the Virgin Islands</i> , 2010 WL156533 (V.I. 2010).....	4,6
<i>Williams v. People of the Virgin Islands</i> , 59 V.I. 1043 (V.I. 2013).....	4,7,13,14
<i>Williams v. People of the Virgin Islands</i> , S. Ct. Crim. No. 2015-0006 (V.I. 2016).....	4,7,8

**STATUTES, RULES AND RESTATEMENTS**

4 V.I.C. § 32(a).....	4
5 V.I.C. §1301.....	8,10
5 V.I.C. § 1302.....	5,9,10
14 V.I.C. §19.....	13
14 V.I.C. §295(1).....	6
V.I. R. Crim. P. 52(b).....	5
V.I.H.C.R. 2(a)(1).....	9,10,11
V.I.R.H.C. Rule 2(b)(5).....	11,16
V.I.R.H.C. Rule 2(b)(1).....	11
V.I.R.H.C. Rule 2(d).....	12,16
V.I.R.H.C. Rule 2(d)(1).....	11

## **STATEMENT OF SUBJECT MATTER and APPELLATE**

### **JURISDICTION**

This Court has jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law. 4 V.I.C. § 32(a). The Superior Court entered an Order Denying Petition for Writ of Habeas Corpus on March 22, 2021, as a final order. (JA3-10). See *Ward v. People of the Virgin Islands*, 58 V.I. 277 (V.I. 2013). Appellant filed a timely notice of appeal on April 19, 2021. (JA1-2).

### **STATEMENT OF RELATED CASES AND PROCEEDINGS**

Appellant is not aware of any other related case or proceeding pending or about to be presented before this Court or any other court, local or federal. This case has been previously before this Court on appeal on three (3) prior occasions on related matters. *Williams v. Virgin Islands*, 2010 WL156533 (V.I. 2010), *Williams v. People*, 59 V.I. 1024 (2013), and *Williams v. Virgin Islands*, S. Ct. Crim. No. 2015-0006 (V.I. 2016). However, the issues presented in this appeal has not previously been before this Court.

### **STATEMENT OF ISSUES PRESENTED**

1. Whether the lower court erred in denying Appellant's Petition for Writ of Habeas Corpus by Person in Prison for failure to present a prima

facie case for relief under Title 5, Section 1302 of the Virgin Islands Code.

2. Whether trial counsel rendered ineffective assistance of counsel by failing to object to evidence or inviting error critical to finding of guilt.

### **STANDARD OF REVIEW**

The standard of review for this Court's examination of the Superior Court's application of law is plenary, while the trial court's findings of fact are reviewed for clear error. *St. Thomas–St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007).

“A plain error that affects substantial rights [of a defendant] may be considered even though it was not brought to the court's attention.” V.I. R. Crim. P. 52(b). “Plain error is defined as those errors that ‘seriously affect the fairness, integrity, or public reputation of judicial proceedings.’” *Phillips v. People*, S. Ct. Crim. No.2007–037, 2009 WL 707182, at \*3 (V.I. Mar. 12, 2009) (quoting *Sanchez v. Gov't*, 921 F. Supp. 297, 300 (D.V.I.App.Div.1996)). See also *Johnson v. United States*, 520 U.S. 461, 466–67, 117 S. Ct. 1544, 1549, 137 L.Ed.2d 718 (1997).

### **STATEMENT OF THE CASE**

Appellant Jalani Williams was arrested on August 2, 2009, and charged with two other individuals, Joh Williams and Khareem Hughes, with

first degree murder and other related crimes, including first degree assault, reckless endangerment, and unauthorized possession of a firearm during the commission of crime of violence. Appellant was 16 years of age at the time of the offense, and as a result was initially arraigned in the Juvenile Division of the Superior Court. The People moved to transfer Appellant to be tried as an adult, which motion was granted after a probable cause hearing on the People's motion to transfer.

Charles E. Lockwood, Esq., was appointed by the Superior Court to represent Appellant from the inception of the case. Th People moved for the pretrial detention of Appellant. A pretrial detention hearing was held on October 26, 2009, and Appellant was detained without bail. The Supreme Court ultimately reversed that decision in *Williams v. Virgin Islands*, 2010WL156533 (V.I. 2010), and Appellant was granted bail.

Appellant and his co-defendants were tried by a jury between October 18, 2011, and November 3, 2011. The Appellant was found guilty on November 4, 2011, on all counts except Count 3, a violation of 14 V.I.C. §295(1). Appellant was sentenced on March 14, 2012, to life without the possibility of parole, as well as a 15 year consecutive sentence on the firearms charge.

Appellant appealed from the Judgment and Commitment. (**JA23-45**). The Supreme Court affirmed Appellant's conviction, but vacated his sentence of life imprisonment without the possibility of parole and remanded for sentencing in accordance with *Miller v. Alabama*, 567 U.S. \_\_\_\_, 132 S. Ct. 2455 (2012). *Williams v. People of the Virgin Islands*, 59 V.I. 1043 (V.I. 2013).

Appellant was resentenced to life imprisonment with possibility of parole by the Superior Court as punishment for first-degree murder committed while he was a juvenile. (**JA68-138**). Appellant appealed from the December 23, 2014, Amended Judgment and Commitment. The Supreme Court affirmed the Superior Court's determination on the amended judgment and commitment. *Williams v. People of the Virgin Islands*, S. Ct. Crim. No. 2015-0006 (V.I. 2016).

### **STATEMENT OF THE FACTS**

Appellant was convicted, following jury trial (SX-2009-CR-554) of numerous offenses, including first-degree murder, and was sentenced by Judgment and Commitment entered May 17, 2012. Appellant appealed from that judgment and commitment to the Virgin Islands Supreme Court. Appellant's convictions were affirmed, but the case was remanded to the

Superior Court for resentencing on the first-degree murder conviction because Appellant was a minor at the time of the offense. (**JA68-138**). Appellant was resentenced and the Superior Court entered an Amended Judgment and Commitment resentencing Appellant on the first-degree murder count to life imprisonment with the possibility of parole dated December 23, 2014. Appellant appealed from that Amended Judgment and Commitment. On May 12, 2016, the Supreme Court affirmed the Superior Court Amended Judgment and Commitment. *Williams v. People of the Virgin Islands*, S. Ct. Crim. No. 2015-0006 (V.I. 2016).

On July 14, 2020, Appellant filed his *Pro Se* Petition for Extraordinary Writ of Habeas Corpus with Attached Affidavit seeking relief pursuant to 5 V.I.C. §§1301, *et. seq.* (**JA13-22**). Appellant based his application for Extraordinary Writ of Habeas Corpus on the grounds of (1) ineffective assistance of counsel, and (2) newly discovered evidence in the affidavits of Lynell Hughes dated December 12, 2016, arguing that a new trial is likely to result in an acquittal if information therein had been presented at trial. The Superior Court, without providing Appellant with reasonable notice and the right to be heard, entered an Order Denying Petition For Writ of Habeas Corpus dated March 22, 2021, on the basis Appellant failed to present a

*prima facie* case for *habeas* relief. (**JA3-10**). Appellant appeals from the decision. (**JA1-2**).

On September 12, 2017, Appellant filed a previous Extraordinary Writ of Habeas Corpus on different grounds, which was denied by Opinion and Order entered January 23, 2019 (SX-2017-CV-385).

### **ARGUMENT**

#### **1. The lower court erred in denying Appellant’s Petition for Writ of Habeas Corpus.**

Virgin Islands Habeas Corpus Rule 2(a)(1) provides:

“Any person who believes he or she is unlawfully imprisoned or detained in custody, confined under unlawful conditions, or otherwise unlawfully restrained of his or her liberty, may file a petition for a writ of habeas corpus to seek review of the legality of that imprisonment or detention.” V.I. H. Corp. R. 2(a)(1).

Title 5, Section 1302(1) of the Virgin Islands Code, allows for writ of habeas corpus where three requirements are met: (1) petitioner is imprisoned or restrained of liberty; (2) the imprisonment or restraint is illegal or in violation of law; and (3) the petition is verified by the petitioner. 5 V.I.C. §1302. The petitioner bears the initial burden. *Donavan v. Gov’t of V.I.*, 2013 V.I. LEXIS 21, \*6-7 (Super. Ct. Mar. 25, 2013).

The Superior Court found Appellant failed to present a *prima facie* case for *habeas* relief. (**JA 4**). The Superior Court held that Appellant failed to

identify the witness whose prior inconsistent statement were in issue or to otherwise present facts to support the allegation that he was prejudiced by the acts or omissions of counsel, and that Appellant's "disagreement with counsel concerning a potential objection to trial evidence appears to relate directly to legal strategy and a tactical decision about which competent counsel might disagree." (JA 6). The Superior Court further held that Appellant failed to present facts sufficient to warrant a finding that had defense counsel acted otherwise, the result of the trial would have been different. *Id.*

The Superior Court further held that the affidavit of Lynell Hughes, which is presented by Appellant as newly discovered evidence, "does not establish facts substantially different from Lynell Hughes' trial testimony. *Id.*

Appellant believes he has met the three perquisites for habeas relief. Appellant is no doubt imprisoned. He believes his imprisonment is unlawful, and he has verified his petition for habeas relief as required by statute, 5 V.I.C. §1302(1). "Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint." 5 V.I.C. §1301. Virgin Islands Habeas Corpus Rules ("V.I.H.C.R.") provides that any person who believes that he or she is unlawfully imprisoned or detained in custody,

confined under unlawful conditions, or otherwise unlawfully restrained of his or her liberty, may file a petition for a writ of habeas corpus to seek review of the legality of that imprisonment or detention.” V.I.H.C.R. 2(a)(1).

When presented with a petition for writ of habeas corpus, “the Superior Court must first determine whether the petition states a prima facie case for relief--that is, whether it states facts that, if true, would entitle the petitioner to discharge or other relief – and in its discretion, may also determine, after providing the petitioner with reasonable notice and a right to heard, whether the stated claims are for any reason procedurally or substantively barred as a matter of law.” V.I.R.H.C. Rule 2(b)(1). See *Rivera-Moreno v. Government of the Virgin Islands*, 61 V.I. 279, 311 (V.I. 2014). The Superior Court must take petitioner’s factual allegations as true in assessing whether the petitioner would be entitled to habeas relief. V.I.R.H.C. Rule 2(d)(1).

If the Superior Court determines that a petition states facts that, if true, would entitle the petitioner to relief, and the claims are not procedurally barred as a matter of law, the writ will issue. V.I.R.H.C. Rule 2(b)(5). The Superior Court made no findings that Appellant’s claims were procedurally barred. Issuance of the writ of habeas corpus however does not grant the ultimate relief requested; it requires further proceedings on the petitioner’s

application for discharge or other relief from unlawful custody or detention.  
V.I.R.H.C. Rule 2(d).

Rather than accepting Appellant's allegations as true, the Superior Court embarked on an analysis of disproving Appellant's claims by finding his claim that trial counsel, who was also appellate counsel, failed to object or allowed the "admission of prior inconsistent statements" against Appellant, thus violating Appellant's Sixth Amendment right to effective assistance of counsel and due process, "cannot give rise to a finding that counsel failed to exercise reasonable professional judgment." (**JA 6**). The Superior Court also found that "Petitioner fails to identify the witness whose prior statements were in issue or to otherwise present facts to support the allegation that he was prejudiced by the acts or omission of counsel." *Id.* The Superior Court held that Appellant failed to set forth facts to show that trial counsel's conduct fell below reasonable professional standard, and if it did, the result of the trial would have been different. *Id.* at p. 5.

Simply joining the objections of co-defendants, Joh Williams and Khareem Hughes, would have necessarily resulted in a different outcome at the trial level, and certainly on appeal. The Supreme Court on direct appeal from Appellant's conviction noted that Appellant did not challenge the sufficiency of evidence, as his co-defendant, Khareem Hughes, *Jalani*

*Williams v. People of the Virgin Islands*, 58 V.I. 277 ft. note 3-- (V.I. 2013). Appellant's primary issue on appeal was the admission of Arkiesa and Lynell Hughes' prior inconsistent statement as substantive evidence. The Supreme Court declined to consider this argument, however, because "unlike his co-defendant Joh," Appellant's counsel "invited the error, and therefore waived, rather than forfeited, appellate review of the evidentiary decision" by conceding that the People could introduce the prior inconsistent statement of Lynell as substantive evidence under former 14 V.I.C. §19. *Williams v. People*, 59 V.I. at 1032.

To successfully present a claim for ineffective assistance of counsel, Appellant must establish first that counsel's performance was deficient. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052 (1984). "This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed defendant by the Sixth Amendment. *Id.* at 687, 104 S. Ct. 2052. The petitioner must demonstrate that "counsel's representation fell below an objective standard of reasonableness under prevailing professional norms." *Id.* at 688, 104 S. Ct. 2052. The defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Berry v. Morton*,

100 F.3d 1089, 1094 (3d Cir. 1996) (quoting *Strickland*, 466 U.S. at 689, 104 S. Ct. 2052).

The petitioner must also demonstrate that he was prejudiced by counsel's errors. *Strickland*, 466 U.S. at 693, 104 S. Ct. 2052. The petitioner must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694, 104 S. Ct. 2052. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome." *Id.* This standard "is not a stringent one;" it is less demanding than the preponderance standard. *Baker v. Barbo*, 177 F.3d 149, 154 (3d Cir. 1999).

The question of prejudice is clear. The failure to properly object to the admission of the witnesses' prior inconsistent statement on due process grounds, and conceding the admission of such statements on substantive evidence, thereby inviting error, necessarily would have resulted in a different outcome at the trial and appellate levels. This had a reasonable likelihood of a different result in the verdicts rendered against Appellant and the refusal of this Honorable Court to consider the reversal of the verdicts as to this Honorable Court did in the case of Appellant's co-defendant, Joh Williams. See *Williams v. People of the Virgin Islands*, 59 V.I. 1043 (V.I. 2013).

## **2. Affidavit of Lynell Hughes**

Again, although Appellant has presented sufficient facts to establish a prima facie case for habeas relief, the Superior Court held that the “standard that the evidence must meet is extremely high.” (JA p.6). The affidavit of Lynell Hughes at paragraph 1 begins with accusing the Appellee, “Government of the Virgin Islands”, of “using statements falsely obtained ... to incriminate and incarcerate [Appellant].” The affidavit goes on to state at paragraph 2 that “The original statements I made to [police] were altered then placed in front of me to sign without the opportunity for me to review it. *Id.* Most importantly, paragraph 3 states: “Prior to trial I tried to communicate this fact to the then prosecutor, [ ] and [ ] through by way of affidavit and it was ignored; I was then forced (subpoenaed) to appear in court to testify on behalf of the prosecution”. *Id.* Paragraph 3 places on obligation on the prosecution to disclose to the defendant, prior to trial, that the witness had recanted her statement. The “Affidavit of Lynell Hughes, taken as true, establishes due process violations as expressed by the Supreme Court in *Brady v. Maryland*, 373 U.S. 83(1963) and its progeny thus entitling Appellant to issuance of the writ. The petition together with the Affidavit of Lynell Hughes, considered by the Superior Court in its decision, states sufficient facts that, if true, entitle the petitioner to relief in accordance with

V.I.R.H.C. Rule 2(b)(5). Issuance of the writ of habeas corpus however does not grant the ultimate relief requested; it requires further proceedings on the petitioner's application for discharge or other relief from unlawful custody or detention. V.I.R.H.C. Rule 2(d).

### **Conclusion**

Appellant filed his petition for Extraordinary Writ of Habeas Corpus by Person in Custody alleging ineffective assistance of counsel, and newly discovered evidence by way of an affidavit of Lynell Hughes, whose prior inconsistent statements were admitted into evidence without objection of trial counsel who invited error, thus waiving Appellant's due process rights. Appellant demonstrated he was prejudiced by counsel's errors. There is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Appellant respectfully requests that the Order Denying Petition for Writ of Habeas Corpus be vacated and the matter remanded for the issuance of the Writ.

Respectfully submitted,

Law Office of Martial A. Webster, Sr.

Dated: October 7, 2021

By: /s/ Martial A. Webster

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**CERTIFICATE OF BAR MEMBERSHIP**

Undersigned counsel hereby certifies that he is a member in good standing of Superior Court of the Virgin Islands and of the Supreme Court of the Virgin Islands.

Dated: October 7, 2021

/s/ Martial A. Webster

Martial A. Webster, Sr., Esq.

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,  
TYPEFACE REQUIREMENTS, TYPE STYLE REQUIREMENTS AND  
WORD COUNT**

A. This brief complies with the type-volume limitation of V.I.R. App. P. Rule 22(f) because the brief does not exceed 7,800 words.

B. This brief complies with the typeface requirements and the type requirements of V.I.R. App. P. Rule 15(a) because this brief has been prepared in proportionally spaced typeface using Microsoft Word 2016 in 14-point type face in Arial Style.

C. I hereby certify that the text of the hard copy brief and the electronic brief are identical and the brief contains 3,377 words.

Dated: October 7, 2021

/s/ Martial A. Webster

Martial A. Webster, Sr., Esq.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 7<sup>th</sup> day of October 2021 that a copy of **APPELLANT'S BRIEF** was e-served through the Clerk of the Supreme Court through the VISCEFS to:

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