VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 7th day of April, 2016.

Present: Lemons, C.J., Goodwyn, Mims, McClanahan, Powell, Kelsey, and McCullough, JJ.

In Re: Keith Allen Harward, No. 1125797, Petitioner

Record No. 160353

Upon a Petition for a Writ of Actual Innocence

Upon consideration of the petition for a writ of actual innocence filed March 4, 2016, the supplemental brief in support of the petition, the Commonwealth's motion to expedite and answer, and the Attorney General's declaration, the Court is of the opinion that the motion to expedite and the petition should be granted and the writ of actual innocence be issued.

Upon pleas of not guilty, Keith Allen Harward was tried by a jury and convicted in the Circuit Court of the City of Newport News of capital murder, rape, forcible sodomy, and robbery and was sentenced to life imprisonment for murder, and a total of sixty-five years for the remaining offenses. Harward's conviction of capital murder was overturned on appeal. Harward v. Commonwealth, 229 Va. 363, 330 S.E.2d 89 (1985). On remand, Harward was convicted of first degree murder and again sentenced to life imprisonment. Harward's direct appeal of his murder conviction concluded when this Court refused his petition for appeal on December 21, 1988.

As a result of an order entered on July 17, 2015, by the Circuit Court of the City of Newport News, the Virginia Department of Forensic Science ("DFS") tested evidence that had

been obtained from the sexual assault victim and the crime scene before Harward's first trial. The evidence was tested using scientific methods that were not available at the time of Harward's trials. The certificates of analysis issued by DFS contain factual findings excluding Harward as a contributor of the DNA isolated on the biological evidence recovered from the victim and the crime scene. In addition, the DNA profile obtained from the recently tested biological evidence has been compared to the National DNA databank and another, now deceased, individual has been identified as the likely contributor of that DNA profile.

Based upon this information, Harward petitioned for a writ of actual innocence pursuant to Code §§ 19.2-327.2 et seq. alleging he is actually innocent of the crimes for which he was convicted. To succeed, among other things, Harward must, by clear and convincing evidence, identify the human biological evidence and the scientific testing supporting his allegations of innocence, identify the reason the evidence was not previously subjected to the testing described in the petition, and establish that no rational trier of fact would have found him guilty beyond a reasonable doubt. After conducting its own evaluation of the facts, including the results of the biological testing, the Commonwealth agrees no reasonable trier of fact would have convicted Harward of the murder, rape, forcible sodomy, and robbery had this new scientific evidence been available at the time of his trial, and affirmatively joins in Harward's request for relief.[1]

Accordingly, as required by Code § 19.2-327.5, the Court finds by clear and convincing evidence that petitioner has proven all of the requirements of Code § 19.2-327.3(A), and that no

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[1] The Court recognizes the concession by the Attorney General does not relieve this Court of its judicial obligation to review the pleadings and the record before us. The Court, however, after consideration of the pleadings and exhibits in this case, deems it prudent to accept the Attorney General's declaration that an independent review of the underlying criminal record is unnecessary for the Court to evaluate the merits of the petitioner's claim.

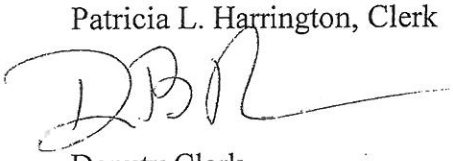
rational trier of fact would have found proof of Harward's guilt beyond a reasonable doubt. The Court grants the requested writ of actual innocence, and vacates Harward's convictions for murder, rape, forcible sodomy and robbery (Circuit Court Case Nos. 9489-83, 9490-83, 9491-83, and 9492-83). The Director of the Department of Corrections is ordered to release Harward from custody imposed by these convictions forthwith.

The matter is remanded to the Circuit Court of the City of Newport News with instructions to immediately enter an order of expungement.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: 

Deputy Clerk