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IN THE

SUPREME COURT OF VIRGINIA

RECORD No. 161527

Brian Wendall Jordan,

Appellant,

v.

Commonwealth of Virginia,

Appellee.

OPENING BRIEF OF APPELLANT

Anne Hampton Andrews (VSB No. 81806)
Robert W. Loftin (VSB No. 68377)
MCGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219
Telephone: (804) 775-4365
Facsimile: (804) 698-2083
aandrews@mcguirewoods.com
rloftin@mcguirewoods.com

Counsel for Brian Wendall Jordan

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I. STATEMENT OF THE CASE

This case involves the erroneous denial of a name change of a person of Islamic faith, who is currently incarcerated at River North Correctional Center in Independence, Virginia. The Circuit Court of Grayson County erred when it denied Appellant Brian Wendall Jordan's ("Jordan") request for a name change. The trial court found that Jordan's name change would "frustrate[] a legitimate law-enforcement purpose and thus the provisions of § 8.01-217(D) are not satisfied." J.A. 55. However, the record before the trial court is devoid of any evidence that Jordan's name change would frustrate "a legitimate law-enforcement purpose." Code § 8.01-217. This Court should reverse the trial court's decision and enter final judgment granting Jordan's name change.

II. STATEMENT OF FACTS AND STATEMENT OF MATERIAL PROCEEDINGS BELOW

Jordan is an inmate incarcerated in the River North Correctional Center in Independence, Virginia. J.A. 2. In 2010, at the age of thirty, Jordan was sentenced to eighty years' imprisonment for malicious wounding, robbery, first degree murder, aggravated malicious wounding, and burglary. J.A. 9–22. During his incarceration, Jordan began practicing the Islamic religion, attending religious services, and observing his faith's customs. J.A. 13–14, 68. In 2011, Jordan converted to Islam and continued to study his faith and learn about the traditions of his religion. J.A. 68. As part of his study, Jordan learned that it is common

practice to change one's name to take on an attribute of Allah upon converting to Islam. J.A. 68.

Compelled by his dedication to his religion, Jordan submitted an Application for Change of Name (Adult) to the trial court. J.A. 2–4. Jordan sought to legally change his name from "Brian Wendall Jordan" to "Abdul-Wakeel Mutawakkil Jordan,"[1] pursuant to Code § 8.01-217. J.A. 50–51. The application was certified under oath and included Jordan's place of residence, the names of both his parents, his mother's maiden name, his date and place of birth, his felony record, that he is presently incarcerated at River North Correctional Center, and that he had not changed his name previously. J.A. 2–4. *See* Code § 8.01-217(B). Jordan explained his good cause basis for his request for a name change. Specifically, Jordan explained that in the practice of Islam, conversion to the religion erases sin and makes a person new under Allah and that changing his name is an important part of his conversion to Islam.[2] J.A. 3, 68.

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[1] In his application, Jordan requested to change his name from "Brian Wendall Jordan" to "Wakeel Mutawakkil." J.A. 2. Jordan subsequently filed an amended application, in which he requested to change his name from "Brian Wendall Jordan" to "Abdul-Wakeel Mutawakkil Jordan." J.A. 51. The only difference between Jordan's application and amended application is his requested name. Therefore, the trial court's decision denying Jordan's name change request is based on his amended application.

[2] This practice is common and recognized by courts as a good cause for a prisoner to request a name change. *See, e.g., Barrett v. Commonwealth of Virginia*, 689 F.2d 498, 503 (4th Cir. 1982) ("Several precedents indicate that the free exercise of religion is satisfied by prospective recognition of a prisoner's adopted Muslim

The trial court found good cause and accepted Jordan's application for change of name. J.A. 9. Pursuant to Code § 8.01-217(D), the attorney for the Commonwealth for the jurisdiction where Jordan filed his application and the attorney for the Commonwealth for the jurisdiction where his conviction occurred were notified of his request and given an opportunity to respond. The Commonwealth's Attorney for Grayson County filed a response on May 6, 2016, and asked the trial court to deny Jordan's request to change his name. J.A. 10–12. On May 12, 2016, Jordan filed his reply to the Commonwealth's response. J.A. 13–15. The Deputy Commonwealth's Attorney for the City of Chesapeake filed a response on June 2, 2016, asking the trial court to deny Jordan's application and enclosing case paperwork from Jordan's convictions.[3] J.A. 16–26.

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name"); *see also Salaam v. Lockhart*, 905 F.2d 1168, 1170 (8th Cir. 1990) ("A personal name is special. It may . . . reflect a reverence for God and God's teachings."). The Eighth Circuit noted, "'[t]he adoption of Muslim names by inmates practicing that religion is generally recognized to be an exercise of both first amendment speech and religious freedom.' *Felix v. Rolan*, 833 F.2d 517, 518 (5th Cir. 1987) (per curiam) (citing cases)." *Salaam*, 905 F.2d at 1170 n.4. Continuing, "[i]t is common practice for a convert to change his name as the Koran provides, and the former Anglo name is thought to be a badge of a spiritually unenlightened state and a relic of slavery. *Masjid Muhammad–D.C.C. v. Keve*, 479 F.Supp. 1311, 1321–22 (D. Del.1979). New names are generally drawn from the ninety-nine attributes of God. *See* Maulana Muhammad–Ali, *The Religion of Islam* 159 (1983) (listing)." *Salaam*, 905 F.2d at 1170 n.4.

[3] The Commonwealth's Attorney for the City of Chesapeake was appointed as a Special Prosecutor in Jordan's underlying criminal case for which he is currently incarcerated. J.A. 17–18.

The trial court conducted a hearing by video conference on September 9, 2016. J.A. 54. That same day, although the trial court acknowledged that Jordan's "application appears to be for a *bona fide* religious purpose," the trial court nevertheless entered an order denying Jordan's name change. J.A. 54–55.

Specifically, the trial court held that changing Jordan's name would frustrate some of the goals of criminal punishment—namely, retribution, deterrence, and incapacitation—erroneously reasoning that a frustration of the goals of criminal punishment equate to frustration of a legitimate law-enforcement purpose within the meaning of Code § 8.01-217(D). J.A. 54–55. Moreover, the trial court erred when it relied upon Jordan's convictions in its finding. Finally, the trial court abused its discretion because Jordan satisfied each of the requirements of the statute.

Jordan timely filed his notice of appeal to this Court on October 7, 2016. J.A. 56–57. This Court granted Jordan's Petition for Appeal on June 29, 2017. J.A. 81.

III. ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN DENYING THE APPELLANT MOTION FOR NAME CHANGE, BECAUSE CIRCUMSTANCES PRESENTED NO LEGITIMATE FRUSTRATION FOR LAW ENFORCEMENT.[4]

[4] This is Jordan's assignment of error granted by this Court when he represented himself pro se at the petition stage. J.A. 70, 81.

IV. ARGUMENT AND AUTHORITIES

A. Standard of Review

While this Court reviews a trial court's statutory interpretation *de novo*, *Washington v. Commonwealth*, 272 Va. 449, 455 (2006), this Court applies an abuse of discretion standard when analyzing a trial court's denial of a name change. *Stephens v. Commonwealth*, 274 Va. 157, 162 (2007); *In re Strikwerda*, 216 Va. 470, 473 (1975) (applying an abuse of discretion standard when the trial court denied the applicant's name change request after conducting an evidentiary hearing).

In *Landrum v. Chippenham & Johnston-Willis Hosps., Inc.*, 282 Va. 346, 352–53 (2011), this Court established the criteria for analyzing whether a trial court abused its discretion:

> In *Kern v. TXO Production Corp.*, 738 F.2d 968, 970 (8th Cir. 1984), the United States Court of Appeals for the Eighth Circuit stated that when a decision is discretionary, "we do not mean that the [trial] court may do whatever pleases it. The phrase means instead that the court has a range of choice, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law." The Eighth Circuit went on to explain: An abuse of discretion . . . can occur in three principal ways: when a relevant factor that should have been given significant weight is not considered; when an irrelevant or improper factor is considered and given significant weight; and when all proper factors, and no improper ones, are considered, but the court, in weighing those factors, commits a clear

> error of judgment. *Id.*
>
> The Fourth Circuit has recognized this definition. *See General Trucking Corp. v. Westmoreland Coal Co.*, No. 92-1225, 1992 U.S. App. LEXIS 30853, at *14 (4th Cir. Nov. 23, 1992) (unpublished) ("Or, as another court has put it, by (1) failing to take into account a significant relevant factor; or (2) giving significant weight to an irrelevancy; or (3) weighing the proper factors but committing a clear error of judgment in doing so." (citing *Kern*, 738 F.2d at 970)). And we now embrace it.[5]

Landrum, 282 Va. at 352–53.

B. Code § 8.01-217 Provides an Avenue For Prisoners to Request a Name Change.

The ability to change one's name has been recognized by the General Assembly for over a century. *See, e.g.,* Code of 1950 § 8-557 (citing Code of 1919 and Constitution of Virginia). Under the common law, an individual was free to adopt any name so long as the change was not done for a fraudulent purpose or in an attempt to infringe on the rights of another. *See, e.g., In re Strikwerda*, 216 Va. 470, 472-73 (1975) (reversing the judgment of the trial court and remanding for entry of orders granting the petitions for change of name upon a finding that the petitions had not been filed for an illegal, fraudulent, or immoral purpose).

[5] As explained herein, the trial court abused its discretion in denying Jordan's name change request. Therefore, the trial court erred whether this Court applies a *de novo* or abuse of discretion standard of review.

The current version of Code § 8.01-217, entitled "How name of person may be changed," states in relevant part:

> A. Any person desiring to change his own name . . . may apply therefor to the circuit court of the county or city in which the person whose name is to be changed resides, or if no place of abode exists, such person may apply to any circuit court which shall consider such application if it finds that good cause exists therefor under the circumstances alleged. An incarcerated person may apply to the circuit court of the county or city in which such person is incarcerated. . . .
>
> B. Every application shall be under oath and shall include the place of residence of the applicant, the names of both parents, including the maiden name of his mother, the date and place of birth of the applicant, the applicant's felony conviction record, if any, whether the applicant is a person for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, whether the applicant is presently incarcerated or a probationer with any court, and if the applicant has previously changed his name, his former name or names.
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> C. On any such application and hearing, if such be demanded, the court, shall, unless the evidence shows that the change of name is sought for a fraudulent purpose or would otherwise infringe upon the rights of others or, in a case involving a minor, that the change of name is not in the best interest of the minor, order a change of name.
>
> D. No application shall be accepted by a court for a change of name of a probationer, person for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, or incarcerated person unless the court finds that good cause exists for consideration of

such application under the reasons alleged in the application for the requested change of name. If the court accepts the application, the court shall mail or deliver a copy of the application to the attorney for the Commonwealth for the jurisdiction where the application was filed and the attorney for the Commonwealth for any jurisdiction in the Commonwealth where a conviction occurred that resulted in the applicant's probation, registration with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, or incarceration. The attorney for the Commonwealth where the application was filed shall be entitled to respond and represent the interests of the Commonwealth by filing a response within 30 days after the mailing or delivery of a copy of the application. The court shall conduct a hearing on the application and may order a change of name if, after receiving and considering evidence concerning the circumstances regarding the requested change of name, the court determines that the change of name (i) would not frustrate a legitimate law-enforcement purpose, (ii) is not sought for a fraudulent purpose, and (iii) would not otherwise infringe upon the rights of others. Such order shall contain written findings stating the court's basis for granting the order.

E. The provisions of subsection D are jurisdictional and any order granting a change of name pursuant to subsection D that fails to comply with any provision of subsection D is void ab initio. The attorney for the Commonwealth for the jurisdiction where such an application was filed has the authority to bring an independent action at any time to have such order declared void. If the attorney for the Commonwealth brings an independent action to have the order declared void, notice of the action shall be served upon the person who was granted a change of name who shall have 30 days after service to respond. If the person whose name was changed files a response objecting to having the order declared void, the court shall hold a hearing. If an

> order granting a change of name is declared void pursuant to this subsection, or if a person is convicted of perjury pursuant to § 18.2-434 for unlawfully changing his name pursuant to § 18.2-504.1 based on conduct that violates this section, the clerk of the court entering the order or the order of conviction shall transmit a certified copy of the order to (i) the State Registrar of Vital Records, (ii) the Department of Motor Vehicles, (iii) the State Board of Elections, (iv) the Central Criminal Records Exchange, and (v) any agency or department of the Commonwealth that has issued a license to the person where such license utilizes the person's changed name, if known to the court and identified in the court order.
>
> F. The order shall contain no identifying information other than the applicant's former name or names, new name, and current address. The clerk of the court shall spread the order upon the current deed book in his office, index it in both the old and new names, and transmit a certified copy of the order and the application to the State Registrar of Vital Records and the Central Criminal Records Exchange. Transmittal of a copy of the order and the application to the State Registrar of Vital Records and the Central Criminal Records Exchange shall not be required of a person who changed his or her former name by reason of marriage and who makes application to resume a former name pursuant to § 20-121.4. . . .

Importantly, the General Assembly amended Code § 8.01-217 in 2014 to address name change requests by incarcerated persons and those with criminal records by deleting the second sentence of subsection A (which read "Applications of probationers and incarcerated persons may be accepted if the court finds that good cause exists for such application"), referencing the Sex Offender and Crimes

Against Minors Registry in subsection B, and adding subsections D and E, among other amendments. These amendments are at issue in this appeal.

Although this Court has not yet decided a prisoner name change case interpreting the 2014 amendments to Code § 8.01-217, this Court has decided several prisoner name change cases under a prior version of Code § 8.01-217. *See, e.g., In re Brown*, 289 Va. 343, 349–50 (2015) (reversing and directing the circuit court to order Brown's name change because good cause had been established and there was no evidence in the record of a fraudulent purpose or that Brown's name change would infringe upon the rights of others); *Stephens,* 274 Va. at 162–63 (reversing and remanding because the circuit court "clearly" abused its discretion in its "implicit denial of Stephens' petition for lack of good cause" when even based on a "limited record" it was clear that Stephen's petition "complied with all of the [ ] requirements set forth in Code § 8.01-217(B)"). In addition to being decided under a prior version of the statute, *Brown* and *Stephens* were also dismissed by their respective circuit courts prior to a hearing on their name change applications.

C. The Trial Court Abused Its Discretion When It Found that Jordan's Name Change Would Frustrate A Legitimate Law-Enforcement Purpose.

After accepting Jordan's application, finding good cause, and holding a hearing, the trial court nevertheless entered an order denying Jordan's name

change on the grounds that changing his name would "frustrate[] a legitimate law-enforcement purpose and thus the provisions of § 8.01-217(D)." J.A. 54–55. In support of its finding that Jordan's name change would frustrate a legitimate law-enforcement purpose, the trial court improperly gave significant weight to Jordan's prior convictions, stating that "[t]he prism through which the court views the request of Mr. Jordan is necessarily different because of his extraordinarily heinous convictions." J.A. 55. The trial court found that Jordan's name change "frustrates retribution, deterrence and incapacitation" because he was convicted under his given name (hereinafter, referred to as "committed name"). J.A. 55. For the reasons explained herein, the trial court improperly equated Jordan's past criminal convictions with a frustration of law enforcement, thereby finding his name change request should be evaluated in light of the goals of criminal punishment. *See* J.A. 54–55. Because the trial court improperly gave significant weight to elements not present in the plain language of the statute—namely, Jordan's prior criminal convictions and the goals of criminal punishment—the trial court abused its discretion in denying Jordan's name change.

This Court has not yet interpreted the phrase "frustrate a legitimate law-enforcement purpose," which was added to subsection D of Code § 8.01-217 in 2014. However, in interpreting the 1982 version of Code § 8.01-217, which categorically prohibited prisoners from changing their names, the United States

Court of Appeals for the Fourth Circuit identified several law-enforcement purposes that are relevant when considering a prisoner's name change. *Barrett v. Commonwealth of Virginia*, 689 F.2d 498, 502–503 (4th Cir. 1982).

In deciding *Barrett*, which resulted in amendments to Code § 8.01-217 to permit prisoners to request a name change, the Fourth Circuit held that prisoners must be given a reasonable opportunity to exercise their religion, considering the "vital governmental interest in accurately identifying prison inmates." 689 F.2d at 500. The Fourth Circuit weighed concerns put forth by the Commonwealth, including "efforts to apprehend escaped prisoners," "confusion in prison operations," and "that some prisoners might abuse name changes to frustrate legitimate law enforcement functions." *Id.* The Fourth Circuit explained that a prohibition on prisoner name changes was "not reasonably and substantially justified" by these concerns. *Id.* at 503.

The Fourth Circuit's discussion indicates that the relevant law enforcement concerns in the context of prisoner name changes involve the identification and apprehension of prisoners. As with the petitioner in *Barrett*, the Virginia Department of Corrections will identify Jordan using both his committed name and his new name pursuant to its policy to include both names in its computer-based offender information management system. J.A. 42–43. Moreover, Jordan's official record, which contains all information maintained by the Department of

Corrections including his original criminal record and information recorded in the Interstate Compact Offender Tracking System, will be updated to reflect his name change. Pursuant to the Virginia Department of Corrections Operating Procedure related to offender access to record information, all of Jordan's records will include his committed name and his new name, thereby allowing authorities to apprehend Jordan should his name change request be granted. J.A. 42–43. Just like in *Barrett*, the grounds for denying Jordan's name change were unreasonable considering "many inmates are known by several names at the time they enter prison." *Id.* at 503. As illustrated by the Virginia Department of Correction's own policies and procedures, there should never be a hint of confusion about who Jordan is.

In the present case, the trial court improperly relied on Jordan's prior criminal convictions and the goals of criminal punishment in denying Jordan's name change request. The trial court reasoned that Jordan's name change application could be denied based on the crimes for which he is committed to confinement. The goals of criminal punishment have already been applied to Jordan when he received his sentence for his underlying crimes, and the goal of punishing Jordan through the means of deterrence, retribution, and incapacitation has already been achieved. Therefore, permitting a trial court to rely on a petitioner's underlying convictions and to apply the goals of criminal punishment

in this proceeding as the basis for denying a name change request is a tantamount ban on prisoner name changes.[6] As such, the trial court's stated reason for denying Jordan's name change is contrary to the statute and the *Barrett* decision, particularly given that the trial court recognized that Jordan's "application appears to be for a *bona fide* religious purpose." J.A. 55.

On the other hand, Jordan's request does not present the same potential to frustrate a legitimate law-enforcement purpose as other prisoner name change cases in which trial courts denied the name change requests.

For example, in *In re Champion*, 72 Va. Cir. 588, 589 (Lee County Mar. 25, 2004), the circuit court denied a name change application of a transgender inmate who was convicted of sexually-based crimes and would be required to register as a sexual offender when his sentence was fulfilled seven years from the date of the decision. In *Champion*, the petitioner requested to change first, middle, and last names and planned to surgically change gender upon release from incarceration, at which time the petitioner would be forty-eight years old. By contrast, in this case,

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[6] In another jurisdiction that has a similar procedure for prisoner name changes, the court weighed certain state interests that parallel law-enforcement purposes. For example, in *In re Petition of Rachuy*, 1993 Minn. App. LEXIS 251, *3–4 (1993) (applying Minn. Stat. §§ 259.10 & 259.11), the Minnesota Court of Appeals concluded that the trial court erred in denying an inmate's name change when the trial court considered the petitioner's past convictions. Similar to the petitioner in *Rachuy*, Jordan's name change is sought for a genuine purpose and the trial court denied Jordan's name change on the basis of inappropriate elements that are not present in the plain language of the statute.

Jordan sought to change his name for religious purposes (as recognized by the trial court), he would not be required to register his name and address with law enforcement agencies, he wishes to retain his surname, and he still has another seventy-three years of his sentence to serve, should he live long enough to be released from prison.

Likewise, the Ohio name change statute, OCR Ann. § 2717.01, provides a procedure for prisoners to apply for a name change. The Court of Appeals of Ohio upheld a trial court's denial of a prisoner's application for name change where the requested name change had the potential to frustrate a legitimate law-enforcement purpose. In *In re Name Change of Whitacre*, 2004 Ohio 2926, P2–P3 (2004), the petitioner was scheduled to be released from prison within a year of his appeal, and upon his release he would be required to register as a sexual offender when released. Significantly, his stated purpose in changing his name was to "start over," which the court recognized as an attempt to evade being identified with his past criminal history. *Id.* at P4. Therefore, Whitacre's purpose for changing his name, as he was nearing release from prison, could conceivably frustrate a legitimate law-enforcement purpose. In contrast with the petitioner in *Whitacre*, Jordan specifically states under oath in his application that he is not seeking a name change to avoid his criminal history. J.A. 2–4. In fact, Jordan stated in his application that changing his name would not make him "invisible" to the victims

and he would provide a copy of the name change order to the victims or otherwise ensure that all parties involved in his criminal matter are advised of his name change. J.A. 3. Unlike the petitioner in *Whitacre*, Jordan's stated purpose in changing his name is in furtherance of his Islamic faith, not to evade being identified with his past criminal history. In fact, the trial court recognized that Jordan's application appears to be for a *bona fide* religious purpose. J.A. 55. Moreover, it is extremely unlikely that Jordan will be released from prison because he was sentenced to eighty years' imprisonment at the age of thirty. J.A. 9–22.

Therefore, the trial court abused its discretion in finding that Jordan's name change would frustrate a legitimate law-enforcement purpose because the trial court improperly considered Jordan's prior criminal convictions and the goals of criminal punishment and failed to distinguish Jordan's circumstances from those where there was the potential to frustrate a legitimate law-enforcement purpose.

D. This Court Should Reverse and Enter Final Judgment Granting Jordan's Name Change Because All of the Elements of Code § 8.01-217 Have Been Satisfied.

The trial court erred when it denied Jordan's name change because Jordan satisfied all of the requirements of Code § 8.01-217. First, and undisputed in this case, the trial court correctly granted Jordan a hearing on his application because he satisfied subsection D's good cause requirement. J.A. 9. Second, the trial court properly found at the hearing that Jordan's name change was (i) not sought for a

fraudulent purpose and (ii) would not otherwise infringe upon the rights of others. J.A. 55. Finally, for the reasons explained in Section IV.C above, Jordan's name change request would not frustrate a legitimate law-enforcement purpose.

Jordan's purpose for changing his name is to further his religious beliefs and to adhere to an important tradition of his faith. Just like the petitioner in *Stephens*, Jordan's petition "unequivocally asserted that [he] sought to change his name for 'religious purposes' in furtherance of his faith in the Islamic religion." *Stephens*, 274 Va. at 162. Indeed, the trial court recognized that Jordan's name change "appears to be for a *bona fide* religious purpose." J.A. 55. Because all of the elements of Code § 8.01-217 have been satisfied and because the trial court recognized Jordan's religious purpose in seeking a name change, the trial court committed a clear error of judgment and abused its discretion by failing to give proper weight to Jordan's stated purpose for his name change petition. *See Landrum*, 282 Va. at 352–53 (citing *Kern*, 738 F.2d at 970). Therefore, this Court should reverse and enter final judgment granting Jordan's name change.

V. CONCLUSION

For these reasons, this Court should reverse and enter final judgment granting Jordan's name change from Brian Wendall Jordan to Abdul-Wakeel Mutawakkil Jordan, his religious name requested in his amended application. Alternatively, this Court should reverse and remand and direct the trial court to

consider Jordan's name change request in light of the fact that all elements of the statute have been met.

Dated: August 8, 2017

Respectfully submitted,

Anne Hampton Andrews /s/

Anne Hampton Andrews (VSB No. 81806)
Robert W. Loftin (VSB No. 68377)
McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219
Telephone: (804) 775-4365
Facsimile: (804) 698-2083
aandrews@mcguirewoods.com
rloftin@mcguirewoods.com

Counsel for Brian Wendall Jordan

CERTIFICATE

The undersigned hereby certifies that the foregoing complies with Rules 5:26 and 5:27, and further certifies as follows:

(1) The Appellant/Petitioner is Brian Wendall Jordan.

(2) Counsel for the Appellant/Petitioner are:

Anne Hampton Andrews (VSB No. 81806)
Robert W. Loftin (VSB No. 68377)
McGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219
Telephone: (804) 775-4365
Facsimile: (804) 698-2083
aandrews@mcguirewoods.com
rloftin@mcguirewoods.com

(3) The Appellee/Respondent is the Commonwealth of Virginia.

(4) Counsel for Appellee/Respondent is:

Matthew R. McGuire (VSB No. 84194)
Assistant Solicitor General
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
Telephone: (804) 786-7773
Facsimile: (804) 371-0200
mmcguire@oag.state.va.us

(5) On this 8th day of August, 2017:

a) Three copies of the foregoing Opening Brief of Appellant and three copies of the Joint Appendix were hand delivered to the Clerk's Office of the Supreme Court of Virginia for filing.

b) An electronic copy of the foregoing Opening Brief of the Appellant and an electronic copy of the Joint Appendix were delivered via the VACES portal to the Clerk's Office of the Supreme Court of Virginia.

*Anne Hampton Andrews /s/*_____
Anne Hampton Andrews