SCV: Submitted on 08-30-2017 14:35:19 EDT for filing on 08-30-2017

IN THE

SUPREME COURT OF VIRGINIA

Record No. 161527

BRIAN WENDALL JORDAN,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

BRIEF OF APPELLEE

MARK R. HERRING
Attorney General of Virginia

TREVOR S. COX (VSB No. 78396)
Acting Solicitor General

MATTHEW R. MCGUIRE
(VSB No. 84194)
Acting Deputy Solicitor General

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-7773
(804) 371-0200 (fax)
mmcguire@oag.state.va.us

August 30, 2017

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INTRODUCTION

This case presents an issue of first impression about the meaning of the phrase "legitimate law-enforcement purposes" as used in Code § 8.01-217(D). Although this Court has previously addressed denials of an inmate's name-change request for lack of good cause, this is the Court's first case to arise after being adjudicated under the revised procedures established by the General Assembly in 2014. As this Court recently stated in *In re Dennis*, adjudication under subsection (D) of Code § 8.01-217 "necessarily implies that the circuit court has discretion in determining whether to grant the petition to incarcerated persons."[1] "[T]he petitioner bears the burden of proving the circumstances regarding the requested name change, and, as a precondition to granting a petition, the court must determine" three things:[2] "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."[3]

Here, the circuit court denied petitioner Brian W. Jordan's request to change his name after concluding that granting it would frustrate legitimate law-enforcement purposes associated with criminal punishment. As shown below, the

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[1] *In re Dennis*, No. 160652, 2017 Va. LEXIS 105, at *10 n.2, 2017 WL 3526694, at *3 n.2 (Aug. 17, 2017).

[2] *Id.* at *9.

[3] Va. Code Ann. § 8.01-217(D) (2015).

circuit court's decision in this case was based on its consideration of factors that plainly fall within the ordinary meaning of the phrase "legitimate law-enforcement purpose." Because the circuit court acted well within its authority in considering whether a "legitimate law-enforcement purpose" would be frustrated if Jordan's request was granted, there is no basis on this record to find an abuse of discretion.

Moreover, even if the circuit court's analysis went beyond what may be considered under the "legitimate law-enforcement purpose" prong of Code § 8.01-217(D), the court attached significant weight to concerns about the victims and their families, which provides ample support for finding that Jordan's name-change petition would "infringe upon the rights of others." So, at a minimum, the court's judgment should be affirmed under the right-result-wrong-reason doctrine.

ASSIGNMENT OF ERROR

> The trial court erred in denying the appellant [sic] motion for name change, because circumstances presented no legitimate frustration for law enforcement.

STATEMENT OF THE CASE AND FACTS

Unlike other cases where this Court has addressed inmate name-change requests,[4] Jordan's case does not involve the "good cause" component of Code § 8.01-217(D). No party in this case disputes that Jordan had good cause for seeking the name change for religious reasons. Instead, this case raises a limited issue

[4] *See, e.g.*, *In re Brown*, 289 Va. 343, 349-50, 770 S.E.2d 494, 497-98 (2015); *Stephens v. Commonwealth*, 274 Va. 157, 161, 645 S.E.2d 276, 277 (2007).

about subsection (D) of Code § 8.01-217 and on what bases a district court may deny a name-change petition after the 2014 amendments to the statute.

A. The General Assembly amends Code § 8.01-217 and limits the ability of inmates to change their names.

In 2014, the General Assembly amended Code § 8.01-217(D) and added an additional judicial process that certain applicants for a name change must satisfy in order for their petition to be granted.[5] Specifically, subsection (D) of Code § 8.01-217 requires that, if the court finds good cause for a name-change request, "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 [as a sex offender], or incarceration." The Commonwealth's Attorneys then have 30 days to file a response agreeing to, opposing, or taking no position with respect to the name-change request.[6]

Code § 8.01-217(D) provides three bases on which to oppose a name-change request: (1) the change would "frustrate a legitimate law-enforcement purpose"; (2) the change "is sought for a fraudulent purpose"; and (3) the change would "otherwise infringe upon the rights of others." If none of those concerns is

[5] 2014 Va. Acts ch. 232.

[6] Va. Code Ann. § 8.01-217(D).

implicated, the court "may order a change of name" after conducting a hearing on the application.

B. Jordan requests a name change for religious reasons.

On March 30, 2016, Brian W. Jordan, an inmate housed at River North Correctional Center, filed a pro se application for a name change in the Circuit Court for Grayson County.[7] Jordan's application stated that good cause existed because he wanted to change his name to "Wakeel Mutawakkil due to his religious affiliation."[8] Although he desired the name change, Jordan expressly conceded that "he would not be hindered from the free exercise of his religion if not allowed to change his name."[9]

Jordan's application also stated that he was a felon who had been convicted of first-degree murder, robbery, burglary, malicious wounding, and aggravated malicious wounding.[10] Recognizing that the victims of his crimes would have an interest in his application, he offered "to provide postage for the mailing of a copy

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[7] JA 2-4.

[8] JA 2.

[9] JA 3.

[10] JA 2.

of the name change Order to" his victims "or otherwise ensure that all parties involved in his criminal matter are advised of [his] name change."[11]

On April 29, 2016, the circuit court found "good cause to accept and consider" Jordan's application for a name change.[12] As required by Code § 8.01-217(D), the court ordered the Clerk of Court "to forward a copy of the Petition with all relevant documents to Douglas S. Vaught, Commonwealth's Attorney of Grayson County and Gregory D. Underwood, Commonwealth's Attorney for the City of Norfolk, who shall file the appropriate answers within 30 days."[13]

C. In light of Jordan's violent crimes, the Commonwealth's Attorneys for Grayson County and the City of Chesapeake both oppose Jordan's request for a name change.

In response to the circuit court's order, the Commonwealth's Attorneys for Grayson County and the City of Chesapeake opposed Jordan's name-change request.[14] Both of their responses focused on the "violent and heinous crimes" that Jordan had committed only seven years earlier. Indeed, the Commonwealth's Attorney for the City of Chesapeake, where Jordan was convicted, attached a copy

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[11] JA 3.

[12] JA 9.

[13] *Id.*

[14] JA 16. Jordan's crimes actually occurred within the jurisdiction of the City of Norfolk Circuit Court, but the case was transferred to Chesapeake due to "a potential conflict involving the Norfolk Commonwealth Attorney's Office." JA 18; *see also* JA 17.

of the stipulation of facts from Jordan's criminal trial that detailed his offenses.[15] Because the serious nature of Jordan's crimes is directly relevant to the circuit court's decision in this case, his offenses are summarized below.

On April 27, 2009, Jordan, wearing surgical gloves, forcibly entered the home of Joyce Merrell, age 76, and proceeded to drag her around her house demanding money while threatening to choke her.[16] After obtaining all of Ms. Merrell's money, he "dragged her back to the dining room," "pushed her on the floor and took out some duct tape to tape her hands together," and then he "struck her over the head with what she believed to be the large flashlight he had when he first entered her house."[17] After regaining consciousness, Ms. Merrell was able to call for help.[18]

One day later, on April 28, Jordan broke into the residence of Marion Wheeler, age 90, and Anna Wheeler, age 86, where they were sleeping in separate bedrooms.[19] Jordan "entered into each bedroom and beat both of the Wheelers

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[15] JA 16.

[16] JA 23.

[17] *Id.*

[18] *See* JA 23-24.

[19] JA 24.

with a long handled flashlight."[20] "Mr. Wheeler was struck numerous times in his head with the flashlight," and he "was in a coma" when he arrived at the hospital.[21] "He had numerous facial fractures, significantly reduced neurological functioning, significant intracranial injury, was paralyzed, and had most of his right ear torn off his head."[22] He "never regained consciousness," and passed away in the hospital.[23]

Ms. Wheeler was able to successfully fight off Jordan's attack by "thr[owing] her hands up in a defensive position to block the blows. As a result, all of the fingers on her right hand and her right thumb, and all of the fingers on her left hand were broken."[24] Ms. Wheeler also suffered numerous facial injuries including "a fracture of the inferior orbital rim extending to the right orbital floor, fractures of the lateral wall right orbit and right zygoma, anterior and posterolateral maxillary sinus wall fractures, nasal bone fractures and displaced fracture of the frontal process of the left axilla."[25] As a result of the attack, she "has pins permanently placed in four of her fingers and has three plates on the right side of

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[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

her face."[26] Jordan was overheard confessing to these crimes by Sherrelle Baker.[27] According to Ms. Baker, Jordan described the scene at the Wheelers' house as "real crazy and there was blood everywhere."[28]

After being convicted of those crimes, Jordan was sentenced to "40 years for first degree murder, 25 years for aggravated malicious wounding, and 15 years for unlawful wounding, and 20 years in each of two other felonies, robbery and burglary for which 20 years was suspended."[29] He also was required to complete "10 years of unsupervised probation."[30]

In light of Jordan's offenses, the Chesapeake Commonwealth's Attorney "respectfully submit[ted] that Mr. Jordan should remain as he is currently named and as he was named at the time of the crimes and the resulting convictions and sentences."[31] The Grayson County Commonwealth's Attorney likewise emphasized the severity of Jordan's crimes: "[t]he interest of the Commonwealth in maintaining the safety and security of the citizens and prison personnel is

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[26] *Id.*

[27] JA 25.

[28] *Id.*

[29] JA 10; *see also* JA 19-22.

[30] *Id.*

[31] JA 16.

paramount in any such consideration of the change of a name when a person has been convicted of first-degree murder and other numerous violent felonies and sentenced to eighty (80) years."[32]

The Grayson County Commonwealth's Attorney specifically addressed the three grounds for denying a name change under Code § 8.01-217(D). First, the Commonwealth argued that changing Jordan's name would "frustrate a legitimate law-enforcement purpose" because the name change "would frustrate . . . the ability to quickly and accurately assess the location of convicted felons, and aid in their apprehension should they escape or commit other crimes for which they could be punished and in which their prior conviction records should be clear and concise."[33] Second, the Commonwealth asserted that Jordan's name-change request was for a fraudulent purpose because he represented that he could still satisfactorily practice his religion even if the request were not granted.[34] And finally, the Commonwealth contended that granting the name-change request would infringe on the rights of others because "the citizens of the Commonwealth deserve to have finality in their judgments and convictions," and the "families of the persons who were killed or wounded by [Jordan] deserve to forever know the

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[32] JA 10.

[33] JA 11.

[34] *See* JA 11-12.

legal name and whereabouts of the perpetrator of the crimes without having to guess what name he has chosen to best avoid part of the consequences of his actions."[35]

D. The circuit court denies Jordan's name-change petition.

On September 9, 2016, the circuit court held a hearing on Jordan's name-change petition.[36] Jordan was permitted to present evidence at the hearing, such as lists showing his attendance at religious services.[37] He was also permitted to amend his name-change petition to keep his surname Jordan, so that his new name would be Abdul-Wakeel Mutawakkil Jordan.[38]

After the hearing, and after reviewing the record, the court rejected Jordan's name-change request.[39] Noting that "Jordan's application appear[ed] to be for a *bona fide* religious purpose," the court nonetheless concluded that granting the application would frustrate "legitimate law-enforcement purpose[s]" as

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[35] JA 12.

[36] JA 54.

[37] JA 35.

[38] JA 36; *see also* JA 51-53.

[39] JA 55.

contemplated by Code § 8.01-217(D).[40] In denying the petition, the court viewed the case through the lens of Jordan's "extraordinarily heinous convictions" and found that allowing Jordan to change his name would frustrate "an elementary purpose of law-enforcement"—"punishment."[41]

The court explained that Jordan "was convicted of these heinous crimes under the name Brian Wendell Jordan and his sentence, as rendered by the Circuit Court of the City of Norfolk, should be served and concluded under that name."[42] Moreover, "[i]ncluded in [the court's] consideration [were] the victims of his crime, who have the right and the security in the knowledge that he is serving his apportioned sentence under that name."[43] In short, "[s]omeone so dangerous should have his identity fixed, certain and intractable not only with the Department of Corrections but with all of society. There should never be even a hint of confusion as to who this person is."[44] Because "[a] function of his punishment is that he bear the convictions in the name they were ordered by the court, and that

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[40] *Id.* The court stated that the request was not for a fraudulent purpose and that it did "not infringe upon another's rights," but the court did not explain the basis for those findings. *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

his victims and society have that assurance," the court denied Jordan's name-change request.[45]

STANDARD OF REVIEW

This Court applies "'an abuse of discretion standard when reviewing a trial court's denial of an application for name change.'"[46] And this Court has noted "three principal ways" in which a trial court may abuse its discretion: (1) "when a relevant factor that should have been given significant weight is not considered"; (2) "when an irrelevant or improper factor is considered and given significant weight"; and (3) "when all proper factors, and no improper ones, are considered, but the court, in weighing those factors, commits a clear error of judgment."[47] "At [this] stage, [the applicant] bears the burden of proving the circumstances regarding the requested name change."[48]

"In evaluating whether a trial court abused its discretion, '[this Court does] not substitute [its] judgment for that of the trial court. Rather, [the Court]

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[45] *Id.*

[46] *In re Dennis*, 2017 Va. LEXIS 105, at *7, 2017 WL 3526694, at *3 (quoting *In re Brown*, 289 Va. at 347, 770 S.E.2d at 496).

[47] *Id.* (quoting *Landrum v. Chippenham & Johnston-Willis Hosps., Inc.*, 282 Va. 346, 352, 717 S.E.2d 134, 137 (2011)).

[48] *Id.* at *9, 2017 WL 3526694, at *3.

consider[s] only whether the record fairly supports the trial court's action.'"[49]

"'Only when reasonable jurists could not differ can we say an abuse of discretion has occurred.'"[50]

> "[T]he [abuse of discretion] standard draws a line—or rather, demarcates a region—between the unsupportable and the merely mistaken, between the legal error, disorder of reason, severe lapse of judgment, and procedural failure that a reviewing court may always correct, and the simple disagreement that, on this standard, it may not."[51]

"The determination whether a trial court has abused its discretion is fact-specific."[52] And the trial court is entitled to consider the totality of the circumstances.[53]

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[49] *AME Fin. Corp. v. Kiritsis*, 281 Va. 384, 393, 707 S.E.2d 820, 824 (2011) (quoting *Beck v. Commonwealth*, 253 Va. 373, 385, 484 S.E.2d 898, 906 (1997)); *see also In re Dennis*, 2017 Va. LEXIS 105, at *10 n.2, 2017 WL 3526694, at *3 n.2 (citing *AME Fin. Corp.*, 281 Va. at 392, 707 S.E.2d at 824).

[50] *Grattan v. Commonwealth*, 278 Va. 602, 620, 685 S.E.2d 634, 644 (2009) (quoting *Thomas v. Commonwealth*, 44 Va. App. 741, 753, 607 S.E.2d 738, 743 (2005)).

[51] *Lawlor v. Commonwealth*, 285 Va. 187, 213, 738 S.E.2d 847, 861 (2013) (quoting *Evans v. Eaton Corp. Long Term Disability Plan*, 514 F.3d 315, 322 (4th Cir. 2008)).

[52] *Nolte v. MT Tech. Enters., LLC*, 284 Va. 80, 92, 726 S.E.2d 339, 346 (2012) (citation omitted).

[53] *See, e.g.*, *Hart v. Hart*, No. 1724-11-1, 2012 Va. App. LEXIS 188, at *32-33, 2002 WL 1994978, at *9 (June 5, 2012) ("Given the totality of the circumstances in this case, the trial court did not abuse its discretion . . . ."); *Kantor v. Kantor*, No. 0370-05-1, 2006 Va. App. LEXIS 62, at *6, 2006 WL 325306, at *2 (Feb. 14,

ARGUMENT

This case presents the circumstance mentioned but not addressed by this Court in its recent decision in *In re Dennis*.[54] Unlike that case, the circuit court here followed Code § 8.01-217(D)'s procedure, finding good cause for Jordan's name-change request based on his asserted religious need, asking the Commonwealth's Attorneys for their position, and holding a hearing.[55] "[A]s a precondition to granting a petition, the court must determine '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.'"[56]

2006) ("We conclude from the record before us that the trial court, 'taking into account the totality of the circumstances,' did not abuse its discretion . . . ."); *Ripley v. Charlottesville Dep't of Soc. Servs.*, No. 2879-99-2, 2000 Va. App. LEXIS 307, at *8, 2000 WL 460455, at *3 (Apr. 25, 2000) ("Based on the totality of the circumstances, we find no abuse of discretion in the trial court's refusal to grant another continuance in this matter."); *see also Va. Bd. of Med. v. Hagmann*, 67 Va. App. 488, 511, n.6, 797 S.E.2d 422, 433 n.6 (2017) (noting that "[t]he Board was entitled to consider the totality of the circumstances," and finding that "the record does not establish an abuse of discretion").

[54] *See, e.g.*, *In re Dennis*, 2017 Va. LEXIS 105, at *6, 2017 WL 3526694, at *2 ("This Court has not addressed the application of Code § 8.01-217 to a change of name petition by a probationer, incarcerated person or registered sex offender since the addition of subsection (D) to that statute.").

[55] *See* JA 54-55.

[56] *In re Dennis*, 2017 Va. LEXIS 105, at *9, 2017 WL 3526694, at *3 (citation omitted).

Because "the evidence demonstrate[d] that . . . one of the three statutory preconditions ha[d] not been satisfied," the circuit court acted within its discretion in concluding that Jordan's "religious motivation for seeking a name change [was] an insufficient ground for granting [his] subsection (D) petition."[57]

I. The circuit court did not abuse its discretion in denying Jordan's name-change petition because it would frustrate legitimate law-enforcement purposes.

The circuit court acted within its discretion in this case in concluding that Jordan had not carried his burden of showing that his name-change request would not frustrate a legitimate law-enforcement purpose. Because this Court has never interpreted the phrase "legitimate law-enforcement purpose" in connection with an inmate seeking a name change, the first step is for this Court to define that phrase.

When interpreting statutory provisions, this Court's analysis begins and ends with the plain meaning of the text unless the text is ambiguous.[58] And in situations like this one, where the General Assembly has not defined a statutory phrase, "'[a]n undefined term must be given its ordinary meaning, given the context in

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[57] *Id.* at *9-10, 2017 WL 3526694, at *3; JA 55.

[58] *Conyers v. Martial Arts World of Richmond, Inc.*, 273 Va. 96, 104, 639 S.E.2d 174, 178 (2007); *see also Boynton v. Kilgore*, 271 Va. 220, 227, 623 S.E.2d 922, 925-26 (2006) ("That intent is usually self-evident from the words used in the statute. Consequently, courts apply the plain language of a statute unless the terms are ambiguous, or applying the plain language would lead to an absurd result.") (citations omitted).

which it is used.'"[59] According to Black's Law Dictionary, "legitimate" is defined as "[c]omplying with the law; lawful" and "[g]enuine; valid."[60] And "law enforcement" is defined as "[t]he detection and punishment of violations of the law," with a notation that "[t]his term is not limited to the enforcement of criminal laws."[61] Finally, "purpose" is defined as "[a]n objective, goal, or end."[62] So combined, the ordinary meaning of the phrase "legitimate law-enforcement purpose" is: the genuine, valid, or lawful object or goal of detecting and punishing criminal violations.

Applying the plain meaning of "legitimate law-enforcement purpose" in this case, the circuit court acted well within its authority when it considered the elementary purposes of criminal punishment in deciding whether to grant Jordan's name-change request.[63] As the trial court recognized, criminal punishment serves a variety of purposes including retribution, deterrence, incapacitation, and

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[59] *Meeks v. Commonwealth*, 274 Va. 798, 802, 651 S.E.2d 637, 639 (2007) (quoting *Sansom v. Bd. of Supervisors*, 257 Va. 589, 594-95, 514 S.E.2d 345, 349 (1999)).

[60] Black's Law Dictionary 1040 (10th ed. 2014).

[61] *Id.* at 1017.

[62] *Id.* at 1431.

[63] JA 55.

rehabilitation.[64] And each of those purposes is complex and an inseparable part of the justification for law-enforcement actions.[65]

Based on those legitimate considerations, the court, exercising its discretion, concluded that "[c]hanging the name of Mr. Jordan frustrates retribution, deterrence and incapacitation. . . . A function of his punishment is that he bear the convictions in the name they were ordered by the court, and that his victims and society have that assurance."[66] In the court's view, "[s]omeone so dangerous should have his identify fixed, certain and intractable not only with the Department of Corrections but with all of society. There should never be even a hint of confusion as to who this person is."[67] So although the Department of Corrections may be able to administratively comply with a name-change order when an application is granted, the circuit court found that fact outweighed by the need to

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[64] *Id.*; *see generally* Henry M. Hart, Jr., *The Aims of the Criminal Law*, 23 Law & Contemp. Probs. 401, 401 (1958) (setting forth in detail the purposes of the criminal law and punishment, and using deterrence as an example for how the various purposes of criminal punishment interrelate: "Suppose, for example, that the deterrence of offenses is taken to be the chief end. It will still be necessary to recognize that the rehabilitation of offenders, the disablement of offenders, the sharpening of the community's sense of right and wrong, and the satisfaction of the community's sense of just retribution may all serve this end by contributing to an ultimate reduction in the number of crimes.").

[65] Hart, *supra* note 63, at 402.

[66] JA 55.

[67] *Id.*

ensure that Jordan's victims and society at large always know who he is and where he is, given his terrible crimes.

In arguing that the circuit court abused its discretion, Jordan asks this Court to depart from the plain meaning of "legitimate law-enforcement purpose,"[68] and instead construe Code § 8.01-217(D) in a way that would severely curtail circuit courts' discretion to deny prisoner name-change requests.[69] Relying heavily on a 35-year-old Fourth Circuit case, which is not binding on this Court,[70] Jordan argues that "the relevant law enforcement concerns in the context of prisoner name changes involve the identification and apprehension of prisoners."[71] That definition is far narrower than the plain meaning of those terms. Moreover, under Jordan's interpretation, there would never be a legitimate law-enforcement purpose that could be frustrated while a person is incarcerated because, as Jordan points

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[68] *Ricks v. Commonwealth*, 290 Va. 470, 477, 778 S.E.2d 332, 335 (2015) ("When the language of a statute in unambiguous, courts are bound by the plain meaning of that language and may not assign a construction that amounts to holding that the General Assembly did not mean what it actually has stated.") (quoting *Elliott v. Commonwealth*, 277 Va. 457, 463, 675 S.E.2d 178, 182 (2009)).

[69] *See* Opening Br. at 10-16.

[70] *See Toghill v. Commonwealth*, 289 Va. 220, 227, 768 S.E.2d 674, 677 (2015) ("While this Court considers Fourth Circuit decisions as persuasive authority, such decisions are not binding precedent for decisions of this Court.").

[71] Opening Br. at 12 (discussing *Barrett v. Commonwealth*, 689 F.2d 498, 502-03 (4th Cir. 1982)).

out, the Department of Corrections has the ability to account for him during his incarceration regardless of whether he changes his name.[72]

If Jordan is right that the phrase "legitimate law-enforcement purpose" should be narrowly construed, then the length of his incarceration—and by, implication the severity of his crimes—actually counts in his favor because he is unlikely to be released for a significant period of time, if ever, leaving little concern that the public will be unaware of his location.[73] In short, to adopt Jordan's interpretation is to effectively hold that circuit courts have no authority to deny a name-change request except, arguably, in some cases where the offender would be released and be required to register as a sex offender.[74] Jordan has offered no evidence suggesting that the General Assembly intended such a narrow construction; indeed, the fact that the legislature amended Code § 8.01-217(D) to give the Commonwealth's Attorneys a role in the name-change application process and to give the circuit courts *more discretion* than was previously afforded to them

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[72] *See id.* at 12-13 ("As illustrated by the Virginia Department of Correction's [sic] own policies and procedures, there should never be a hint of confusion about who Jordan is.").

[73] *See id.* at 15 ("[H]e still has another seventy-three years of his sentence to serve, should he live long enough to be released from prison."); *see also id.* at 16 ("[I]t is extremely unlikely that Jordan will be released from prison because he was sentenced to eighty years' imprisonment at the age of thirty.").

[74] *See id.* at 14-15.

under this Court's case law weighs against Jordan's proffered construction.[75] It seems safe to say that the General Assembly would have enacted a far different statutory scheme had it intended for inmates like Jordan to be able to freely change their name.

Finally, Jordan argues that the fact that his name-change request was for a "*bona fide* religious purpose" carries dispositive weight.[76] But this Court rejected that argument in *In re Dennis*, stating "if the evidence demonstrates that any one of the three statutory preconditions has not been satisfied, a purported religious motivation for seeking a name change is an insufficient ground for granting a subsection (D) petition."[77] Put differently, religious motivation is relevant to whether an inmate has shown good cause for the petition; it is not dispositive with respect to whether the second or third bases for denying a name-change petition have been satisfied.

In sum, this Court should follow its ordinary approach to statutory interpretation and construe the phrase "legitimate law-enforcement purposes" in Code § 8.01-217(D) according to its plain meaning. With the recent amendments

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[75] *See Ricks*, 290 Va. at 477, 778 S.E.2d at 335 ("'Furthermore, the plain, obvious, and rational meaning of a statute is to be preferred over any curious, narrow, or strained construction,' . . . ." (citation omitted)).

[76] *See* Opening Br. at 15-17.

[77] *In re Dennis*, 2017 Va. LEXIS 105, at *9-10, 2017 WL 3526694, at *3.

to Code § 8.01-217(D), the General Assembly has enacted a finely balanced scheme that gives circuit courts significant discretion to grant or deny name-change petitions submitted by inmates, so long as the trial court follows the procedural requirements of the statute.[78] Here, the circuit court adhered to the procedure set out in Code § 8.01-217(D): (1) the court found good cause for Jordan's name-change request; (2) the court notified the relevant Commonwealth's Attorneys of the petition; (3) the Commonwealth's Attorneys opposed Jordan's request; and (4) after a hearing, the court concluded that a name change was not appropriate for Jordan because it would frustrate legitimate law-enforcement purposes given the nature of Jordan's crimes. That conclusion was not an abuse of discretion based on the facts of this case.

II. Alternatively, this Court should affirm because the reasons given by the circuit court amply support a finding that Jordan's name-change request would infringe on the rights of others—his victims.

Even if the Court believed that the "legitimate law-enforcement purpose" clause is the wrong box to put this case in, Jordan still would not be entitled to relief. The circuit court denied Jordan's name-change request in large part because of the court's concerns about Jordan's victims and their families. As the court put

[78] *In re Dennis*, 2017 Va. LEXIS 105, at *6, 2017 WL 3526694, at *2 (stating that subsection (D) "also provides circuit courts with discretion concerning whether to grant the request to change the name after a hearing"); *see also id.* at *10 n.2, 2017 WL 3526694, at *3 n.2.

it, those individuals "have the right and [should have] the security in the knowledge that [Jordan] is serving his apportioned sentence under" his given name. The court's focus on Jordan's victims demonstrates that Code § 8.01-217(D)'s third basis for denying a name-change petition would apply here: granting the name change would "infringe upon the rights of others."

Although this Court has not defined the phrase "infringe upon the rights of others," the plain meaning is again readily ascertainable. "Infringe" is generally defined as "to encroach upon in a way that violates law or rights of another."[79] So, in this context, the statute permits the court to consider whether changing an inmate's name would encroach on a third party's rights. In making that assessment, this Court has instructed that the finding "must be based on evidence" as opposed to "speculation."[80] For the reasons discussed throughout, the circuit court gave substantial weight to concerns about the victims of Jordan's crimes and the ways in which they would be harmed by permitting him to change his name.

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[79] *Infringe*, Merriam-Webster, https://www.merriam-webster.com/dictionary/infringe (last visited Aug. 22, 2017); *see also* Bryan A. Garner, *Garner's Modern American Usage* 447 (3d ed. 2009) ("*infringe* is to break in and thereby damage, violate, or weaken").

[80] *In re Miller*, 218 Va. 939, 944, 243 S.E.2d 464, 468 (1978).

Those considerations provide ample support for this Court to alternatively affirm the circuit court under the "infringe" prong of Code § 8.01-217(D).[81]

The circuit court's statement that granting Jordan's petition would not violate Code § 8.01-217(D)'s "infringe" prong is of no moment.[82]

> Under the right result for the wrong reason doctrine, "it is the settled rule that how[ever] erroneous . . . may be the reasons of the court for its judgment upon the face of the judgment itself, if the judgment be right, it will not be disturbed on account of the reasons."[83]

So even if the circuit court was wrong to construe the phrase "legitimate law-enforcement purpose" according to its plain meaning, the right-result-wrong-reason doctrine nonetheless permits the court's judgment to be upheld. Here, the court's conclusion that Jordan's victims and their families deserve to know he is serving his sentence under the same name under which he committed murder is a permissible basis for concluding that the name-change would "infringe upon the rights of others."

CONCLUSION

For the reasons stated above, the circuit court's decision should be affirmed. That the circuit court acted within its discretion in this case, however, does not

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[81] *See* JA 55.

[82] *See id.*

[83] *Perry v. Commonwealth*, 280 Va. 572, 579, 701 S.E.2d 431, 435 (2010) (quoting *Schultz v. Schultz*, 51 Va. (10 Gratt.) 358, 384 (1853)).

mean Jordan cannot call himself and be known informally as Abdul-Wakeel Mutawakkil Jordan. He is free to use that name in prison if he so chooses. Indeed, Jordan himself has stated that his religious exercise does not depend on whether his name-change petition is granted.

This case is simply about whether circuit courts *are required* to grant name-change requests by individuals who committed terrible crimes, especially where Commonwealth's Attorneys have opposed the petition. With the 2014 amendments to Code § 8.01-217(D), the General Assembly made clear that inmates are not automatically entitled to change their name, even when they may have good cause for doing so. Here, Jordan has not carried his burden of showing that the circuit court abused its discretion in finding that granting his name-change application would frustrate a legitimate law-enforcement purpose.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA,

By: *Matthew R. McGuire*
MATTHEW R. MCGUIRE (VSB NO. 84194)
Acting Deputy Solicitor General
mmcguire@oag.state.va.us

MARK R. HERRING
Attorney General of Virginia

TREVOR S. COX (VSB NO. 78396)
Acting Solicitor General

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-7773
(804) 371-0200 (fax)

CERTIFICATE OF SERVICE AND FILING

I certify under Rule 5:26(h) that on August 30, 2017, this brief was filed electronically with the Court, in Portable Document Format, and three printed copies were hand-delivered to the Clerk's Office in compliance with Rule 5:26(e). This brief complies with Rule 5:26(b) because the portion subject to that rule does not exceed 50 pages. A copy was electronically mailed to:

Anne Hampton Andrews
Robert W. Loftin
McGuireWoods LLP
Gateway Plaza
800 E. Canal Street
Richmond, VA 23219
aandrews@mcguirewoods.com
rloftin@mcguirewoods.com

Matthew R. McGuire