

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
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Granted Appeal Summary

Case

CHADWICK DOTSON, CHAIRMAN, VIRGINIA PAROLE BOARD
v. GILBERT MERRITT, III
(Record Number 220654)

From

Circuit Court for the City of Norfolk; Mary Jane Hall, Judge.

Counsel

Victoria L. Johnson (Office of the Attorney General) for appellant.

Jennifer L. Givens, Juliet B. Hatchett, Diane M. Philips (the innocence project), S. Virginia Bondurant Price, Maricris L.R. Pendingue, James F. Neale, and Kristen L. Mynes (McGuireWoods LLP) for appellee.

Assignments of Error

1. The circuit court erred by holding that Merritt's pleadings sufficiently articulated a factual basis under Virginia Code § 8.01-229(D) for statutory tolling when Merritt alleged that he could not have known about the facts supporting his habeas claim until Fuller signed her affidavit in January 2020 and when Merritt did not show that he acted with diligence and brought his habeas claim within one year of learning the factual basis of his claims.
2. The circuit court erred when it concluded that the plain language of the Conditional Pardon did not waive Merritt's habeas claims, when it considered parol evidence in determining the intent of the parties to the Conditional Pardon, and when it determined that the parol evidence supported its conclusion that Merritt had not waived his claims.
3. The circuit court erred when it allowed Merritt to amend his already untimely habeas petition to include a new and independent *Brady* claim related to the canvass notes and when it found the information in the canvass notes material under *Brady*.