

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 18th *day of* September, 2009.

In Re: Thomas Edward Haynesworth, No. 142110, Petitioner

Record No. 090942

Upon a Petition for a Writ of Actual Innocence

Upon consideration of the petition for a writ of actual innocence filed May 11, 2009, the Commonwealth's answer, and the Attorney General's declaration, the Court is of the opinion that the petition should be granted and the writ of actual innocence be issued.

Upon a plea of not guilty, Thomas Edward Haynesworth was tried by a jury and convicted in the Circuit Court of the City of Richmond of rape and was sentenced to ten years' imprisonment.* Haynesworth's direct appeal concluded when this Court refused his petition for appeal on December 5, 1984.

As a result of a Virginia Department of Forensic Science ("DFS") review of older case files containing human biological evidence, the DFS tested evidence that had been obtained from the victim and from Haynesworth at the time of trial. The evidence was

* Haynesworth is also serving sentences for a number of unrelated convictions, which are not challenged in this petition.

tested using scientific methods that were not available at the time of Haynesworth's trial. The certificate of analysis issued by the DFS contains factual findings excluding Haynesworth as a contributor of the DNA isolated on the biological evidence recovered from the victim.

Based upon this information, Haynesworth has filed a petition for a writ of actual innocence pursuant to Code §§ 19.2-327.2 et seq. alleging that he is actually innocent of the crime for which he was convicted. To succeed, among other things, Haynesworth must, by clear and convincing evidence, identify the human biological evidence and the scientific testing supporting his allegation of innocence, the reason the evidence was not previously subjected to the testing described in the petition, and that no rational trier of fact could have found him guilty beyond a reasonable doubt. After conducting his own evaluation of the facts, the Attorney General "agrees that no reasonable trier of fact would have convicted Haynesworth of the rape had the new scientific evidence been available at the time of his trial" and affirmatively joins in Haynesworth's request for relief.

Accordingly, as required by Code § 19.2-327.5, the Court finds by clear and convincing evidence that petitioner has proven all of

the required facts contained in Code § 19.2-327.3(A) and that no rational trier of fact could have found proof of guilt beyond a reasonable doubt. The Court grants the requested writ of actual innocence and vacates Haynesworth's conviction for rape. The matter is remanded to the Circuit Court of the City of Richmond with instructions to immediately enter an order of expungement.

A Copy,

Teste:

Patricia L. Henning

Clerk