

Tuesday

14th

September, 2004.

In Re: Wendell Wilson,

Petitioner.

Record No. 1739-04-2

Upon a Petition for a Writ of Actual Innocence

Before Chief Judge Fitzpatrick, Judges Elder and Humphreys

Wendell Wilson petitions this Court for a Writ of Actual Innocence pursuant to Chapter 19.3 of Title 19.2 of the Code of Virginia. He contends he is innocent of two crimes for which he was convicted in the Circuit Court of the City of Colonial Heights in 1997, to-wit, CR96-112-01 and CR96-112-02.

We do not have the authority to issue a writ in this matter. The documentation accompanying Wilson's petition reveals that he pled guilty to the charges pursuant to a plea agreement. Code § 19.2-327.10 reads in pertinent part: "Notwithstanding any other provision of law or rule of court, upon a petition of a person who was convicted of a felony *upon a plea of not guilty*, the Court of Appeals shall have the authority to issue writs of actual innocence under this chapter." (Emphasis added.) Accordingly, we summarily dismiss the petition.

Because the issue addressed herein is one of first impression and potential litigants and members of the bar may benefit from the directives herein, we direct the Clerk to publish this order.

A Copy,

Teste:

Clerk