

Tuesday

14th

September, 2004.

In Re: Gary Lamont Walker,

Petitioner.

Record No. 1919-04-2

Upon a Petition for a Writ of Actual Innocence

Before Chief Judge Fitzpatrick, Judges Elder and Humphreys

Gary Lamont Walker 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 Richmond in 1998, to-wit, CR-98-44 and CR-98-45.

Walker is not eligible for the writ. In order to be eligible for the writ, a petitioner must state, among other things, that the evidence forming the basis of the petition “was previously unknown or unavailable to the petitioner *or his trial attorney of record* at the time the conviction became final in the circuit court . . . .” Code § 19.2-327.11(A)(iv) (emphasis added).

Walker bases his petition on two psychological reports, dated February 11, 1998. However, in his petition, Walker states:

My attorney during trial decided not to present a psychiatric defense, he never disclosed to me any psychological reports, therefore it was never known to me the (petitioner) that there were psychological reports that was [sic] sent to my attorney. It was not until after all my appeals were exhausted in state court that I requested my case file and I discovered the psychological reports. This was the first time that I had known of the psychological reports in which I had found the mitigating evidence enclosed.

Because the psychological reports were known to and provided to Walker’s trial attorney of record at the time Walker’s convictions became final in the circuit court, Walker is not eligible for the writ.

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