

Tuesday

5th

October, 2004.

In Re: Hiep Bui,

Petitioner.

Record No. 1829-04-4

Upon a Petition for a Writ of Actual Innocence

Before Chief Judge Fitzpatrick, Judges Elder and Humphreys

Hiep Bui 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 the crime of robbery, of which he was convicted in the Circuit Court of Fairfax County on April 23, 1996.

The arrest warrant indicated the offense occurred on or about October 31, 1995. The arrest warrant was amended on February 1, 1996 to state the offense was committed on October 28, 1995. In 2000, Bui obtained a copy of a police document entitled “Criminal Incident Information.” The document indicated the “date of occurrence” was October 29, 1995.

To the extent Bui’s argument can be construed to challenge the amendment of the warrant and the sufficiency of the evidence presented at trial, such claims provide no valid basis for relief in the present proceeding. Chapter 19.3 solely allows review of previously unknown or unavailable non-biological evidence. Amendment of the document charging Bui with the offense, and the sufficiency of the evidence to prove his guilt, were matters upon which he was fully capable of seeking appellate review.

Nor does Bui’s discovery of the police document indicating October 29, 1995 as the date of the offense entitle him to relief. Code § 19.2-327.11(A)(vii) requires the “previously unknown or unavailable” evidence of innocence to “prove that no rational trier of fact could have found proof of

guilt beyond a reasonable doubt.” Bui’s petition fails to explain how the existence of the police document indicating a different date of the offense would have affected the evidence proving his guilt. Because Bui has failed to demonstrate no rational trier of fact could have found him guilty, he is not eligible for the writ. Accordingly, we summarily dismiss the petition.

Because the issues addressed herein are 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