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TAMARA CHARLES
CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

MITCHELL N. NICHOLAS, Petitioner, vs. PEOPLE OF THE VIRGIN ISLANDS, Respondent.	Case No. ST-2025-MC-00024
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2026 VI Super 24U

Mitchell N. Nicholas, *pro se*
Keen Mountain Correctional Center
Inmate No. 1207937
VADOC Central Mail Distribution Center
3521 Woods Way
State Farm, Virginia 23160

MEMORANDUM OPINION AND ORDER

¶1. **THIS MATTER** is before the Court on Petitioner Mitchell N. Nicholas’s (“Nicholas”) Petition for Writ of Habeas Corpus (“Petition”), filed June 13, 2025, wherein Nicholas requests a new trial.¹ For the reasons outlined below, the Court finds that Nicholas has not stated a *prima*

¹ Petitioner submitted a handwritten *pro se* motion pursuant to Virgin Islands Rules of Civil Procedure 60(b) and (d), various amendments to the U.S. Constitution, 18 U.S.C. § 3109 and 18 U.S.C. § 2703(c)(2). In its order filed August 20, 2025, this Court concluded that “[i]t is unclear from the Motion what form of review that Petitioner is seeking. Therefore, the Court will treat the Motion as seeking a Writ of Habeas Corpus.” Notably, even under Rule 60, Petitioner has not established a right to relief.

facie case entitling him to relief or, in the alternative, the Petition is barred as a matter of law, therefore, the Court denies Nicholas’s Petition for Writ of Habeas Corpus.²

BACKGROUND

¶2. Following a two-day jury trial,³ which began on October 2, 2026, Petitioner Mitchell N. Nicholas was convicted of Murder in the First Degree, Unauthorized Possession of a Firearm During the Commission of a Crime of Violence, Assault in the First Degree, and Unauthorized Possession of Ammunition⁴ in relation to the killing of Georgia Gottlieb on or about July 29, 2005.

¶3. On January 10, 2008, the Court entered an Order of Judgment and Commitment by which Nicholas was sentenced to life imprisonment for first-degree murder and twenty years imprisonment for possession of an unlicensed firearm, with those sentences to run concurrently.⁵ Nicholas was remanded to the Bureau of Corrections to serve his sentence.

¶4. On December 7, 2007, Nicholas filed a timely *pro se* appeal to the Supreme Court of the Virgin Islands (“Supreme Court”). On appeal, Nicholas argued, *inter alia*, that this Court erred when it denied his March 26, 2007, motion to suppress evidence obtained in the warrantless search

² Additionally, for the reasons stated below, the Court also denies Petitioner’s request for relief pursuant to Rule 60(b)(6) and 60(d)(1)(2) of the Virgin Islands Rules of Civil Procedure.

³ The trial was docketed as ST-2005-CR-0334.

⁴ In violation of the following provisions of the Virgin Islands Code, respectively: 14 V.I.C. §§ 921, 922(a)(1); 14 V.I.C. § 2253(a), 14 V.I.C. § 295(1), and 14 V.I.C. § 2256(a).

⁵ On October 4, 2007, the Court sentenced Nicholas from the bench. A written Judgment and Commitment was signed on December 27, 2007, and subsequently entered on January 10, 2008. *Nicholas v. Gov’t of the V.I.*, 56 V.I. 718, 727-28. The Court also sentenced Nicholas to five years imprisonment for Unauthorized Possession of Ammunition, to run consecutively with the murder and unlicensed firearm sentences and merged the first-degree assault conviction with the murder charge.

of his person and hotel room.⁶ The Supreme Court affirmed Nicholas’s conviction in all respects except as to the charge of Unlawful Possession of Ammunition.⁷

¶5. Approximately thirteen years after the resolution of Nicholas’s appeal, he filed the instant Petition. Here, Nicholas again seeks relief on Fourth Amendment grounds. Nicholas asserts that police “unlawfully service[d] upon cellphone companies⁸ [outdated] and unrelated federal grand jury subpoenas to illegally track [his] location and then [used] a hotel room master key and a battering ram to unlawfully enter [his] room where [he] was a lawfully registered guest in violation of the U.S. Constitution and [18 U.S.C. §§ 2703(c)(2) and 3109] without any warrants.”⁹ Nicholas also invokes U.S. Const. amends. I, II, V, VI, VIII, and XIV, in support of entitled to relief.¹⁰

¶6. Hence, Nicholas seeks an evidentiary hearing to question witnesses as to how the subject subpoenas “came to be” and “the truthfulness of the affidavit filed,” which he asserts will result in the Court granting him a new trial.¹¹

JURISDICTION AND STANDARD OF REVIEW

¶7. “The writ of habeas corpus may be granted by the Superior Court of the Virgin Islands, upon petition by or on behalf of any person restrained of his liberty.” 5 V.I.C. § 1303. The right of

⁶ *Nicholas v. Gov’t of the V.I.*, 56 V.I. 718, 737 (V.I. 2012).

⁷ On appeal, the Supreme Court reversed the conviction for Unauthorized Possession of Ammunition because “section 2256 of title 14 of the Virgin Islands Code, as it existed at the time Nicholas was charged, generally criminalized possession of ammunition ‘unless authorized by law’ but provided no means to obtain such authorization,” and therefore “the People could not have proven that Nicholas committed this offense.” *Nicholas*, 56 V.I. at 730.

⁸ The report generated by the Federal Bureau of Investigation and dictated on August 3, 2005, and attached to the instant Petition as Exhibit 1, references only one phone carrier—Sprint—and provides that “[p]rior to going to [the hotel room] information was obtained from the Sprint phone company that Nicholas’s phone was possibly located in the vicinity of Estate Hull Bay on St. Thomas, Virgin Islands.”

⁹ Petition, at 2-3.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 9.

habeas corpus is also guaranteed in the Virgin Islands through section 3 of the Revised Organic Act.¹²

¶8. Accordingly, “[a]ny person who believes he or she is unlawfully imprisoned or detained in custody, confined under unlawful conditions, or otherwise unlawfully restrained of his or her liberty, may file a petition for a writ of habeas corpus to seek review of the legality of that imprisonment or detention.” V.I. R. Habeas Corpus 2(a)(1).

¶9. “When presented with a petition for writ of habeas corpus ... the Superior Court must first determine whether the petition states a prima facie case for relief – that is, whether it states facts that if true, would entitle the petitioner to discharge of relief ...” V.I. R. Habeas Corpus 2(b)(1). A petitioner who alleges that he is illegally imprisoned must state in his petition “each ground on which the imprisonment or detention is alleged to be illegal and shall state the specific facts supporting each ground.” V.I. R. Habeas Corpus 2(a)(4). Put differently, the habeas petitioner “bears the burden of proving the facts supporting the petition or establishing grounds entitling him to relief.”¹³ Conclusory and speculative allegations are insufficient to state a prima facie case for habeas relief.”¹⁴

¶10. “The writ – which operates as a procedural order to show cause – is issued if the petitioner has made a prima facie showing of entitlement to relief on claims that are not otherwise barred;

¹² *Rivera-Moreno v. Gov’t of the V.I.*, 61 V.I. 279, 296-97 (V.I. 2014) (citing 48 U.S.C. § 1561; *Tobal v. People*, 51 V.I. 147, 152 (V.I. 2009) (“explaining that the Revised Organic Act serves as a *de facto* constitution for the Virgin Islands which the Legislature may not override”)).

¹³ *See also Rivera-Moreno*, 61 V.I. at 311 (citing *People v. Romero*, 883 P.2d 388, 391 (1994) (“explaining the habeas corpus procedure under California’s nearly identical statutes” and holding the Superior Court must determine whether Petitioner’s claims are procedurally barred)).

¹⁴ *Woodrup v. Gov’t. of the V.I.*, 75 V.I. 495, 502 (V.I. 2022) (citing *United State v. Fishel*, 747 F.2d 271, 273 (5th Cir. 1984 (“Allegations ... must be supported by substantial factual assertions capable of resolution by an evidentiary hearing.”))).

issuance of the writ of habeas corpus does not grant the ultimate relief requested but simply requires further proceedings on the petitioner’s application for discharge or other relief from unlawful custody or detention.” V.I. R. Habeas Corpus 1(d)(2).

¶11. In addition, when a petition for a writ of habeas corpus alleges claims “already reviewed by a competent court,” this Court may, “in its discretion, consider that ruling as a basis to deny improper successive review.”¹⁵

¶12. In sum, “[i]f the court determines that the petition does not state a prima facie case for relief or that the claims are all procedurally barred, the court will deny the petition outright,” but “if it appears that the writ ought to issue,” the Superior Court “shall grant [a writ of habeas corpus] without delay.”¹⁶

¶13. Applying these standards, the Court must analyze whether Nicholas’s Petition meets his burden of stating a prima facie case, thereby requiring Respondents to file a return to support the lawfulness of Nicholas’s incarceration.

¶14. Additional if the Court were to consider this Petition pursuant to Virgin Islands Rules of Civil Procedure 60(b)(6) and 60(d)(1)(2), application of Rule 60(c)(1) requires that claims be made within a reasonable time. Rule 60(c).

¹⁵ *Rodriguez v. Bureau of Corrections*, 70 V.I. 924, 939 (V.I. 2019). *See also Rivera-Moreno.*, 61 V.I. at 311 (citing *People v. Romero*, 883 P. 2d 388, 391 (1994) (“explaining the habeas corpus procedure under California’s nearly identical statutes” and holding the Superior Court must determine whether Petitioner’s claims are procedurally barred)).

¹⁶ *Rivera-Moreno.*, 61 V.I. at 311 (citing 5 V.I.C. § 1304).

ANALYSIS

A. NICHOLAS HAS NOT STATED A *PRIMA FACIE* CASE ENTITLING HIM TO RELIEF, OR IN THE ALTERNATIVE, NICHOLAS’S PETITION IS BARRED AS A MATTER OF LAW.

¶15. The Petition must state where Nicholas is imprisoned and be directed to the persons having custody of Nicholas. 5 V.I.C. §§ 1302(1); 1305. It is apparent from the Petitioner’s return address that Nicholas is imprisoned. However, the People of the Virgin Islands—who Nicholas lists as Respondents (*sic*) in his caption—may not properly be named as a Respondent herein.¹⁷ Rather, Nicholas may properly have directed his Petition to the Bureau of Corrections or the Governor of the Virgin Islands.¹⁸ The Petition must also state the name and location of the court that entered the judgment of conviction or order of detention being challenged. V.I. R. Habeas Corpus 2(a)(3)(C). Nicholas does not identify the Court in the body of his Petition but includes the Judgment and Commitment being challenged as an exhibit. Therefore, because the information required by the rule is evident from the attached material, Nicholas’s Petition is not procedurally barred for failure to adhere to V.I. R. Habeas Corpus 2(a)(3). Further, because “[t]he *pro se* petition is addressed on its merits ... the possible erroneous inclusion of the People of the Virgin Islands ... in the caption,” and the omission on the face of the Petition of information required

¹⁷ *Parilla v. People of the Virgin Islands*, 2024 WL 5290892, at *3 n.2 (V.I. Super. Ct. Dec. 10, 2024). Nicholas also addressed his Petition to the Office of the Attorney General in his certificate of service. As this Court has previously explained: “[t]he Attorney General is charged with the duty ‘to prosecute in the name of the People of the Virgin Islands, offenses against the laws of the Virgin Islands,’ but has neither the power nor the duty to imprison or restrain persons convicted of criminal offenses.” *Parilla*, 2024 WL 5290892, at *n.2 (citing 3 V.I.C. § 114(a)(3)).

¹⁸ The Bureau of Corrections and the Acting Warden are proper Respondents notwithstanding that Nicholas is housed in the Red Onion Bureau of Corrections in State Farm, Virginia. *Id.* (citing 5 V.I.C. § 4503(a); 3 V.I.C. §§ 372, 375(a)). “The Governor, as chief executive officer of the Government is also a proper Respondent.” *Id.*

under V.I. Habeas Corpus 2(a)(3) that is otherwise available through appended documentation “is of no effect.”¹⁹

¶16. Nicholas’s Petition, presented under penalty of perjury, satisfies the requirement under 5 V.I.C. § 1302(3) that it be verified by oath.

¶17. With the foregoing established, the Court must next determine whether the Petition states a *prima facie* case for relief regarding Nicholas’s alleged illegal imprisonment. V.I. R. Habeas Corpus 2(b)(1). The Court thus addresses Nicholas’s Fourth Amendment claim.

¶18. In his appeal to the Supreme Court, Nicholas challenged the propriety of the warrantless search of his person and hotel room on Fourth Amendment grounds.²⁰ Nicholas “contend[ed] that exigent circumstances were not present due to the eleven-hour gap between the initial police visit to the [Bellavista Scott Hotel] on the evening of July 29, 2005, and the subsequent visit on the morning of July 30, 2005.”²¹ In support, Nicholas argued that because “the police could have easily obtained a warrant during this period...the police officers’ decision to ‘call it a day’ when they could not locate any hotel staff—rather than remaining at the hotel overnight for surveillance—demonstrates that the police did not believe they were faced with an emergency situation.”²²

¶19. The Supreme Court held:

The Fourth Amendment prohibits unreasonable searches and seizures, and “searches conducted outside the judicial process, without prior approval by a judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” The Fourth Amendment’s limitations on searches apply with equal force to hotel rooms. To justify a warrantless intrusion into someone’s hotel room absent consent, the People

¹⁹ See *Parilla*, 2024 WL 5290892, at *3 n.2.

²⁰ *Nicholas*, 56 V.I. at 738.

²¹ *Id.*

²² *Id.*

must show both probable cause and exigent circumstances. Although the burden of proving that a search or seizure was unlawful normally rests with the defendant, when the police conduct a search or seizure without a warrant, the burden shifts to the government to prove exigent circumstances or another exception to the warrant requirement.

....

Here, the police clearly possessed exigent circumstances at the time they entered the hotel room. “Circumstances involving the protection of a child’s welfare, even absent suspicions of criminal activity, may present an exigency permitting warrantless entry, but only if the officer reasonably believes that ‘someone is in *imminent* danger.’” At the time the police gathered the relevant information—that Nicholas was in Room 205 of the Bellavista Scott Hotel with his son [D.N.]—they had reason to believe that D.N. witnessed [, Georgia Gottlieb,] his mother’s murder and may, in fact, have been the only eyewitness. (S.A. 114.) They knew that a gun was used in the killing but was not left at the crime scene. (S.A.172.) The police had statements from neighbors establishing that Nicholas entered the apartment that morning. (S.A. 238.) Shortly after he entered, the neighbors heard the sound of a gunshot and a loud thump, and Nicholas was seen leaving the apartment in a hurry with his son. (S.A. 143, 144, 200; J.A. 113–15.) Although the police had no evidence that Nicholas ever threatened his son, they knew that he had both a motive and the opportunity to silence his son, the only likely eyewitness. Therefore, the police acted reasonably, and the trial court correctly found that exigent circumstances justified the warrantless entry and search.²³

¶20. Clearly, Nicholas’s Fourth Amendment challenge to the warrantless intrusion by police into his hotel room has already been raised, considered, and rejected on the merits. While Nicholas’s Petition includes additional nuance --- namely, the alleged illegal tracking of his phone location—his argument and the facts stated to support it are essentially the same.²⁴ Additionally, while the violations alleged may entitle the Petitioner to civil relief under various civil rights laws, under the present facts, the police possessed independent grounds for entering the hotel room separate and apart from the constitutional violations alleged by petitioner—this means that, even

²³ *Nicholas*, 56 V.I. at 738; 740-41 (citations omitted).

²⁴ See *Fenton v. Gov’t of the V.I.*, 78 V.I. 765, 774 (V.I. 2024), (“[Petitioner’s] arguments have changed, yet the issue they support remains the same, and issues already considered and rejected by [the Supreme Court] on the merits on direct appeal may not be relitigated through a habeas petition.”) (citing *Blyden v. People*, 64 V.I. 367, 377 (V.I. 2016)).

if the allegations are true, suppression was not the appropriate remedy. Accordingly, Nicholas's Petition, which he advances on Fourth Amendment grounds, is barred as a matter of law.²⁵ This Court therefore denies Nicholas's Petition. V.I. R. Habeas Corpus 2(b)(4).

B. NICHOLAS'S 13-YEAR DELAY IN RAISING THESE CLAIMS PURSUANT TO RULE 60 IS UNREASONABLE AND THEREFORE PETITIONER IS NOT ENTITLED TO RELIEF.

¶21. Virgin Islands Rule of Civil Procedure 60 governs requests for relief from judgments.²⁶ Rule 60(b)(6) allows a court to relieve a party or its legal representative from a final judgment, order, or proceeding for, inter alia, "(6) any other reason that justifies relief," which motion must be brought within a reasonable period of time in light of the totality of the circumstances. The decision to vacate or modify a judgment is left to the sound discretion of a trial court.²⁷ The petitioner bears the burden of demonstrating that he meets the prerequisites of relief under Rule 60(b).²⁸

¶22. Even if this Court were to consider Nicholas's Petition pursuant to Virgin Islands Rules of Civil Procedure 60(b)(6) and 60(d)(1)(2), application of Rule 60(c)(1) requires that claims be made within a reasonable time. "What constitutes a 'reasonable time'...is to be decided under the circumstances of each case."²⁹ Here, Nicholas advances substantially the same Fourth Amendment claim that he raised on appeal and which the Supreme Court resolved in 2012, and no

²⁵*Id.*

²⁶ Virgin Islands Rule of Criminal Procedure provides that, when the V.I. Rules of Criminal Procedure are silent on a topic, the V.I. Rules of Civil Procedure are to be relied upon. V.I.R. Crim P. 1(f).

²⁷ *Appleton v. Harrigan*, 61 V.I. 262, 268 (V.I. 2014) (citing *Gould v. Salem*, 59 V.I. 813, 817 (V.I. 2013)).

²⁸ *A.H. Riise Gift Shops v. Gov't of the V.I.*, Case No. ST-00-CV-420, 2013 V.I. LEXIS 4, at *10-11 (V.I. Super. Ct. January 14, 2013) (unpublished).

²⁹ *Patra v. Pennsylvania State System of Higher Ed.*, 2026 WL 1165171, at *2 (3d Cir. Apr. 29, 2026) (quoting *Taylor v. Comm'r of Pa. Dep't of Corr.*, 150 F.4th 188, 193 (3d Cir. 2025)).

more. Nicholas has offered no explanation for the passage of 13 years since his direct appeal was decided and the filing of his petition for a Writ of Habeas Corpus. The failure to make any argument is a waiver of that argument, even for *pro se* parties.³⁰

¶23. Nicholas has not provided any extraordinary circumstances that justify his subsequent thirteen-year delay in petitioning this Court anew. Nicholas has not demonstrated any reason that was beyond his control in justification of this untimely filing.³¹ Relief under Rule 60(b)(6) is not a substitute for a timely motion for relief from judgement. The Court, therefore, concludes that this delay is unreasonable,³² as Nicholas has not presented any evidence to meet his burden that “exceptional circumstances” exist such that his Rule 60(b)(6) request was made within a “reasonable time.” Therefore, Nicholas is not entitled to relief under V.I. R. Civ. P. 60.

CONCLUSION

¶24. Because the Supreme Court has already determined that the police entered Nicholas’s hotel room pursuant to the exigent circumstances exception to the Fourth Amendment, his Petition which claims entitlement to relief on Fourth Amendment grounds and seeks an evidentiary hearing is barred as a matter of law and therefore denied. Additionally, Nicholas’s claim for relief under

³⁰ See *St. Thomas Cargo v. Braga*, 2025 VI SUPER 40, 2025 V.I. LEXIS 43, 2025 LX 522694, 2025 WL 3537355.

³¹ In *Virgin Islands Bldg. Specialties, Inc. v. Buccaneer Mall Assocs.*, the District Court found a seven (7) month delay in acting on a summary judgment motion to be negligent and that, “[s]uch negligence in keeping apprised of the case is an independent basis for the trial court’s denial of Rule 60(b)(6) relief.” *Virgin Islands Bldg. Specialties, Inc. v. Buccaneer Mall Assocs.*, 197 F.R.D. 256, 259 (D.V.I. App. Div. 2000). Similarly, this court found that a Rule 60(b)(6) motion filed six (6) years and eleven (11) months after judgment was entered was barred for “failure to raise it ‘within a reasonable time.’” *Perez v. Perez*, Family No. D369/1982, 1984 V.I. LEXIS 37, *11-12 (V.I. Super Ct. December 17, 1984) (unpublished).

³² See *id.* (comparing *Moolenaar v. Gov’t of the V.I.*, 822 F. 2d 1342, 1348 (3d Cir. 1987) (“concluding that a Rule 60(b)(6) motion filed less than two years after the district court’s initial judgment was not filed within a reasonable time”)).

extraordinary circumstances pursuant to Rule 60 is denied as time barred because the thirteen-year delay in raising these issues is unreasonable.

Accordingly, it is hereby

ORDERED that Nicholas's Petition for writ for habeas corpus is **DENIED**; and it is further

ORDERED that a copy of this Order shall be directed to Defendant at Keen Mountain Correctional Center, Inmate No. 1207937, VADOC Central Mail Distribution Center, 3521 Woods Way, State Farm, Virginia 23160.

Dated: June 1, 2026



HON. SIGRIS M. TEJO
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

ATTEST:

TAMARA CHARLES
Clerk of the Court

BY:



DONNA D. DONOVAN

Court Clerk Supervisor 06 / 05 / 2026