July 31, 2023

Inmate Smith

Greensville Correctional Center

901 Corrections Way

Jarratt, Virginia 23870

***Re: Virginia Department of Forensic Science Microscopic Hair Comparison Case Review***

***Commonwealth v. Smith***

***FS Lab #T01-234***

Dear Mr. Smith:

As you may be aware, the Federal Bureau of Investigation (FBI) has been reviewing its examiners’ reports and testimony in cases involving microscopic hair comparisons. The FBI has identified a number of cases where its scientists made statements that went beyond what was scientifically supported and in several FBI cases, the defendants were later exonerated by DNA evidence. In light of this, the Department of Forensic Science (DFS) has undertaken a review of its cases involving microscopic hair comparisons. The Forensic Science Board, the Department’s policy board, has developed a process for this Review by DFS.

A case will be included in the DFS Review if the hair examiner made a positive association to a suspect, and it is determined that the suspect was convicted of a crime in the case. A Review Team consisting of two attorneys and one forensic scientist is reviewing the hair comparison reports and any testimony provided by the examiner in eligible cases using criteria developed by the Forensic Science Board.

In reviewing the examiner’s testimony, the Review Team considers the following questions:

(1)  Did the examiner state that an evidentiary hair could be associated with a specific individual to the exclusion of all others?

(2)  Did the examiner assign a statistical weight or probability or provide a likelihood that the questioned hair originated from a particular source?

(3)  Does the testimony contain any other potentially misleading statements or inferences?

If the Review Team answers “yes” to any of these three questions in a case, affected parties will be notified if the examiner’s testimony exceeded the acceptable limits of science.

Based on your request, your casehas been included in the DFS Review. **The Forensic Science Board, based on a recommendation of the Review Team, has determined that the hair examiner’s testimony in your case exceeded the acceptable limits of science.** The enclosed documentation details the Review Team’s concern(s) with the testimony of the examiner.

Please note that the Review Team made no findings or observations regarding the impact that the hair examiner’s testimony had on the overall outcome in the case. Therefore, additional facts may be pertinent to your innocence or guilt.

You may have questions regarding the impact of this notification on your case. The Institute for Actual Innocence at the T.C. Williams School of Law can offer you free and confidential legal advice about the meaning of this notification. The Institute for Actual Innocence can be reached at:

Institute for Actual Innocence

University of Richmond School of Law

28 Westhampton Way

Richmond, VA 23173

If you decide to contact the Institute for Actual Innocence, they will be able to discuss with you the how this notification affects your case and any post-conviction testing or relief that may be available.

If it is determined that evidence from the case is still available and that DNA testing may be agreed to by the parties or sought pursuant to court order, the Department of Forensic Science is willing to discuss testing options available and resubmission of the evidence. Please contact Department Counsel, Amy Jenkins, at 700 North 5th Street, Richmond, Virginia 23219, for further assistance.

Please note that the prosecutor and the law enforcement agency have been notified by separated correspondence.

Sincerely,

Chair

Forensic Science Board

Enclosures