RECORD No.
082122

VIRGINIA:

In the Court of Appeals of Virginia on Wednesday *the* 28th *day of* May, 2008.

James A. Turner, Appellant,

against Record No. 2995-07-4
Circuit Court No. FE-2004-106860

Commonwealth of Virginia, Appellee.

From the Circuit Court of Fairfax County

Per Curiam

This petition for appeal has been reviewed by a judge of this Court, to whom it was referred pursuant to Code § 17.1-407(C), and is denied for the following reason:

"'A trial court has broad discretion to revoke a suspended sentence and probation based on Code § 19.2-306, which allows a court to do so "for any cause deemed by it sufficient."'" Hess v. Commonwealth, 17 Va. App. 738, 741, 441 S.E.2d 29, 31 (1994) (quoting Davis v. Commonwealth, 12 Va. App. 81, 86, 402 S.E.2d 684, 687 (1991)). Here, the trial court predicated its decision to revoke Turner's probation on his failure to comply with the terms of his probation: specifically, the successful completion of a treatment program for sex offenders, not, as Turner argues in his petition, on results of his polygraph tests. The record in this case also reflects that Turner was expelled from the program for his "failure to adhere to the [program's] attendance policy" and his "lack of progress" in meeting the program's objectives. Accordingly, this Court finds no abuse of discretion in the trial court's determination to revoke Turner's probation.

This order is final for purposes of appeal unless, within fourteen days from the date of this order, there are further proceedings pursuant to Code § 17.1-407(D) and Rule 5A:15(a) or 5A:15A(a), as

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appropriate. If appellant files a demand for consideration by a three-judge panel, pursuant to those rules the demand shall include a statement identifying how this order is in error.

It is ordered that the Commonwealth recover of the appellant the costs in this Court, which costs shall include a fee of $400 for services rendered by the Public Defender on this appeal, in addition to counsel's necessary direct out-of-pocket expenses, and the costs in the trial court.

This Court's records reflect that the Office of the Public Defender for Fairfax County is counsel of record for appellant in this matter.

Costs due the Commonwealth
by appellant in Court of
Appeals of Virginia:

Public Defender $400.00 plus costs and expenses

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By: Marty K. P. King

Deputy Clerk

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VIRGINIA:

In the Court of Appeals of Virginia on **Monday** *the* **29th** *day of* **September, 2008.**

James A. Turner, Appellant,

against Record No. 2995-07-4
Circuit Court No. FE-2004-106860

Commonwealth of Virginia, Appellee.

From the Circuit Court of Fairfax County

Before Judge Haley, Senior Judge Bumgardner and Retired Judge Swersky*

For the reason previously stated in the order entered by this Court on May 28, 2008, the petition for appeal in this case hereby is denied.

It is ordered that the Commonwealth recover of the appellant an additional fee of $100 for services rendered by the Public Defender on this appeal, in addition to counsel's costs and necessary direct out-of-pocket expenses. The Commonwealth shall also recover of the appellant the costs reflected in this Court's May 28, 2008 order.

This order shall be certified to the trial court.

Additional costs due the Commonwealth
by appellant in Court of Appeals of Virginia:

Public Defender $100.00 plus costs and expenses

* Retired Judge Alfred D. Swersky took part in the consideration of this case by designation pursuant to Code § 17.1-400(D).

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By: Mary E. Rowe
Deputy Clerk

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