In The

Supreme Court of Virginia

RECORD NO. 181096

NOAH SALIM BURNHAM,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

REPLY BRIEF OF APPELLANT

Miriam Airington-Fisher (VSB No. 78260)
AIRINGTON, STONE & ROCKECHARLIE, PLLC
530 East Main Street, Suite 200
Richmond, Virginia 23219
(804) 774-7117 (Telephone)
(804) 774-7128 (Facsimile)
mairington@airingtonlaw.com

Counsel for Appellant

THE LEX GROUP ♦ 1108 East Main Street ♦ Suite 1400 ♦ Richmond, VA 23219
(804) 644-4419 ♦ (800) 856-4419 ♦ Fax: (804) 644-3660 ♦ www.thelexgroup.com

SCV: Submitted on 06-11-2019 11:46:06 EDT for filing on 06-11-2019

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

ANALYSIS 1

The Commonwealth incorrectly asserts that *Grant* requires that the trial court prescribe a number of years to a term of probation..... 1

CERTIFICATE..... 4

TABLE OF AUTHORITIES

Page(s)

CASE

Grant v. Commonwealth,
223 Va. 680 (1982) 1, 2

STATUTE

Va. Code § 19.2-306.....1

OTHER AUTHORITY

Webster's Third New International Dictionary 1792 (1981) 2

COMES NOW, Appellant, NOAH SALIM BURNHAM, by Counsel, in reply to the Brief of Appellant filed by the Commonwealth in this matter. Appellant does not restate herein the facts or procedural history of this case, or the applicable standard of review, which have been previously briefed by both parties. Appellant does not herein restate the entirety of his argument on appeal, but responds to a limited issue raised in the Commonwealth's opening brief.

ANALYSIS

The Commonwealth incorrectly asserts that *Grant* requires that the trial court prescribe a number of years to a term of probation.

In her reply brief, the Commonwealth asserts that *Grant* controls and is not distinguishable from the instant case. (Comm. Br. at 11) *Grant* held that the trial court has authority to revoke a suspended sentence anytime within the maximum period of time allowed for sentencing on the original charge, where the sentencing order contains neither a set period of supervised probation nor a specified period of suspension.[1]

The Commonwealth reads an additional definition into the term "fixed" as used in Code § 19.2-306 to require that the trial court specify the term of years of probation. In *Grant*, this Court used the term *prescribed* in

[1] *Grant v. Commonwealth*, 223 Va. 680, 686 (1982)

analyzing whether a period of probation had been set or fixed within the meaning of the statute. The Court further defined the word "prescribe" as follows: "To "prescribe" means to "lay down authoritatively as a guide, direction, or rule of action."[2] A plain reading of *Grant* leads to the conclusion that the rule applies where the trial court did not prescribe any term of probation - that is, where the trial court did not guide or direct any term of probation.

Here, the trial court prescribed an indefinite term, thus delegating to the probation officer the specific authority to remove the defendant from probation, but still prescribing the guidelines of the term of probation. This *is* notably distinguishable from *Grant*, where the trial court was totally silent on a term of probation. Nowhere in the statute, or in this Court's holding in *Grant*, does a requirement exist that a period of probation be set in months or years in order to fall within the definition of prescribed by the trial court. Accordingly, the holding and rationale in *Grant* does *not* control this case.

---

[2] *Grant* at 350 (citing Webster's Third New International Dictionary 1792 (1981)).

Appellant maintains all arguments raised in his Petition for Appeal and Opening Brief, and restates his request for oral argument on this matter.

Respectfully Submitted,

NOAH SALIM BURNHAM
By Counsel

/s/ Miriam Airington-Fisher
Miriam Airington-Fisher, Esquire
Virginia State Bar #78260
Airington, Stone & Rockecharlie PLLC
530 East Main Street
Suite 200
Richmond, Virginia 23219
Telephone: (804) 774-7117
Facsimile: (804) 774-7128
mairington@airingtonlaw.com

CERTIFICATE

I hereby certify that on this 11th day of June, 2019, pursuant to Rules 5:26 and 5:32(a)(3)(i), three paper copies of the Reply Brief of Appellant have hand-filed with the Clerk of the Supreme Court of Virginia and an electronic copy of the Reply Brief was filed, via VACES. On this same day, an electronic copy of the Reply Brief of Appellant was served, via email, upon:

Victoria Johnson (VSB No. 68282)
OFFICE OF THE ATTORNEY GENERAL
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-6515 (Telephone)
(804) 371-0151 (Facsimile)
vjohnson@oag.state.va.us

Counsel for Appellee

/s/ Miriam Airington-Fisher
Miriam Airington-Fisher, Esquire