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Clerk, Supreme Court of Appeals
Richmond, Va.

201 VA474

Record No. 5023

In the Supreme Court of Appeals of Virginia at Richmond

WILLIAM H. VICK

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF NORFOLK COUNTY

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5023

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 29th day of April, 1959.

WILLIAM H. VICK, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Circuit Court of Norfolk County

Upon the petition of William H. Vick a writ of error and *supersedeas* is awarded him to judgments rendered by the Circuit Court of Norfolk County on November 26, 1958, and December 9, 1958, in a prosecution by the Commonwealth against the said petitioner for felonies, no bond being required; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

* * * * * *

page 43 } Virginia:

In the Circuit Court of Norfolk County August 29, 1956.

* * * * *

This day came again the Attorney for the Commonwealth, and Wayland P. Britton, counsel for the defendant, as well as the above named defendant, in person, who was tried by the Court on the 3rd day of July, 1956, found guilty by the Court of Grand Larceny, and the case was referred to the Probation Officer of this Court for investigation and presentence report, which was this day presented in open court in the presence of the accused, and is ordered filed as a part of the record of this case. The accused, who was advised of the contents of said report, by counsel, waived cross examination of the probation officer, and by counsel, stated that he did not wish to present any additional facts bearing upon the matter.

After having heard the argument of counsel, and considered said report, it was demanded of him the said W. H. Vick if anything he had or knew to say for himself why the court here should not now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay of judgment: It is considered by the Court that the defendant, W. H. Vick, be confined in the State Penitentiary of this Commonwealth for a period of one (1) year, therein to be kept so confined and treated in a manner prescribed by law.

It appearing to the Court that it is compatible with the public interest that the said one (1) year in the Penitentiary herein imposed on the said W. H. Vick be, and the same is hereby suspended and doth place the said W. H. Vick on probation during his good behavior for one (1) year upon the condition that he keep the peace and dignity and not violate any of the laws of the Commonwealth of Virginia, or any other State or the United States for a period of one (1) year and report to the Probation Officer of this Court from time to time as required by law.

page 44 } Virginia:

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page 47 } Virginia:

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page 48 } Virginia:

In the Circuit Court of Norfolk County August 29, 1956.

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It appearing to the Court that it is compatible with the public interest that the said one (1) year in the Penitentiary herein imposed on the said W. H. Vick be, and the same is hereby suspended and doth place the said W. H. Vick on probation during his good behavior for one (1) year upon the condition that he keep the peace and dignity and not violate any of the laws of the Commonwealth of Virginia, or any other State or the United States for a period of one
page 49 } (1) year and report to the Probation Officer of this Court from time to time as required by law.

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page 50 } Virginia:

In the Circuit Court of Norfolk County August 29, 1956.

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* * * * *

page 52 } Virginia:

In the Circuit Court of Norfolk County on the 10th day of Sept. 1958.

Commonwealth of Virginia,

v.

William H. Vick.

ORDER.

THIS DAY, Came the Attorney for the Commonwealth and moved the Court for an order against William H. Vick to show cause why the probation periods heretofore awarded said William H. Vick by orders of this Court entered on the 29th day of August, 1956, be not revoked for subsequent violation of the criminal laws of the Commonwealth of Virginia.

WHEREFORE, the Court doth order that William H. Vick be brought before this Court to show cause why the probation periods aforesaid be not revoked. The Court doth further

order that a copy of this order be served on said William H. Vick by the Sheriff of Norfolk County.

E. L. OAST, Judge.

Date Entered Sept. 10, 1958.

A Copy—Teste:

MAJOR M. HILLARD, Clerk
By H. T. GILLETTE, D. C.

(on back)

Executed in the County of Norfolk, Va. this the 26 day of Sept. 1958 by serving a copy hereof on William H. Vick in person.

J. A. HODGES
Sheriff County of Norfolk, Va.
By J. M. GIDDINGS, Deputy.

* * * * *

page 53 }

* * * * *

MOTION TO QUASH AND DISMISS RULE.

The defendant, William H. Vick, by his attorney, hereby moves the court to quash and dismiss the rule to show cause why the probation period heretofore awarded said William H. Vick by orders of this court entered on the 29th day of August, 1956, should be revoked on the following grounds:

1. That the probationary orders and suspension of sentences were entered on August 29, 1956 and were for a period of twelve (12) months; that the offense on which the motion to revoke the said sentences is predicated, occurred on the 25th day of February, 1958; that the rule to show cause for revocation of probation was filed on the 10th day of September, 1958; that the offense of February 25, 1958 was committed more than twelve (12) months from the date of the beginning of the probation period granted the defendant;

that no action was taken looking to the revocation of the aforesaid suspension of sentences until after twelve (12) months from the date of the granting of the said probation and the court is therefore without power or jurisdiction to revoke the probation heretofore granted the said defendant.

In consideration whereof, your defendant prays that the said rule to show cause be quashed and dismissed, and he will ever pray.

WILLIAM H. VICK,
By JAMES N. GARRETT
Attorney.

Filed 11-26-58.

H. T. G.

• • • • •

page 54 } Virginia:

In the Circuit Court of Norfolk County November 26, 1958.

• • • • •

This day came the Attorney for the Commonwealth, and James N. Garrett, counsel for the defendant, as well as the above named defendant, who was led to the bar in the custody of the Jailor of this Court, who was tried by the Court upon the aforesaid charge on the 29th day of August, 1956, was sentenced to one (1) year in the State Penitentiary, said sentence suspended upon the condition that he keep the peace and dignity, and not violate any of the laws of the Commonwealth of Virginia, or any other State or the United States for a period of one (1) year and report to the Probation Officer from time to time as required by law.

It was stipulated by counsel that the said W. H. Vick was convicted in this Court on the 23rd day of April, 1958, of Third Offense Petit Larceny. After having heard the argument of counsel; it is considered by the Court that the said W. H. Vick has violated the terms of his probation, thereupon it is ordered that the probation be and is hereby revoked, to which action of the Court the defendant, by counsel, duly excepted.

Therefore, it is considered by the Court that the said W. H. Vick be confined in the State Penitentiary of this Commonwealth for a period of one (1) year, therein to be kept so

confined and treated in a manner prescribed by law, and the prisoner is remanded to jail.

Thereupon the defendant, by counsel, moved the Court for a sixty (60) day stay of execution, which motion the Court granted.

* * * * *

page 55 } Virginia:

In the Circuit Court of Norfolk County November 26, 1958.

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This day came the Attorney for the Commonwealth, and James N. Garrett, counsel for the defendant, as well as the above named defendant, who was led to the bar in the custody of the Jailor of this Court, who was tried by the Court upon the aforesaid charge on the 29th day of August, 1956, was sentenced to one (1) year in the State Penitentiary, said sentence suspended upon the condition that he keep the peace and dignity, and not violate any of the laws of the Commonwealth of Virginia, or any other State or the United States for a period of one (1) year and report to the Probation Officer from time to time as required by law.

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page 56 } Virginia:

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page 59 } Virginia:

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Thereupon the defendant, by counsel, moved the Court for a sixty (60) day stay of execution, which motion the Court granted.

* * * * *

page 61 } Virginia:

In the Circuit Court of Norfolk County December 9, 1958.

* * * * *

It appearing to the Court that on November 26, 1958, the defendant herein was sentenced on seven seperate convictions of grand larceny, to serve one year in the penitentiary on each of said offenses, two of said sentences to run concurrently with the other five, for violation of the terms of probation granted on August 29, 1956. And it further appearing that the conviction which constituted the violation of probation occurred on April 23, 1958, more than one year after the defendant was sentenced and after the first year of the period of probation had elapsed.

It is hereby ordered that the first order entered herein as to this defendant on November 26, 1958, is vacated and

annulled, but all other orders as to this defendant entered on said date shall remain in full force and effect. To which action of the Court the defendant, by counsel, duly excepted.

* * * * *

page 62 }

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

The defendant, William H. Vick, hereby gives notice of his intention to apply to the Supreme Court of Appeals of Virginia, prior to the expiration of sixty (60) days after final judgment, and states that he will apply for a writ of error to the said final judgments which were entered on the 26th day of November, 1958 and the 9th day of December, 1958, and said defendant assigns the following errors of the Circuit Court of Norfolk County, Virginia, in the hearing of the aforesaid case:

1. The court was without jurisdiction to hear the Rule to revoke the probation period of the defendant, William H. Vick, as his probation period had expired.
2. The court erred in over-ruling the defendant's motion to quash.
3. The court erred in revoking the defendant's probation in sentencing the defendant to four (4) years in the State Penitentiary.

WILLIAM H. VICK
By JAMES N. GARRETT,
Counsel.

Filed in the clerk's office the 6th day of Jan., 1959.

Teste:

MAJOR M. HILLARD, Clerk
By H. T. GILLETTE, D. C.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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