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Clerk, Supreme Court of Appeals
Richmond, Va.

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Record No. 6165

In the
Supreme Court of Appeals of Virginia
at Richmond

BOBBY RAY YATES

v.

C. C. PEYTON, SUPERINTENDENT OF THE VIRGINIA STATE PENITENTIARY

FROM THE CIRCUIT COURT OF CUMBERLAND COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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.

This to be

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6165

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 11th day of June, 1965.

BOBBY RAY YATES, Plaintiff in Error,

against

C. C. PEYTON, SUPERINTENDENT OF THE VIRGINIA STATE PENITENTIARY, Defendant in Error.

From the Circuit Court of Cumberland County
C. Champion Bowles, Judge Designate

Upon the petition of Bobby Ray Yates a writ of error is awarded him to a judgment rendered by the Circuit Court of Cumberland County on the 25th day of September, 1964, in a certain proceeding then therein depending wherein the said petitioner was plaintiff and C. C. Peyton, Superintendent, etc., was defendant; no bond being required.

RECORD

* * * * *

page 14 } Virginia:

In the Circuit Court for the County of Cumberland continued and held hereof on this the 28th day of April, 1960:

Present: Hon. Joel W. Flood, Judge

* * * * *

Commonwealth of Virginia,

v. Indictments for Felonies, Nos. 1, 2, 3, and 4

Bobby Ray Yates.

This day came the Attorney for the Commonwealth and Bobby Ray Yates, who stands indicted for the following felonies, to-wit: No. 1, Break, enter. steal, etc. from John Randolph Elementary School; No. 2, Break, enter, steal, etc. from Luther P. Jackson High School; No. 3, Break, enter, steal, etc. from Cumberland High School and No. 4, Possession of Burglarious tools. And it appearing to the Court that the accused is not represented by counsel, the Court before accepting any pleas of the accused, doth appoint William R. Blandford, an able and competent attorney at law practicing before the bar of this court to defend him.

Thereupon the accused, after private consultation with his counsel, stated that he was ready for trial and desired to be tried on this day on all four counts simultaneously before the same jury, and the Attorney for the Commonwealth likewise consented. And the counsel for the accused waived
page 15 } any objection to the accused appearing in Court in prison clothing.

Thereupon the accused was duly arraigned and after being advised by his counsel pleaded not guilty to the indictments, which pleas were tendered by the accused in person. Thereupon, as the law provides, a jury duly summoned for the trial of these cases in sufficient number was called, and thereupon as the law provides, the Attorney for the Commonwealth and the attorney for the accused each exercised their right in striking therefrom four, leaving the following twelve, to-wit:

P. L. Duncan, Jr., H. B. Pleasants, Sr., W. V. Ligon, Willis Varner, Tommie Ford, Mrs. Walter Jenkins, Harold Varner, H. W. Zimmerman, Mrs. Herbert Morris, Charles Womack, Jr, Mrs. Nancy Goodman, and Clarence Booker, all of whom, having been sworn to well and truly try and true deliverance make between the commonwealth and the accused at the bar and a true verdict give according to the law and the evidence. And having heard the evidence and arguments of counsel, and having received the instructions of the Court, were sent to their room to consult upon their verdicts and after some time returned into Court and presented their verdicts in the following words, to-wit: Indictment No. 1, "We the Jury, find the Defendant guilty as charged and fix sentence at 3 yrs. in the Penitentiary. H. W. Zimmerman, Foreman"; Indictment No. 2, "We the Jury, find the Defendant guilty and fix his sentence at 3 yrs. in the Penitentiary. H. W. Zimmerman, Foreman"; Indictment No. 3, "We the Jury, find the Defendant guilty as charged and fix sentence at 3 yrs. confinement in Penitentiary. H. W. Zimmerman, Foreman"; Indictment No. 4, "We the Jury find the Defendant guilty and fix his sentence at 1 yr. confinement in Penitentiary, H. W. Zimmerman, Foreman."

And it being demanded of the accused if anything for himself he had or knew to say why judgment should not be pronounced against him according to law and nothing being offered or alleged in delay of judgment it is accordingly the judgment of this Court that the said Bobby Ray Yates, be, and he hereby is sentenced to confinement in the Penitentiary

page 16 } for a period of three (3) years on Indictment No. 1; that he be, and he hereby is sentenced to confinement in the Penitentiary for a period of three (3) years on Indictment No. 2; that he be, and he hereby is, sentenced to confinement in the Penitentiary for a period of three (3) years on Indictment No. 3, and that he be, and he hereby is, sentenced to confinement in the Penitentiary for a period of one (1) year on Indictment No. 4, the periods by the jury ascertained as aforesaid, and that the Commonwealth of Virginia, do recover of the said Bobby Ray Yates its costs by it about its prosecution in this behalf expended.

Thereupon, counsel for the defendant moved the Court to allow the aforesaid sentences to run concurrently, which said motion the Court doth overrule.

The court certifies that at all time during the trial of this case the accused was personally present.

It is further ordered that the said accused be given credit for eleven days spent in jail awaiting trial.

A copy of orders recorded in Law Order Book 6 pages 473, 474 and 475.

IMOGENE W. TUNSTALL, Clerk.

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ORDER.

This proceeding came on to be heard on August 4, 1964, upon the petition and amended petition for a writ of *habeas corpus* filed by Bobby Ray Yates and the return and answer of the respondent, the petitioner appearing in person and by J. Taylor Williams, an attorney who was heretofore appointed by this Court to represent him, and the respondent appearing by Reno S. Harp, III, Assistant Attorney General.

Whereupon, the Court heard the evidence and argument of counsel, and, upon mature consideration thereof, doth find that petitioner is presently detained pursuant to a judgment of this Court of April 28, 1960, wherein petitioner was sentenced on Indictment No. 1 to serve three years in the Virginia State Penitentiary, having been convicted of breaking and entering; that petitioner was also convicted on the same day of two charges of breaking and entering and one charge of possession of burglary tools; that petitioner was ably, competently, and effectively represented by William R. Blandford, an attorney who had been appointed by the Court to represent him on April 26, 1960; that said attorney carefully prepared for the trial of the case and represented petitioner at his trial to the best of his ability; that the fact that the petitioner was dressed in prison clothing at the page 23 } time of his trial did not deprive him of any right guaranteed to him by the Constitution of Virginia or the Constitution of the United States; that petitioner has failed to bear the burden in showing that he is illegally detained; and that petitioner was not denied any of his constitutional rights in connection with the aforesaid trial in this Court.

For the foregoing reasons the Court is of opinion that the writ should not issue as prayed.

It is, therefore, adjudged and ordered that the petition for a writ of *habeas corpus* be, and is hereby, denied and dismissed and the writ discharged and the petitioner remanded to the custody of the Superintendent of the Virginia State Penitentiary, to all of which action of the Court, the petitioner, by counsel, objects and excepts.

Let the Clerk of this Court certify a copy of this order to the petitioner, the respondent, and the Attorney General of Virginia.

I ask for this:

RENO S. HARP, III
Counsel for Respondent.

Seen and objected to:

J. TAYLOR WILLIAMS
Counsel for Petitioner.

Entered this 25th day of September, 1964.

C. CHAMPION BOWLES
Judge Designate.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

* * * * *

Notice is hereby given that the petitioner, Bobby Ray Yates, appeals in this case and will apply for a writ of error and *supersedeas,* and assigns the following errors:

1. The Court erred in finding that petitioner was adequately represented by counsel at his trial on April 26, 1960.

2. The Court erred in finding that the petitioners right to a

fair and impartial trial was not prejudiced by his being tried by a jury on April 26, 1960, while dressed in prison clothing.

3. The Court erred as a matter of law in denying the petition for a writ of *habeas corpus,* and dismissing said petition.

BOBBY RAY YATES
By J. TAYLOR WILLIAMS
Counsel.

I hereby certify that a true copy of the foregoing Notice of Appeal and Assignment of Error was mailed to Reno S. Harp, III, attorney of record for the respondent, on the 1st day of October, 1964.

J. TAYLOR WILLIAMS
Counsel for Petitioner.

Filed in the Clerk's office of the Circuit Court of Cumberland County this 1st day of October, 1964.

IMOGENE W. TUNSTALL
Clerk, Circuit Court.

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BOBBY RAY YATES,
the Petitioner, was duly sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. Williams:

* * * * *

page 5 } Q. On what date was counsel appointed to represent you?

A. 26th day of April, 1960, sir.

Q. Was that the date that an indictment was returned—that the indictments were returned against you on these charges?

Bobby Ray Yates.

A. I think so.
Q. And on what date were you tried?
A. April 28, 1960, sir.
Q. You were tried by a jury?
A. Yes, sir.
Q. And you state that counsel appointed to represent you interviewed you for twenty to thirty minutes on the date he was appointed?
A. Yes, sir.
Q. Did you see him again before the date of trial?
A. No, sir.
Q. And on the date of trial did he consult with you prior to going into the trial?
A. Actually, it wasn't consulting. He told me that Mr. Carter offered me twenty years to plead guilty, and I told him that I didn't want to plead guilty at all.
Q. Mr. Carter—that was the Commonwealth's Attorney?
A. Yes, sir.
page 6 } Q. You also alleged in that petition that you requested that you—that your counsel subpoena a certain witness in your behalf?
A. Yes, sir. Losie Browning.
Q. When did you request that he be subpoenaed?
A. The day that I was tried, sir. He was in the courtroom.
Q. He was present in the courtroom on that day?
A. Yes, sir.
Q. What clothing were you wearing at the time that—that you were tried?
A. The same clothing that I am wearing now, sir.
Q. That is prison clothing?
A. Yes, sir. Prison clothing.
Q. Were you given any opportunity to put on civilian clothing?
A. I was never asked if I objected to being tried in prison clothing.
Q. Did you have any civilian clothing available that you could have worn?
A. Yes, sir.
page 7 } Q. Did you make any efforts to have civilian clothing that day?
A. My wife had brought civilian clothing up with her, sir.
Q. Did you have an opportunity when you could have changed into civilian clothing?

Bobby Ray Yates.

A. Yes, sir. I think I could have changed before the trial in the Judge's room back here, sir.

Q. Was it suggested to you that you change to civilian clothing?

A. No, sir.

Q. Did the question enter your mind at the time?

A. No, sir. It didn't.

Q. Now, the order entered in your case states that the counsel for the accused waived any objection to the accused appearing in courtroom in prison clothing. Now, did you waive that yourself, or were you consulted?

A. I wasn't consulted, sir. Until I seen it in the Court record was the first time I knew about it—had even been brought up.

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Q. Your Honor, may I ask another question? Your appointed counsel was Commonwealth's Attorney for Powhatan County. Is that correct?

A. Yes, sir.

Q. After the trial, what did he do?

A. He gave me a warrant for grand larceny, sir, to be tried in his county.

Q. A warrant charging you with what?

A. Grand larceny, sir.

Q. Were you subsequently tried?

A. No, sir, I was never tried. I think it was *nolle "processed."*

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WILLIAM R. BLANDFORD,
a witness called by and on behalf of the respondent, after being duly sworn, testified as follows:

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CROSS EXAMINATION.

By Mr. Williams:

Q. Mr. Blandford, on the date of this trial, did you have in your pocket a warrant for the arrest of your client on a larceny charge in Powhatan?

page 23 } A. Judge, I don't know whether I had a warrant in my pocket or not. I know that an investigation had gone on and whether it was before or after I don't know, but I do know that there was no action pending against Yates at the time I was representing him—at the time I represented him. I know later that an indictment was filed against Yates. It was in connection with, I believe, some telephone equipment. Now, I might be mistaken.

The Court: You're speaking for the respondent?

A. Yes, sir, and this—this was—could have been in connection with this series of—of violations. However, we allowed these, and intentionally so. After the filing of the indictment in Powhatan we did not try the accused within three terms of court, intentionally, and it was automatically dismissed.

The Court: The record may show that Mr. Blandford is Commonwealth's Attorney in Powhatan County.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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