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Record No. 6779

In the Supreme Court of Appeals of Virginia at Richmond

DOUGLAS PERRY LAWRENCE

v.

C. C. PEYTON, SUPT., ETC.

FROM THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

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.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6779

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 6th day of October, 1967.

DOUGLAS PERRY LAWRENCE, Plaintiff in error,

against

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

From the Circuit Court of the City of Virginia Beach
Paul W. Ackiss, Judge

Upon the petition of Douglas Perry Lawrence a writ of error is awarded him to a judgment rendered by the Circuit Court of the City of Virginia Beach on the 7th day of March, 1967, in a certain proceeding then therein depending, wherein Douglas Perry Lawrence was plaintiff and C. C. Peyton, Superintendent of the Virginia State Penitentiary, was defendant; no bond being required.

RECORD

* * * * *

AFFIDAVIT

STATE OF VIRGINIA:

to-wit:

CITY OF RICHMOND:

This is to certify that D. P. LAWRENCE, the undersigned party, personally appeared before me in my City and State aforesaid; the same, who, upon oath, deposes and says:

1. That, he is a citizen of the United States of America, by birth.,

2. That, he is a pauper, in law, and without sufficient funds to prepay the costs of this suit; and unable to secure the aid or assistance of counsel to represent his interests; as made and so provided for by Sections 14-180.1 of the 1964 Code of Virginia, as amended; and Section 19.1-241.1 Of the 1964 Code of Virginia, as amended.,

3. That, on this 1st day of June, 1965; the said Affiant has the sum of $none, on his Penitentiary Spending Account.,

4. That, the petitioner-affiant doth verily believe that he *he* is entitled to general relief in this cause, according to law.

D. P. LAWRENCE
Affiant

GIVEN UNDER MY HAND AND SEAL THIS 1ST DAY OF JUNE, 1965.

My Commission Expires 2/27/67.

WILLIAM C. PERDUE
Notary Public

* * * * *

AT LAW No. 9438-A/9768
RECORD No. 6779

CERTIFICATE

I, PAUL W. ACKISS, Judge of the Circuit Court of the City of Virginia Beach, Virginia, do hereby certify that I

have investigated the financial status of the petitioner and am of the opinion that the petitioner is unable to pay or secure to be paid the costs incident to his appeal.

GIVEN under my hand and seal this 7 day of May, 1968.

PAUL W. ACKISS
Judge of the Circuit Court of the
City of Virginia Beach, Virginia

Recd. 3-24-68.—Card A. L. L.

* * * * *

page 1 }

* * * * *

PETITION FOR A WRIT OF *HABEAS CORPUS AD SUBJICIENDUM*

Comes now petitioner Douglas P. Lawrence and respectfully represents that he is aggrieved and prejudiced by an illegal and *unlawfull* judgment order of conviction and commitment entered by the circuit court of the City of Virginia Beach Va. on the 13th day of April 1965, and pursuant to Sec's 8-596, 8-598, 8-599, 5852 code of Virginia presents this his petition.

Petitioner prays for leave of court to present this petition in proper person, *in Forma pauperis,* by mail pursuant to Sect. 14-180 and that it merits remedy from the restraint and confinement imposed by the respondent, and petitioner further moves the court to order the clerk to prepare and submit the complete record of the case to the court.

STATEMENT OF FACTS

Petitioner was arrested about 10 miles from the scene of the crime while stopping for a traffic signal at which page 2 } time petitioners car and person were searched, the officer later *admited* in court he had no probable cause to stop or search the car nor had he any warrants for arrest or search, Petitioner was then locked up and *and* refused permission to use a phone after repeatedly requesting same and he was not given a preliminary hearing until 10 or more days following arrest at which time Mr. McKee was appointed by the court to defend your petitioner, but did not do so a Mr. Lamb appeared at the trial who was not ap-

pointed by the court nor did petitioner consent to be represented by this man, Mr. McKee was also counsel for one of the co-defendants who was sentenced to a term of 5 years while petitioner was given a term of 75 years, clearly a case of *inafective* and inadequate representation, while notice of an appeal was given, it was *overuled* by the Judge stating—"there will be no appeal in this case" to which counsel entered no exception, but turned around and left the court room rapidly without listening to your petitioner's request to motion the court to suspend at least part of the sentence.

On June 1st, 1965 petitioner made a formal request supported by an affidavit of poverty for a copy of the transcript of the trial and his court records by registered mail. Reg. mail certified #322762 but has not to this day March
page 3 } 3rd 1966 received even an acknowledgement of the request, thus preventing petitioner from perfecting an appeal nor was counsel to perfect one appointed.

I.

COMPLAINT

Petitioner complains that the process of arrest was in violation of Sect's 19.1.90 19.1.91, *Sands & Co.* v. *Norvell* 126 Va. 384, 101, S.E. 569. *Winston* v. *Com.* Sec. 52-21, 188 Va. 386, 49, S.E. 2d 611, 615, in that arresting officer did not comply with his duty.

II.

Petitioner was denied the right to an examination as provided for under Sect. 19.1.101. *Wormley* v. *Com.* 10 Gratt L. 51 Va. 658. *Kindred* v. *Stith et al.* Sup. court of Ill. 1869, 51 Ill. 401 in which it was held "it is the duty of the arresting officer to convey the party as soon as possible before a Magistrate."

III.

Petitioners rights under Article I Sec's 8-11 of the Constitution of Va. were completely ignored, as were petitioner's rights under U.S. Const. am. 6 and 14 and due process was not had.

IV.

In denying petitioner the right to communicate with his

attorney or family he was being held *incommunicado*. *Escobedo* v. *Ill.* U.S. S. Ct. 1964.

V.

Petitioner was denied the right to appeal.

VI.

The right to counsel to perfect an appeal.

VII.

The right to a transcript of the proceeding and copies of the court records. See Robert E. Cabaniss Sept. 1965, in which it was held neither attorney nor the trial judge may interfere with the right to appeal, and that a *narative* or transcript of the proceeding shall be furnished the defendant by the court.

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IIX

Sect. 8 article I. of the Const. of Va. provides: that in criminal prosecutions a man had a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor. Sect. 19.1.165 states that, Judgment to be reversed when so defective as to be in violation of the Constitution. There is no question that the proceeding prior to the trial were and are in violation of petitioner's fundamental constitutional rights of Va. and the U.S.

IX

The arresting officer acting without probable cause and without warrants of arrest or search did arrest search and seize petitioner's person and car on suspicion a denial of due process clauses of the Const. of Va. and the United States and in violation of petitioners rights to the protection of the laws, which are there to protect the innocent as well as the guilty from the illegal actions of authorities. See: U.S. am. IV, V, VI, XIV.

Mapp v. *Ohio* 367 U.S. 643.
Hall v. *Com. of Va.* 138 Va. 727, 121, S.E. 154
Mallory v. *U.S.* No. 521 1957
Wong Sun v. *U.S.* 371 U.S. 491.
Paul Gatlin v. *U.S.* No 17, 728, 1963.

Dennis O. Miller v. *U.S.* No 17, 729 U.S. Court of Appeals D.C.

X

The court appointed Mr. Kellam at my request and who was the Attorney of my choosing a Mr. McKee ap-
page 5 } peared at the Jail and represented himself as being from Mr. Kellam's office and that he would handle the case, but shortly before the trial, Mr. McKee passed my case on to a Mr. *Lamb* who was not even from Mr. Kellams office over my bitter objections Mr. McKee then stated that he is defending one of my co-defendants who was sentenced to 5 years while your petitioner got 75 years. *Mr.* Lamb *was not the attorney of my choice nor was he appointed by the court to defend me,* this is a clear violation of my fundamental constitutional rights.

XI.

The defense was of such a low caliber as to constitute no defense at all. *Johns* v. *Smyth* 176 F. Supp. 949 Petitioner contends that he was entitled to, but did not receive the devoted uninhibited faithful service of his counsel.

XII.

My counsel never advised me of any of my rights, nor did the court nor does it appear anywhere on the record, *ipsa fuod loquitur.*
See: *Walker* v. *Com.* 144 Va. 648, 131, S.E.
Spurgeon v. *Com.* 86 Va. 10 S.E. 979.
Humer v. *Com.* 122 Va. 94, S.E. 157.
Montague v. *Com.* 10 Gratt 763
That such deficient and ineffective representation is also clearly in violation of Cannons 5, 8, 12, of the Bar goes without saying.

XIII.

Your petitioner *straineously,* bitterly objects and protests against having been palmed off from one Attorney to an-
other and yet another attorney with neither my nor
page 6 } the courts authorization or consent, until petitioner was in the clutches of a most inadequate and ineffective shyster passing as an attorney *pretenting* to repre-

sent petitioner before a biased and prejudiced court and was thus thrown to the mercy of wolves.

XIV

Being tried in a hostile court "defended" by inadequate counsel whose only defense in my behalf consisted of entering a motion to appeal after having been sentenced, but for this single motion it would not appear from the record that I ever had an Att'y to represent me; can such a flagrant and mere lip service be in *complyance* with *with* my constitutional rights and guaranty to due process?
Am. 14 Sec. I U.S. Const. Sec. 11 Const. of Va.

XV

Because of the hostility of the Judge and his express prejudice in *overruling* a motion to appeal and stating *"there will be no appeal in this case"* as to the record *res ipsa loquitus.*

Petitioner fully understands the refusal of the court to furnish him a transcript of the trial for purposes of appeal having made such glaring, notorious and flagrantly unfair language and ruling to the great harm and prejudice of your petitioner.

XVI

Because of the above charges petitioner moves the Hon. Supreme Court to disqualify and enjoin Richard
page 7 } E. Kellam Judge of the circuit court of the City of Virginia Beach, Va. from any and all participation in connection with this case.

XVII

Petitioner having received a sentence of 75 years while his co-defendant received 5 years on an identical indictment and who was defended by my court appointed counsel while said counsel never even appeared in court in my behalf; can it ever be said that your petitioner was given equal protection of the Law? as I am according to both the Const., of the U.S. and Va. *am* entitled to as of right, the great disparity in the sentences speaks for itself of the unequal justice and lop-sided protection of the Law in stronger and more eloquent terms than your petitioner can ever hope to express himself.

XVIII

QUESTIONS BEFORE THE COURT

A. Was petitioner illegally seized and searched and arrested by officers acting without probable cause or warrants of arrest?

B. Was due process had?

C. Did petitioner receive the equal protection of the Law?

D. Was petitioners right to appeal violated?

E. Did petitioner receive a fair and impartial trial before an impartial Judge?

F. Was petitioner represented by his court appointed counsel?

page 8 } G. Did petitioner receive uninhibited faithful and proper representation of counsel that he was entitled to?

H. Was petitioners right to a transcript of the trial for purposes of appeal violated by being denied such transcript?

I. Was petitioners right to counsel for the purpose of appeal violated? when denied.

J. Petitioner after arrest was denied the right to communicate with an Att'y or his family and held *incommunicado;* Where his fundamental constitutional rights in the wanton disregard of his right to counsel violated?

See: *Escobedo* v. *Ill.* U.S. S.Ct. (1964)

Robert E. Cabannis v. *C. C. Peyton* Supreme Court of Appeals Va. Sept. 10th 1965.

Griffin v. *Ill.* 35 U.S. 12 and supported in this jurisdiction by *Allen* v. *Va.* 374 U.S. at page 93, of the U.S. Reports, on rights to appeal and transcripts.

K. About Feb. 1st 1965 petitioner received a summons to appear in court March 9th 1965 but was not taken to court on that day, but on *on* April 13th 1965 suddenly without even one minutes' warning to prepare my case and notify my witnesses to appear I was taken to court for trial and handed a second summons while on the way to court, thus denying your petitioner adequate time to prepare his defense and due process was not had, and protests and objects against such extra judicial strategy of the court to deliberately deprive petitioner of his rights which in effect prohibited preparing an adequate defense.

page 9 } PRAYER

Petitioner prays the honorable court to grant him the relief and redress he seeks from the injustice he now suffers

and awards him the writ of *Habeas Corpus* in this collateral attack petitioner cites numerous violations of his constitutional rights and procedure among others such as being held two weeks before even taken before a Magistrate for examination or a hearing and was never advised of his rights, nor does petitioner *belief* that any court of justice, worthy of the name will put its stamp of approval upon such outrageous violations of a poor and humble defendants rights and having submitted abundant allegation of unrecorded facts, in petitioners humble opinion his cause merit a favorable consideration.

Petitioners reserves the right to amend.

Respectfully submitted
DOUGLAS P. LAWRENCE

Subscribed and sworn to before me this ..... day of April 1966.

My commision expires .....

.....
Notary Public

COUNTY OF POWHATAN
STATE OF VIRGINIA

SUBSCRIBED and SWORN to before me this 12 day of April 1966

* * * , Notary Public

My Commission Expires August 28, 1968.

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* * * * *

IN THE
SUPREME COURT OF APPEALS
RICHMOND VIRGINIA.

AFFIDAVIT

Affiant moves the Honorable court to permit him to proceed *in forma pauperis,* Sec. 14.180, and to appoint him counsel Sec. 19.1.241 to prosecute his writ of *Habeas Corpus.*

Affiant respectfully submits and avers that he is without funds or *recourses* to provide his own counsel and further avers that the action before the court is made in good faith for the remedy he is entitled to by law and that the statements are true to the best of his belief and knowledge.

Subscribed and sworn to before me this 6th day of April 1966. County of Powhatan Virginia.

DOUGLAS P. LAWRENCE
Notary Public

My commission expires on the ..... day of ..... 19.....

CERTIFICATE OF SERVICE

I, the petitioner Douglas P. Lawrence have this 6th day of April 1966 placed a copy of this petition in the mail addressed to the respondents Att'y Ass't. Att'y Gen. Reno S. Harp Supreme Court Bldg. Richmond Virginia.

DOUGLAS P. LAWRENCE

Subscribed and sworn to before me this ..... day of April 1966.

My commission expires .....

.....
Notary Public

COUNTY OF POWHATAN
STATE OF VIRGINIA

SUBSCRIBED and SWORN to before me this 12 day of April 1966.

* * *, Notary Public

My Commission Expires August 28, 1968.

Recd. 4-15-66—No fee. H. G. T.

* * * * *

page 13 } VIRGINIA:

IN THE
SUPREME COURT OF APPEALS

DOUGLAS P. LAWRENCE

* * * * *

ANSWER

Now comes the respondent, by counsel, and files his answer to the petition for a writ of *habeas corpus* and says:

1. Respondent denies each allegation set forth in the petition for a writ of *habeas corpus* and says that at a plenary hearing such allegations will be proven to be false and says further that petitioner has filed a petition for writ of *habeas corpus* which presents a case for the determination of unrecorded matters of fact relating to a previous judicial proceeding in the Circuit Court of the City of Virginia Beach.

Wherefore, respondent prays that a writ of *habeas corpus* be issued in conformity with the provisions of § 8-598 of the Code of Virginia, returnable to the Circuit Court of the City of Virginia Beach.

C. C. PEYTON, Superintendent of
the Virginia State Penitentiary

By: JAMES PARKER JONES
Counsel

Recd. 6-6-66 A. L. L.

* * * * *

page 14 }

* * * * *

AMENDMENT:

Amendment to the Petition for a writ of *Habeas Corpus* in the above styled case as amended to page 7 of the original petition for a writ of H. C.

XIX

Petitioner alleges that in violation of Sec. 19.1-244 which states "Approvers shall not be admitted in any case" that the testimony of the approver one Leon Purnell was inadmissible in evidence 19.217: 1966, C. 366 In *Oliver* v. *Com.* 77 Va. 590 It was said "The doctrine of approvement was never the law of this State." Also see *Byrd* v. *Com.* 2 Va. CAS (HVA) 490.

XX

In admitting in evidence approvers testimony the petitioners rights were seriously and substantially violated and jeopardized under Sec. 18.1-212. "The separate confessions of co-defendants are each admitted only against the defendant who makes the confession" See *Phillips* v. *Com.* 202 Va. 207, 116 SE 2 d.282.

XXI

The Att'y who represented me in court and who was not my court appointed counsel besides offering no defense advised me to "say nothing and agree with everything"

XXII

The courts attention is herewith directed to the records; order of Sentence etc. of the lower court; and nowhere does it appear that a pre-sentence report had been ordered or was before the court, as required under *Sec.* 53-
page 15 } 278.1, *code of Va.* 1950 "The court *shall before passing sentence* direct a probation and parole officer appointed under §53-244 or a probation officer appointed under §53-266 to investigate and report upon any and all facts tending to show extenuating circumstances that the court may be fully advised as to the appropriate and just sentence to be imposed:

Petitioner may well ask at this point, *How appropriate and just is the difference of* 70 *years between the sentence of your petitioner and that of one of his co-defendants.*

The presentence report being a mandatory requirement and its deliberate *omition* was highly prejudicial to your petitioners cause, and resulted in the great harm and injustice inflicted upon your petitioner.

See: Sect. 16.172.41 (1954) code of Va. & 16.1-175.

Respectfully submitted
DOUGLAS P. LAWRENCE

Recd. 7-8-66. H. G. T.

* * * * *

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* * * * *

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 12th day of October, 1966.

* * * * *

On June 6, 1966, came the respondent, by counsel, and filed a motion praying that this court issue a writ of *habeas corpus* returnable to the Circuit Court of the City of Virginia Beach.

On consideration whereof, and pursuant to the provisions of Code, § 8-598, as amended, a writ of *habeas corpus* is awarded Douglas P. Lawrence, to be directed to C. C. Peyton, superintendent of the Virginia State Penitentiary, commanding him to have the body of the said Douglas P. Lawrence before the Circuit Court of the City of Virginia Beach on the first day of its next term, to wit: December 5, 1966, which court shall hear and determine the matters set forth in said petition.

The clerk of this court shall certify a copy of this order to the petitioner, the respondent, the clerk of the Circuit Court of the City of Virginia Beach, and to the attorney general of Virginia.

The service of a copy of this order shall have the same force and effect as if a formal writ of *habeas corpus* were issued and served as required by law.

* * * * *

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* * * * *

ORDER

It appearing to the Court that on October 12, 1966, the Supreme Court of Appeals of Virginia issued a writ of *habeas corpus* returnable to this Court on December 5, 1966, and it appearing further that this Court cannot hear this case on that date, it is ordered that W. Leigh Ansell, an able and competent attorney at law, whose address is 3707 Virginia Beach Blvd. Va. B., is appointed to represent the petitioner; and it is further ordered that this matter be continued to a date convenient to said attorney and the Office of the Attorney General.

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

Enter: 10/28/66. P. W. A.

* * * * *

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* * * * *

ANSWER

Now comes the respondent, by counsel, and files his answer and says:

1. On August 31, 1964, a warrant was issued against the petitioner charging him with the crime of robbery. (See Exhibit I—Certified Copy of Warrant.)

2. On September 14, 1964, the petitioner appeared before the Municipal Court for the City of Virginia Beach and was appointed counsel, H. L. Lam, at which time a preliminary hearing was conducted, and the petitioner was certified to the grand jury. (See Exhibit II—Certified Copy of Court Order.)

3. On November 20, 1964, the grand jurors returned a true bill on an indictment charging the petitioner with the crime of robbery. (See Exhibit III—Certified Copy of Indictment.)

4. On April 13, 1965, the petitioner appeared before the Circuit Court of the City of Virginia Beach accompanied by

his attorney, was arraigned, plead not guilty to the charge, was tried by the court, and sentenced to serve a term of seventy-five years in the Virginia State Penitentiary, after having been found guilty of the crime of robbery. (See Exhibit IV—Certified Copy of Court Order.)

5. Respondent states that he is currently detaining the petitioner pursuant to the above mentioned court order.

page 19 } 6. Respondent denies any allegations not expressly admitted herein.

Wherefore, the respondent respectfully prays that the petition for a writ of *habeas corpus* be denied and dismissed.

C. C. PEYTON, Superintendent of
the Virginia State Penitentiary

By: W. LUKE WITT
Counsel

Filed Jan. 24, 1967.

JOHN V. FENTRESS, Clerk

By P. GAMORY, D.C.

* * * * *

page 20 } EXHIBIT I

* * * * *

STATE OF VIRGINIA) To-Wit: No.....
CITY OF VIRGINIA BEACH)

TO ANY CITY SERGEANT OR POLICE OFFICER:

Whereas, Det. O. Lambert and A. R. Nobles has this day made complaint and information on oath before me, Alvin L. Rodgers Justice of the Peace of the said City, that Douglas Perry Lawrence in the said City did on the 31st day of August, 1964: Unlawfully, wilfully and feloniously make an assault on one John W. Kay, night clerk of the Beach Taxi Inc., 516-17th St, Va Beach, Va. and him the said Douglas Perry Lawrence in bodily fear did then and there feloniously put approximately $264.30 in U.S. Coins and Currency of the goods and chattels of the said Beach Taxi, Inc. by threat and the presenting of a weapon, to-wit one 38-Cal S&W Pistol

with which the said Douglas Perry Lawrence was then and there armed, and did unlawfully, feloniously and violently take, steal and carry away, in violation of Title 18.1-91 of the Code of Va. against the peace and dignity of the Commonwealth of Virginia.

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the Municipal Court of the said City, *City Hall, Borough of Princess Anne at Princess Anne, Virginia,* the body (bodies) of the above accused, to answer the said complaint and to be further dealt with according to law.

Given under my hand and seal, this 31st day of August, 1964.

ALVIN L. RODGERS, J. P. (SEAL)
Title of issuing officer

* * * * *

page 21 } EXHIBIT II

COMMONWEALTH OF VIRGINIA
REQUEST FOR COURT APPOINTED COUNSEL

In The Municipal Court—of the City of Virginia Beach, on the 14th Day of September, 1964.

COMMONWEALTH
VS
Request for appointment of counsel by Douglas Perry Lawrence, charged with Robbery.

I have been advised by the Municipal Court—of my rights to representation by counsel in the trial of the charge pending against me; I certify that I am without means to employ counsel of my own choosing and I hereby request this court to appoint counsel for me.

DOUGLAS P. LAWRENCE
(Signature of defendant)

This day the above defendant upon being first duly sworn made oath before me in open court that he was without means to employ counsel of his own choosing.

J. DAVIS REED, JR., Judge

This day the above named defendant having been advised by this Court of his rights to representation by counsel in the trial of the charge pending against him herein and having made oath in open court that he—she was without means to employ counsel of his—her own choosing, the court doth appoint H. L. Lam, a competent attorney practicing in this court to defend said defendant.

J. DAVIS REED, JR., Judge

VIRGINIA:

IN THE MUNICIPAL COURT—COURT OF THE CITY OF VIRGINIA BEACH, ON THE 14 DAY OF SEPT. 1964.

Douglas Perry LAWRENCE, the defendant charged with the offense of robbery, having this day appeared in this Court with H. L. Lam, Counsel, heretofore appointed by the Court—of his own choosing, and the court upon hearing the evidence, the charge against the said defendant is sent to Grand Jury.

J. DAVIS REED, JR., Judge

* * * * *

page 22 } EXHIBIT III

COMMONWEALTH OF VIRGINIA,) TO-WIT:
CITY OF VIRGINIA BEACH)

In the Circuit Court of the City of Virginia Beach:

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the City of Virginia Beach and now attending the said Court, upon their oaths, present that DOUGLAS PERRY LAWRENCE On or about the 31st day of August in the year 1964, in the said City of Virginia Beach, Virginia, in and upon one John W. Kay feloniously did make an assault by presenting a pistol and him the said John W. Kay in bodily fear did then and there feloniously put approximately $264.30 of the moneys, goods and chattels of the Beach Taxi Corp. then and there feloniously and violently did steal, take and carry away, against the peace and dignity of the Commonwealth of Virginia,

Form 7—1M—1-63

* * * * *

INDICTMENT FOR ROBBERY

YES—A TRUE BILL

James E. Healy, Foreman

Nov 20, 1964 Date

* * * * *

page 23 } EXHIBIT IV

* * * * *

In the Circuit Court of the City of Virginia Beach on the 13th Day of April 1965

Commonwealth of Virginia)
vs.) Upon an Indictment for Robbery
Douglas Perry Lawrence)

The Court doth order for the recording *verbatim* of the evidence and incidents of the trial of this case by the electronic device this day approved by the Court, and thereupon came the Attorney for the Commonwealth, and the accused Douglas Perry Lawrence, who stands indicted for robbery, was led to the bar in the custody of the Sergeant of this Court, and also came Henry L. Lam, attorney for the accused, said attorney having heretofore been appointed by the Court on October 14, 1964, due to his inability to secure counsel of his own choosing, and upon being arraigned, the accused pleaded Not Guilty to said indictment, tendered in person by the accused, and with the consent of the accused, his counsel, and the concurrence of the Attorney for the Commonwealth, and the Court here entered of record, the Court heard and determined the case without the intervention of a jury, and after hearing the evidence, the Court doth find the accused guilty of robbery as charged in the indictment and doth fix his punishment at Seventy Five (75) years in the Penitentiary.

Whereupon it being demanded of the prisoner if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay thereof, it is considered by the Court that the said Douglas Perry Lawrence be confined in the Penitentiary of this Commonwealth for the term of Seventy (75) years, but that he be

given credit for the time spent in jail, he having been committed to the jail of this City on the 31st day of August, 1964.

And it is ordered that the Clerk of this Court forthwith transmit to the Superintendent of said Penitentiary, a copy of this judgment, and that the Sergeant of this City when required so to do, deliver the said Douglas Perry Lawrence to the guard authorized to receive him who shall remove and safely convey him from the jail of this City to the said Penitentiary, therein to be kept imprisoned and treated in the manner directed by law.

And the prisoner is remanded to Jail.

* * * * *

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* * * * *

ORDER

NOW COMES, the petitioner, by Counsel, and states unto the Court that it is necessary that the petitioner be present for interviewing and assistance of counsel prior to the trial of this matter, which is set for trial in the Circuit Court of the City of Virginia Beach, Virginia on February 23, 1967 at 10:00 a.m.

IT IS THEREFORE ADJUDGED, ORDERED and DECREED that the Superintendent of the Virginia State Penitentiary do deliver the said petitioner to the City Sergeant of Virginia Beach, Virginia on or before February 13, 1967, so that the accused will be available for counselling and hearing.

IT IS FURTHER ORDERED that a copy of this order be forwarded to the Attorney General of Virginia, and the Superintendent of the Virginia State Penitentiary.

ENTER: R. S. W., Judge

DATE: 2/6/67

* * * * *

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* * * * *

ORDER

This proceeding came on to be heard on February 23, 1967, upon the petition of Douglas P. Lawrence for a writ of *habeas corpus* and the answer of the respondent, the petitioner appearing in person and by W. Leigh Ansell, an attorney previously appointed by this Court to reresent him, and the respondent being represented by Curtis R. Mann, Assistant Attorney General.

Whereupon, the Court heard the evidence and argument of counsel for the petitioner and respondent, and for the reason reasons stated from the bench at the conclusion of the hearing, the Court is of the opinion that the writ should not issue as prayed.

It is, therefore, adjudged and ordered that the writ of *habeas corpus* be denied and dismissed, 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, objected, excepted and notes an appeal.

It is further ordered that a certified copy of this order be sent to W. Leigh Ansell, court-appointed counsel for petitioner, the petitioner, the respondent and the Attorney General of Virginia.

Entered this 7 day of March, 1967.

P. W. A., Judge

page 26 } I ask for this:

CURTIS R. MANN
Counsel for Respondent

Seen and objected to:

W. LEIGH ANSELL
Counsel for Petitioner

page 27 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS

To: Mr. John V. Fentress, Clerk
Circuit Court
Princess Anne Station
Virginia Beach, Virginia

NOTICE is hereby given that the Petitioner, by and through his Court appointed attorney, appeals the decision of this Court entered on February 23rd, 1967, denying his petition for writ of *habeas corpus* and assigns the following errors as required by Rule 5:1, Section 4 of the Rules of the Supreme Court of Appeals of Virginia.

1. The Court erred as a matter of law and evidence in ordering that the petition for writ of *habeas corpus* be denied and dismissed.
2. Error of the Court in finding that the petitioner was ably and effectively assisted by counsel before trial and at the trial.
3. Error of the Court in finding that at no time prior to or during the course of petitioner's trial were any constitutional rights denied him.
4. Error of the Court in finding that the trial Court's failure to furnish a transcript of the trial thereby denying the petitioner the right of appeal.

DOUGLAS P. LAWRENCE

By W. LEIGH ANSELL
Of Counsel

page 28 }

* * * * *

Filed Mar. 13, 1967.

JOHN V. FENTRESS, Clerk

By R. H. WEST, D.C.

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page 32 }

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ORDER

This day came the petitioner, by counsel, and counsel for the Petitioner moved for an order requiring the evidence to be transcribed for the purposes of an appeal.

IT IS THEREFORE ADJUDGED, ORDERED AND DECREED that the evidence be transcribed and that counsel for the Petitioner and the Attorney General for the Commonwealth of Virginia be furnished with a copy.

ENTER: P. W. A., Judge

Date—3/14/67.

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TRANSCRIPTION

* * * * *

Following is the transcription of the electronic recording, by Dictaphone as approved by this court, of the hearing on Thursday, the 23rd day of February, 1967, of the petition for a Writ of *Habeas Corpus* filed by the above named petitioner, which was heard by the Court, The Honorable Paul W. Ackiss presiding; and the trial for robbery of this petitioner as the defendant which was heard by the Court on Tuesday, the 13th day of April, 1965, The Honorable Richard B. Kellam presiding.

APPEARANCES:

Mr. W. Leigh Ansell Attorney at Law	For The Petitioner
Mr. Curtis R. Mann Assistant Attorney General	For The Respondent
Mr. Robert L. Simpson Commonwealth's Attorney	For The Commonwealth

Mr. Henry Leslie Lam
Attorney at Law For The Defendant

* * * * *

page 7 } PROCEEDINGS

February 23, 1967

The Court: Gentlemen, are you ready in the case of Douglas P. Lawrence against C. C. Peyton, Superintendent?

Mr. Ansell: The petitioner is ready, Your Honor.

Mr. Mann: The respondent is ready.

The Clerk: Will the parties who will testify in this matter please rise and raise your right hand.

Do you solemnly swear (Whereupon, all of said parties were duly sworn according to the law by the Clerk.)

Mr. Ansell: Your Honor, I move to exclude the witnesses.

The Court: All right, sir, they will be excluded.

Do you all wa—do you want to make an opening statement, so the Court will know what grounds the petition is on?

Mr. Ansell: Yes, sir, if Your Honor please I do.

(Whereupon, the witnesses were removed from the courtroom to await being called in to testify.)

page 8 } OPENING STATEMENT

MR. W. LEIGH ANSELL

Mr. Ansell: Your Honor, this is a fairly involved petition which alleges many things.

It alleges error that occurred in trial, which is the introduction of inadmissible evidence; the fact that a preliminary hearing was not had until sometime after arrest; that there was a notice of appeal given and that nothing was ever done about it either by the attorney who at that time represented the petitioner or by the court who the petitioner wrote a letter to and never got a reply.

I think this will be our major basis under this complaint, Your Honor, is the denial of the right of appeal. However, there are many other points that we want to bring to the attention of the Court because there are several recent cases, I think, on this matter.

There is another point that we will—has been alleged to, how counsel was appointed in this matter. It appears that there was one counsel and then somehow he got out of the case and another counsel was appointed in his stead. Which the petitioner here feels that the way that this was handled violated his constitutional rights. He further states page 9 } that he was—there was ineffective assistance of counsel in that he was not properly advised of his rights prior to trial.

And through these factual situations, Your Honor, we will try to show that he was denied equal protection under the law and due process in his trial. I think the record will show that he did enter a plea of not guilty to this case and no appeal was taken and that there are many questions in regard to the taking of the appeal and the ineffective assistance of counsel.

The Court: It was tried by the court?

Mr. Ansel: Tried by the court, yes, sir.

The Court: Mr. Mann, you

Mr. Mann: I'll waive an opening statement, Your Honor.

Mr. Ansell: All right, sir. I'll call Mr. Douglas Perry Lawrence.

City Sergeant: Take that chair right there, Mr. Lawrence.

(Whereupon, Mr. Douglas Perry Lawrence, the petitioner, who had previously been duly sworn, was called to the witness stand, was examined and testified as follows.)

page 10 } MR. DOUGLAS PERRY LAWRENCE

DIRECT EXAMINATION

By Mr. Ansell:

Q. Please state your name for the record, please, Mr. Lawrence.

A. Douglas Perry Lawrence.

Q. Speak so they can hear you back there. Now, Mr. Lawrence, how old were you on April the 13th, 1965?

A. Nineteen what?

Q. 1965. How old are you today?

A. Well, I'll be sixty next birthday, September the 15th.

Q. All right, sir. Now,

A. I expect that's right.

Q. you are—you are presently being detained on an order which sent you to the penitentiary for a crime of robbery, is that true?

Mr. Douglas Perry Lawrence

A. Yes, that's what the indictment was.
Q. And do you know what date you were tried?
A. On the 13th day of somethin'—April, I think that's right.
Q. Of 1965?
A. I think that's right, yes, sir. I ought to re-
page 11 } member that particular day.
Q. All right, sir, and on the day of trial were you aware that you would be tried that day?
A. No, sir.
Q. You were not?
A. No, sir.
Q. And will you explain to this Court what you thought was going to happen or when you thought you were going to be tried?
A. What's that?
Q. When did you know you were going to be tried?
A. I didn't know I was going to be tried, I was hope's'n I'd have some paper sheets about the ninth I was ready for trial then but they didn't—they didn't call me. And I wasn't given any notice or 'vised of it I was settin' there on the mornin' of April the 13th, they came and got me and fetched me right over here to court. So it's to the best of my knowledge how I got there that morning when I come to court, that last subpoena. I got there early a few days ahead of time. I knew when I was supposed to be tried and I wasn't tried on March 9th.
Q. Are these the papers that they—that were
page 12 } served on you, sir?
A. I can't see 'em 'til I get my spec's on. Yes, sir. Yes, sir. Both. This one first, and that one on the morning I was tried.
Q. This was served on you on the morning you were tried?
A. Yes, sir, it was given—handed to me.
Q. Handed to you
A. Yeah.
Q. on April the 13th,
A. That's right.
Q. 1965?
A. That's right.

The Court: You want to offer these?
Mr. Ansell: I'd like to offer those, yes, sir.
The Court: I'll affirm they are entered and just put Petitioner's Exhibit Number One, I'm going to staple them

Mr. Douglas Perry Lawrence

Mr. Ansell: Oh?
The Court: I mean on the back.
Mr. Ansell: Yes, sir.
The Court: Is that all right?
Mr. Ansell: Yes, sir.

page 13 } (Whereupon, said two subpoenas were received in evidence and so marked by the Court.)

By Mr. Ansell:
Q. All right, sir, so let me ask you this, when did you have an attorney? Did you have a court appointed attorney in this case?
A. He was there, with me.
Q. In the—in your case—in your trial in 1965, did you have a—did you hire your own lawyer?
A. No, sir, no, sir, I—I signed a paper and then the court, see, 'pointed an attorney.
Q. Yes, sir.
A. It was one—one of the proceedings, and I think he was with me during the—I think the court appointed—the man's name was
Q. What was the man's name?
A. He name was McGee or McKee, one. He said he was from Mr. Kellam's office. I signed a paper askin' for Mr. Kellam to represent me,
Q. Um hum.
A. in court. And Mr. *Kee* right after that, be-
page 14 } fore that I think—which I think was after, in the courtroom told me, said, "I'm goin' to have to give you to Mr. Lam." I didn't know who Mr. Lam was. I didn't know who Mr. McKee was tell you the truth, but he was, well, he come to see me over there and asked me all the questions and was supposed to represent me. But he turned me over to Mr. Lam and then Mr. Lam come to see me.
Q. Was this prior to the preliminary hearing?
A. Ah—ah
Q. Who represented you in the preliminary hearing?
A. I think—I think Mr. McKee did.
Q. All right, sir.
A. Best of my recollection. Could o' been Mr. Lam cause both o' 'em are small fellows and they were nice to me. I really don't know but I think it was McKee. Least it was I say now, we were over in the court in the finish it was Mr. Lam I know.

Mr. Douglas Perry Lawrence

Q. All right, sir. Now,

A. I didn't want to change lawyers. Wasn't—wasn't nothin' I could do 'bout it and so Mr. Lam took me and he come over there to see me a time or two.

Q. All right.

page 15 } A. He represented me at the trial—at the trial, Henry Lam I * * * it was just his name.

Q. All right, sir. Now, did you discuss your case with Mr. Lam?

A. Well, ah—yes, I told Mr. Lam 'bout everything I knew about it which was nothing.

Q. Did he appear to understand the nature of your case?

A. Not to me he didn't but he claimed he did, I never thought he did.

Q. Did you discuss with him the problems of your case?

A. The what?

Q. The problems of your case, like the search and seizure and

A. Yes, I did, I told 'im 'bout 'dat 'bout 'de search and seizure part of it and being arrested without the warrant, several other points I give to 'im, yes, sir, and that's what I asked 'im to do something about but it never was to my recollection while I was in court do nothin' 'bout it.

Q. All right. Now, did you discuss with Mr.

page 16 } Lam your right with regards to a jury trial, discuss with him a plea which you would enter or any other matters that would be taken up at the trial?

A. No, not definitely.

Mr. Mann: Your Honor, I believe the records of this court speak for themselves as to just how he pled and everything about it.

Mr. Ansell: Well, I think, obviously, they speak for themselves, Your Honor, but I feel that

The Court: You can ask him what—what his counsel did as far as the allegations go.

Mr. Ansell: Right.

By Mr. Ansell:

Q. Do you remember what your counsel discussed with you prior to the trial?

A. No, I don't, I can't say exactly what it was other than, understand I asked him if he had done anything about it to appeal the case for me.

Mr. Douglas Perry Lawrence

Q. Well, we are not there yet. Let's just talk about—let's take it as it came. All right. Do you know how many times you talked with Mr. Lam?

A. I couldn't say, two or three times he come
page 17 } over there a few minutes.

Q. Well, how many—how long would you say he spent with you all told? How many minutes did he spend with you?

A. Not very many, I couldn't say, very short time.

Q. Well, would you say thirty minutes, an hour?

A. Well, it wouldn't of been an hour, maybe thirty minutes all together, I guess.

Q. All right, and when did you first see Mr. Lam? Was it at the preliminary hearing? You said Mr. McKee gave—gave you to Mr. Lam.

A. Yes, sir, I think I remember seein' 'im there. That's where Mr. McKee told me he was goin' to give me to Mr. Lam. Mr. Lam came over to 'de jail.

Q. I see, over to the jail.

A. Yes, sir, I—I

Q. Was that after the preliminary hearing?

A. That's what I thought they had, a preliminary hearing over there, I couldn't understand much about it.

Q. Well, did you ever come over to this building to reflect—to Municipal Court with Mr. Lam? How many times did he represent you in court?

page 18 } A. I can't remember, it seems it was one time, it was when I was sentenced.

Q. One time. All right, now, did Mr. Lam go over with you the charges, what you were charged with?

A. Well, he knew what I was charged with I don't know whether he read the warrant over or not, but I had a carbon copy of the warrant.

Q. Do you remember him going over the warrant with you?

A. No.

Q. Did he go over the indictment with you?

A. We didn't have anything except but the warrant that I seen.

Q. All right, sir. How far did you go in school, Mr. Lawrence?

A. I don't know, sixth or seventh grade, I reckon.

Q. Did Mr. Lam discuss with you any of the prospects of the lesser included offenses than what you were charged

with? In other words, did he go over with you the fact that you could have been convicted of robbery or some lesser offense?

A. Oh, I don't think so.

page 19 } Q. Grand larceny or larceny?

A. I don't remember anything like it, I don't know whether he did or not.

Q. Did ah—did you think there was any need to continue your case?

A. Sir?

Q. Was there any need to postpone your case for any reason?

A. Postpone?

Q. Yes, you were tried, I believe, on April the 13th, was there any reason for your case to be postponed to your knowledge?

A. Well, was somethin' or 'nother * * * you know, I couldn't get nobody to down here * * * to see me and I guess it was that.

Q. Do you think Mr. Lam had an adequate time to investigate your case and prepare it?

A. Do I think he had ample time?

Q. Yes, sir.

A. I certainly do think so, I think he did.

Q. All right. Did Mr. Lam discuss with you any

page 20 } witnesses that you wanted to call on your behalf, either—either witnesses that could give you an alibi or any evidence on your behalf or any witnesses that could testify with regard to your character? Did he ever discuss any witnesses?

A. No.

Q. Did he ever ask you if you wanted any witnesses?

A. No.

Q. Did you have any witnesses that could testify on your behalf in your trial?

A. I'm not sure now whether

Q. Are you from this area?

A. No, sir. No, sir.

Q. Where are you from?

A. I was born and raised in Gatesville, North Carolina.

Q. Gatesville, North Carolina.

A. I lived in Norfolk eight years approximately, during the war and since then sometimes.

Q. Were you married at this time?

Mr. Douglas Perry Lawrence

A. Yes, sir, I'm married yet, but I don't live with my wife. We been separated many years.

page 21 } Q. Would your wife, or any of your friends, or anybody that you know here would any of them been able to come and testify in your behalf?

A. Well, I should think so. My—my nephew and my brother and my people that I know home.

Q. Were there any statements introduced at your trial that were used against you?

A. Any statements?

Q. Any statements, did you ever make any statements that were used against you at your trial?

A. I don't know whether there was any or not. I just stated that I did nothin' I didn't do that nor nothin' I didn't know nothin' about it and that was the truth. They wake me up from my sleep.

Q. All right, sir. Now, I believe there were several police officers that testified at the time of the trial, is that so?

A. Yes, sir, there was some put on the stand, yes, sir.

Q. All right.

A. I think one of 'em, Mr. or Detective or some 'in', Detective Noels or som' in' like 'at (Detective Noble)

page 22 } Q. Um hum.

A. And a—and a large fellow, a uni—a uniformed man, he was there.

Q. All right, and you have alleged in your petition here that—that they testified, I believe you have here on page 2, that the police officer admitted that he had no probable cause to stop or search the car in which you were riding, nor did he have any warrant for arrest or for searching the car.

A. Best o' my recollection that's right. Only he did after while say that somebody had called 'dis particular car to him the day before or the night before or som' in' and he had a eye on it or som' in', I don't know what he's talkin' about.

Q. Um hum.

A. That's to be best of my recollection.

Q. All right, sir. Now, did—did your attorney, Mr. Lam, cross examine these witnesses that testified?

A. Ah—he might 'ave called it cross examinin' but he didn't say nothin' 'bout arrest or about a warrant nor about searchin' without a warrant or nothin' else. Well,

Q. In other words,

page 23 } A. all he examined, Mr. Lam asked the people that had some money out there, some paper money

Mr. Douglas Perry Lawrence

and a—and a sack, I don't know what the sack had in it, maybe 't'was some mo' money in it—it was what they claim they took out o' the car.

Q. Um hum.

A. And Mr. Lam asked was there any serial numbers or any markin's on that money that could identify it. He say all money I don't know who it was then was the taxi company or but I think it was * * * you know, asked * * * and he said, "No," said, "it wasn't no identifying marks on the money."

Q. Did Mr. Lam object to the introduction of this evidence in the trial, did he object to the Judge?

A. You say did he

Q. To the money and the statements and whathaveyou and —to

A. I don't think so—I don't think so 't-all. Couldn't swear to exactly what who said and who what who did and I was a very sick man when it happened. * * * But I don't think he did I don't remember him objectin' to it.

page 24 } Q. All right, sir. Now, after the evidence was taken and the court found you guilty, was your case referred for a probation report?

A. No, sir, do I didn't know anything about it or hear anything about it.

Q. When were you sentenced?

A. Same day, 13th day of—of—of—of April. Sentenced right then and there.

Q. Did you have any conversation with your attorney and ask him if—that you wanted a probation report?

A. Well, sir, I'm only there to take from the court, I didn't know I was to have conversation wid' 'im.

Q. Well, what—do you remember what he told you?

A. No. He was writing down som' in' I don't know what at that time.

Q. All right, sir. And the Judge went ahead and right away and sentenced you?

A. Yeah, he sentenced me right then and ah—

Q. All right, now, would you tell His Honor here exactly what happened after the Judge sentenced you in this case?

page 25 } A. Yes, sir. Mr. Lam, the lawyer, jumped up and motion' to appeal my case and the Judge overruled and the other words that was said there was a few more words said but I couldn't remember exactly what the Judge said, but I know he sad some' in 'bout 'de case. "There'd be no appeal in this case," and the best of my reco—

of what I could understand what 'e said. Wasn't any use of one or wouldn't be one, one. And I took Mr. Lam by 'de hand, like 'dat or arm, or 'de shoulder, I said, "Mr. Lam, did you hear that, the man overruled an appeal in my case, he *wont* even let me appeal my case?" And Mr. Lam's reply to me was, he said, "What are you going to appeal on?" And he went right out right then and said somethin' to the Judge as he passed towards the back end of the courtroom and I've never seen 'im since.

Q. All right, sir. Did you discuss the possibility of an appeal of your case prior to going to court, in other words, over in the jail?

A. Yeah, I told 'im I wanted to appeal my case if everything wasn't

Q. Didn't go right.

A. —didn't go right to appeal my case, I certainly did.

Q. All right. And did Mr. Lam make a motion

page 26 } at the end of the trial to set aside the verdict as contrary to

A. I don't know 'bout it, he

Q. the law and the

A. might have but I don't remember anything being said 'bout the verdict but I do remember a motion for ah—he said he wanted the case appealed and—and ah—'twas overruled.

Q. All right, sir. Now, after this time did you ever write, did you, yourself, ever write to Mr. Lam to ask him for an appeal?

A. No, sir. Not Mr. Lam, no, sir.

Q. Did you ever write to anyone with

A. Ah—well,

Q. regards to an appeal?

A. Yes, sir, I sent after my court records down here—I sent a—I sent ah—a petition fixed up and a form of pauper's and I asked for my court records and I mean asked for my court records was intendin' for fixin' for that, yes, sir.

Q. All right, now, did—how did you—what sort of mail did you send down?

page 27 } A. I sent a—I sent a certified mail, yes, sir. And a copy of it to the Supreme Court of Appeals. Since we was talkin' (there was a lapse of time between the last sentence and this one) I had it notarized and all fixed up proper by Mr. Purdue and Mr. Fielding up there in Richmond.

Q. Did you write these letters, yourself, sir?

A. No, sir, I didn't, a friend of mine wrote 'em for me.

Q. A friend of yours wrote them?
A. Yes, sir.
Q. But you signed your name
A. Yes, sir, signed
Q. and you signed the pauper's affidavit?
A. That's right. Yes, sir.
Q. And I show you these and ask you if these are copies that you sent for of your record and the letters you sent to the court?
A. Yes, sir, they certainly are, absolutely, word for word 'dey are.
Q. And I show you registered receipt which is "Certified No. 322762" and ask you if this is the receipt that you received from the court of these letters?

page 28 } A. Yes, sir, this is the receipt I received from Virginia Beach, the court here.

Q. Un hum. And that's the one
A. That's here.
Q. that is with your records?
A. Well, no, this is a receipt for a copy of
Q. Oh, this is from Mr. Turner?
A. Yes, sir. The Supreme Court of Appeals of Virginia.

Mr. Ansell: Your Honor, I'd like to introduce this into evidence,
The Court: All right.
Mr. Ansell: I don't know how you want to deal with it.
The Court: All right, I'll mark it and then you can have it back. I'm going to mark it and pin them together and call them Plaintiff's—Petitioner's Exhibit Number Two. Clip them together.
Mr. Ansell: All right.

(Whereupon, certified receipts numbered 322760 and 322762 Post Office Department, letter to Honorable H. G.

page 29 } Turner, Clerk, dated June 1, 1965, pauper's affidavit, and letter to Honorable Richard E. Kellam, Judge, dated June 1, 1965, were entered into evidence, clipped together and marked Petitioner's Exhibit Number Two by the Court.)

By Mr. Ansell:
Q. All right, sir, I would like for you to read these, if—if you would, are your eyes good enough to read these?
A. Yeah, with my glasses.

Mr. Douglas Perry Lawrence

Q. Put those in the record then.

A. Read 'em, you mean out loud or —?

Q. Yes, sir. Read them right out here and start with the date, right on down. Read loud so His Honor can hear it and understand it.

A. Well, says, "June the 1st, 1965. Honorable Richard B. Kellam, Judge, Circuit Court of the City of Virginia Beach, Virginia. Honorable Sir: I appeared before this court on April the 3rd, 1965, wherein I received as upon conviction of a felony, a term of imprisonment of seventy-five years. Since

page 30 } I am a pauper and without sufficient funds to prepay the costs incidental to the preparation of a certified copy of the transcript of record of the testimony and *evidecne* adduced at the time of the trial, I request the court to enter an order in my behalf directing the Clerk of this Court to furnish me with the—with the process of my trial, and to the court reporter to furnish me with a certified copy of the transcript of record. I attach herewith a affidavit of poverty under Virginia Code Section 14-180.1, of the 1964 Code of Virginia, as amended.

"I believe that my request is in keeping with the applicable decisions of the—of the courts in: *Griffin* v. *Illinois,* 351 U.S. 12, and supported in this jurisdiction by *Allen* v. *Virginia,* 374 U.S. at page 93, of the U.S. Reports. Attention is further directed to the opinion of the Attorney General of Virginia, dated, May 22nd, 1964, relative to the provisions of Item 73, and Chapter 640, of the Acts of the Assembly, 1962.

"Kindly reply and advise. I remain, Respectfully yours, D. P. Lawrence, No. 86525, The Penitentiary, Richmond, Virginia 23219—Enclosure: copy to: Chief Justice, Supreme Court of Appeals of Virginia at Richmond."

It says, "State of Virginia, City of Richmond,

page 31 } This is to certify that D. P. Lawrence, the undersigned party, personally appeared before me in my City and State aforesaid, and—aforesaid, the same, who, upon oath deposes and says:

"1. That defendant is a citizen of the United States of America by birth.

"2. That he is a pauper in law, and without sufficient funds to prepay the costs of this suit, and unable to secure the aid of assistance of counsel to represent his interests, as made and so provided for by Sections 14-180.1 of the 1960 Code of Virginia as amended, and Section 19.1-241.1 of the sixty—1964 Code of Virginia as amended.

Mr. Douglas Perry Lawrence

"That on this day (it's not filled in there with the date) of 1965, the said affiant has the sum of $ ..... on his penitentiary spending account." I don't remember what I put in there.

Q. That's all right.

A. It wasn't nothin' but a few cents in the balance there.

Q. All right.

A. "4. That the petitioner—affidavit—affiant—petitioner"

Q. Affiant.

page 32 } A. "Affiant doth verily believe that he is entitled to general relief in this cause, according to law." He has some 'in else here. "Honorable H. G. Turner, Clerk Supreme Court of Appeals, Richmond, Virginia. Dear Mr. Turner:

"Attached hereto please find correspondence and affidavit of *proverty* addressed to the Circuit Court of the City of Virginia Beach, Virginia, a copy of which is directed to the judicial notice of this court for further proceedings to be had.

"Kindly acknowledge and advise. I remain, Very truly yours, Douglas P. Lawrence, No. 86525, State Penitentiary, Richmond."

Mr. Mann: Your Honor, may I find out the date of that last letter?

Mr. Ansell: June the 1st, 1965.

A. Yes, June the 1st,

Mr. Ansell: They are all dated June the 1st, '65. And the date of the trial was April the 13th, 1965.

By Mr. Ansell:

Q. All right, sir. Mr. Lawrence, did you write this petition, yourself?

page 33 } A. No, sir, I didn't.

Q. You are familiar with the allegations in there, are you not?

A. Yes, sir, most, I think so, I read it

Q. Did you

A. before.

Q. Did you go over them with whoever you had prepare this for you?

A. No, sir, I went over 'em by myself, I had

Q. I mean, did you tell the man who wrote it what you wanted?

Mr. Douglas Perry Lawrence

A. Yeah.

Q. All right, sir. Now, you allege here on page 2 of the petition, further that you were refused permission to use the telephone after repeatedly requesting the same. Will you explain this to His Honor?

A. I'll explain it the best of my knowledge. When we turned in that place we asked to use the telephone. Detective said, "Yes, let him have a 'phone call," but we didn't get it. Actually we were put upstairs and plenty upset. And then a few days after my head got a little rest so I thought I could talk on the 'phone somebody asked, I do know

page 34 } who it was, too, Mr. Polk, I asked him one or two more when he come in there but I never took it up with Sheriff Marr. I asked two or three of 'em to let me use the telephone and 'dey didn't say, "No, you can't use the telephone," 'dey didn't say 'dat. They said, "Can't get to it right now, I'm busy," or some 'in', but I tell you now for certain I didn't never get to use one, I'll tell you that truthfully, not to call anybody.

Q. All right,

A. Somebody said he must not o' heared me, I don't know whether he did or had his mind on some 'in else or

Q. And you go on to say that you were denied a preliminary hearing for ten days after your arrest.

A. That's approximately, I—I'm sure

Mr. Mann: Your Honor, I object to any defects of the preliminary hearing. That is a procedural matter which cannot be raised in Virginia.

The Court: That's correct. You can ask him (Could not understand balance of statement.)

By Mr. Ansell:

Q. All right, let me ask you, when was your preliminary hearing?

page 35 } A. Well, that—that's—the day of it I don't know. I don't remember tell the truth eight or ten days or more after I was locked up, I know that.

Q. And were you taken before the court anytime before that?

A. A policeman taken me over to one court but not the one I was sentenced in. We were taken over there to—to—to ah—to sign up to get 'de lawyer, one thing and later on we was taken over 'dere for a preliminary hearing as I understand

it at the time that Mr. Lam, I mean that Mr. McKee gave me over to Mr. Lam, I think it was, told me he was goin' to do it and sent Mr. Lam later, a day or two later over to 'de jail to see me.

Q. All right, sir. Now, going along on this page 2, I believe it is, you mention that your notice of an appeal was given and overruled and that the Judge stated there would be no appeal in this case, ah

A. That was best I could understand what was—he was sayin' but I do know definitely that he overruled the motion for an appeal. That was plain as day.

Q. And did your counsel take exception to that?

A. No, not at all. I tried to get 'im to, but he
page 36 } got up and left me right then. Said what—what
are you going to appeal on or some 'in' he made his remark.

Q. But you did—you did mention to your counsel at that time you wanted to appeal?

A. Yes, sir.

Q. All right, sir. Now, you have alleged here on page 3, that you were denied your right to communicate with your attorney or family and that you were being held *incommunicado,* will you explain that to us?

A. Well, just like I explained to you little while ago, I didn't get a chance to use the 'phone to call or nothin' else, never did. I wanted to get ahold to my niece and two, three more several over here to my relatives but I never did get a chance to do it. I wrote one friend of mine once or twice and I heard from 'im but he was way up in the western part of the state and never—never gotten down—I just give up, I was in a bad accident and I was in that state that I had—I just give up—I give up.

Q. Well, were any of these people necessary to your case? In other words, would they—could they have been used as witnesses in your behalf?

A. Well, yes, sir, in some instances, yes, sir,
page 37 } they could, I would think.

Q. Did you ever ask your attorney to contact these people for you?

A. Yes, sir, I asked him to contact one or two of 'em, a couple of 'em.

Q. Did he do so?

A. No, sir, do I didn't never get any answer. He didn't have 'em in court for me.

Q. All right, sir. Now, let me—let me ask you this. Did

you ever discuss with your counsel the question of your obtaining a transcript of the case or did you just mention it in other terms, in regard to your effecting an appeal?

A. Yes, I told him I wanted to take 'de appeal.

Q. Did you ever expressly ask him for a transcript of the record or not?

A. Yeah, I wanted an understanding that I—that it was necessary for takin' an appeal that I—but I don't remember the words that was said.

Q. All right, sir. And were you familiar with the time limitations on taking an appeal in case of this nature?

A. No, sir. No, sir, not to appeal, I knew it was
page 38 } sixty or ninety days or somethin', I'd heard it but I didn't know if it was true.

Q. Were there any questions that you asked Mr. Lam to inquire into during the trial that were not asked by him?

A. Ah—yes, sir, yes, 'dere certainly was certain things.

Q. Do you recall now what they were?

A. Not all, no, sir, but I do recall that I insisted on him questionin' 'bout what were we stopped for without a warrant and searched when we were already parked at a stop light and—and illegal search and seizure and without a warrant and so on.

Q. And he did not go into the illegal search and seizure?

A. No, sir, don't know—I'm sure he didn't. You ask me, it would be in the record if he did, I doubt it.

Q. Let me ask you this. Do you recall Judge Kellam telling you before this case was ever tried that if you had any questions you wanted to ask if you asked your counsel and he wouldn't ask them to stand up and ask him?

A. Yes, I distinctly remember Judge Kellam sayin' that, I certainly do.

page 39 } Q. And did you ever at anytime think that if Mr. Lam wouldn't ask the question that you would?

A. Well, I—after talkin' to Byrd and them about it I found out it wasn't and so I didn't go—go no further when they told me to just let everything go and let him have it, Mr. Lam, except I didn't—I didn't say anymore to 'im 'bout it.

Q. Did he give any reason—were you given any reason for not asking the questions you asked him to?

A. Well, he said let him have it everything come out better then, that's all the—that's all the reason he give me. But I remember Judge Kellam I—I have to say 'dat he certainly

told me that, yes, sir. Said if that man wont ask the man the questions you tell me and I'll make 'im do it, that's the words that he told me, but I wouldn't do it because the lawyer had already told me to let him have it—let him handle things to suit himself, you know, and everything would be better for me, you know.

Q. All right, sir. Now, on page 5 of your petition here, you have stated that—in here that Mr. Lam was not the attorney of your choice.

A. Well, that is true.

page 40 } Q. Well, let me ask you this, you didn't hire him, did you?

A. No, sir, never signed nothin' for him.

Q. Are you aware that if the court appoints an attorney for you that you do not just choose the attorney you want that you, if the court appoints a local

A. I am now, yes, sir, but he didn't, I mean, the court didn't appoint him for me.

Q. You say the court did not appoint Mr. Lam?

A. No, sir. Only thing that the Judge asked me after Mr. Lam gone ahead and got me all tangled up in the thing, he asked me was it alright to use him, was I satisfied with him, he asked me that, too. I remember Judge Kellam, nothin' wrong about it he asked me that and I said—he asked me how everything was goin' and I said, "Yes, sir, anything's all right with me."

Q. All right, sir.

A. I signed a paper in there for this first court that I went into before the preliminary hearing. 'De Judge give us a blank which—who you want for your lawyer here, I said, "I want Mr. Kellam," I'd heard tell of several he knew his business here, you know, I don't know either one

page 41 } of 'em personally. I—he pushed me back and said this man wants Mr. Kellam. I signed it. But Mr. McKee come and Mr. McKee told me that he was from Mr. Kellam's office. So that satisfied me, I agreed to accept Mr. McKee. But Mr. McKee gave me over to Mr. Lam when it wasn't satisfactory for me at a later date. But I had to let it go on, there was nothin' I could do about it. He represented McKee th'owed me aside and rep—and represented my "rough partner" you call it. I felt mighty bad 'bout it, I have to say it, and I still feel 'dat way, I feel bad 'bout—'bout 'de way Mr. McKee treated me.

Mr. Douglas Perry Lawrence

Q. All right, sir. And you have an allegation, I believe it is number eleven, you say that Mr. Lam's defense was of such a low caliber as to constitute no defense at all.

A. I guess I shouldn't have said 'dat, but it's true.

Q. And that you did not receive his devoted, uninhibited, faithful service. Now, can you explain exactly what you meant, or such

A. Well, it was he wouldn't—he wouldn't—it was just he wouldn't ask nobody nothin' if he just—I

page 42 } thought would help me when I had told him to go on and pull it, he just wouldn't do it, he got around it somehow. Anything I wanted done, just wasn't done. The only thing he done was got up and made a little talk and the Judge had already give me—already found me guilty. 'Course some of it, he told me—told 'de Judge some of the conditions of my health, that I wasn't able to do five years much less, you know, a long time. And that's all, he just wouldn't say nothin', no —no practicin' in court but whether I had due process of law or whether I didn't, he just wouldn't bring 'em out, as the record will show you. You can't see any place on the record where he brought out any points for me, can you?

Q. The record has not been printed up.

A. It hasn't?

Q. No, sir.

A. Well, I mean, you can get it and listen at it. He didn't say nothin' to protect my rights or nothin'.

Q. All right. Now, there are other questions. Did Mr. Lam advise you that you had a right to be tried by a jury, that the court would

A. Well, ah—

Q. call twenty jurymen of which your counsel

page 43 } could strike four and the other counsel could strike four?

A. Well, Judge Kellam did, he told me about that when I was tried.

Q. Did you discuss your plea in the case with Mr. Lam, the fact that you

A. I told him I

Q. could plead guilty or

A. wasn't goin' to plead guilty. He said was there any question about it? I said, "No, sir, I can't plead no guilty."

Q. But you did discuss your plea with him?

A. Yes.

Mr. Douglas Perry Lawrence

Q. All right, sir. Were there any other rights that you are entitled to that you know now that Mr. Lam did not advise you of?

A. All 'at I can remember I—I already

Q. Do you remem—do you remember what he did advise you of when you were over there in the jail and talked to you prior to trial?

A. Ah—he advised me as to my rights?

Q. Yes.

page 44 } A. He didn't advise me 'bout any of my rights. The Judge did. About the jury trial and he told me I could have a jury if I wanted one or a Judge trial if I wanted.

Q. All right, sir. Going on to your allegation number fourteen, you state that you were tried in a hostile court. Can you explain what you mean by a hostile court?

A. Well, I don't know, I didn't tell 'im to put 'dat word in 'dere but what I was tellin' 'im 'de court has to—wouldn't—wouldn't, you know what I mean, it wasn't a general court and the public wasn't there that I could see a lot of policemans was there and that's all, maybe one little girl and a little boy or some'in' I saw in 'ere or maybe two or three could have been in there. I couldn't look back, you know, but it wasn't no court full o' people like it is as a rule when somebody has a trial.

Q. All right, sir.

A. I don't know why 'dese was in 'ere I don't know who 'dey were.

Q. All right, but you got all the attention in there. But the Judge, you say, because of the hostility of the Judge and his prejudice in overruling a motion for appeal.

page 45 } A. Well, it certainly sounded like it to me when he overrule a man's right to appeal and his life was at stake there.

Q. Well, let me ask you this, was there anything that the Judge did to show any bias or prejudice other than overruling the motion

A. No,

Q. for a right of appeal?

A. No, sir, I wouldn't say so, no, sir.

Q. And was this your motion, did you make a motion for appeal yourself, or did your attorney

A. No, was the attorney jumped up and made it at my request but I think—I think I said somethin', too, I don't know whether it is in the record or not.

Mr. Douglas Perry Lawrence

Q. I see. You made no request for the transcript until you wrote your letter to—to the court?

A. I—I—no, I didn't make any request to the court for it, not, sir, until I petitioned 'em for it and sent a form of pauper in there with it. I didn't have any idea they was goin' to send it for the reason that I sent this up all to the court—Supreme Court of Appeals, I'd appealed to 'em before.

Q. Let me ask you this, what was your reason for sending for a transcript?

page 46 } A. Well, reason was for sending for the transcript I wanted to appeal my case, o' course, but since I couldn't get it I had to do anything I could to get some hearin' and then I filed a petition for a writ of habeas corpus. The reason I wanted it for months, several months later, I don't remember how many months later 'de thing is dated there. What date is the habeas corpus there, I don't remember?

Q. Oh, well, that's not under consideration today, Mr. Lawrence, we are just interested in—in your appeal. We spoke before that there was no presentence report at your trial, is that right?

A. I didn't know anything about one, not one for me.

Mr. Mann: I object to that, also, Your Honor, as that is procedural as contained in *Smythe v. White.*

Mr. Ansell: Well, I admit to that Judge, I looked that up ahead of time.

The Court: All right.

Mr. Ansell: I would like to have in here, though, on Mr. Lawrence's behalf on—to keep the record straight, and this—it's in the amendment now, Mr. Mann, with regard the person that looked into the law on this, and we don't feel

page 47 } that this is our main—our main point, as far as we are concerned. Mr. Lawrence has put it into his petition, I think he's entitled to be heard on it.

By Mr. Ansell:

Q. Mr. Lawrence, you allege that, "Approvers shall not be admitted in any case," will you tell the Court what you mean by this, sir?

A. What is that?

Q. Well, I think what you are after is a—is a codefendant that testified

A. Um hum.

Q. at your trial.
A. Yes.
Q. And is that the matter that you are saying here today, that he should not have been allowed to testify, is that correct?
A. Well, I don't think that ah—from what I can learn that it did any good and (could not understand what he said).
Q. Talk louder, talk out loud so
A. I say, I—I don't know, I don't think his—ah—his evidence against me should be acceptable, of course,
page 48 } I don't know, that's my understandin' about the law, I really don't know for sure.

Mr. Mann: Again, Your Honor, we are going into the sufficiency of the evidence that was used in the original proceedings. This is a habeas corpus proceeding and it's not at bar.
The Court: That's correct. If you have followed his (could not understand what the Court said.
Mr. Ansell: All right, sir. Well, I have one more part.

By Mr. Ansell:
Q. You have in this *amendement* that your counsel advised you to say nothing and agree with everything.
A. That's right.
Q. Now, have—you have this in quotes, is this exactly what he told you?
A. Well, it is as well as I can remember, yes.
Q. All right, sir. Answer Mr. Mann.

CROSS EXAMINATION

MR. DOUGLAS PERRY LAWRENCE,
THE PETITIONER

By Mr. Mann:
Q. Mr. Lawrence, have you ever been convicted
page 49 } of a felony before?
A. Well, I think Mr. McKee took care of all that all right, sir. He had dropped me as a client. He come over there and—and brought another attorney with him fo' a witness and had to be mean and ask me that same question and he'd had a lot o' dealin's wid' me, Mr. Reno Harp. You know I've been in prison before. I don't see any need of that, not

being vindictive at all, I don't mean it that way, but I'm just tellin' you, I—I think you already know.

Q. I know, all right.

A. Yes, sir.

Q. But does the Court know?

A. I—I couldn't say 'bout 'dat, now, whether the Court knows or not, but I think you know all right.

Mr. Mann: That goes to the credibility of the witness, Your Honor.

The Court: That's right. Well, your answer is, "Yes," as I understand it.

A. Sir?

The Court: Your answer to his question is, "Yes". His question was, "Have you ever been convicted of a felony?"

page 50 } A. Yes, I know what he said, yes, sir. That's
Q. Your answer is, "Yes"?
A. Oh, yes, that's right, Your Honor.

By Mr. Mann:

Q. Mr. Lawrence, is it not true that you originally employed the firm of Kellam and Kellam to represent you?

A. That is not so.

Q. Not so.

A. No, sir. I didn't employ 'em, but I—I asked—I signed a paper and told 'em I'd like for 'em to represent me. But I didn't employ 'em, no, sir.

Q. You didn't pay anything?

A. Sir?

Q. You didn't pay anything?

A. No, sir.

Q. All right. Well, did your wife pay anything?

A. No, sir.

Q. No one paid anything?

A. Right.

Q. How is it that Mr. McKee happened to come over to the jail to see you?

page 51 } A. I'm unable to answer that question. The court just planned it or somebody did. I didn't have anything to do with it, but he came over there to see me more than one time.

Q. Now what witnesses were you denied to have present at your trial?

Mr. Douglas Perry Lawrence

A. I don't think I have that—that in the petition there that I had any witnesses denied in there, but I could have had some.

The Court: Speak up louder, please.

By Mr. Mann:

A. I say, I—I don't think I had in the —in the writ—petition there that I had been denied any witnesses, Mr. ah

Q. Well, you testified that your attorney failed to contact certain witnesses.

A. Well, I asked 'im to get hold to some o' my people to come here and—so I could—would better myself, you know, in a position for trial.

Q. They wouldn't have known anything about this crime, alleged crime that was committed?

A. No, not those, but he—but I asked him to contact—

page 52 } well, he didn't contact those so I didn't bother about any witnesses.

Q. Now, you have testified that you asked your court appointed counsel to appeal your case.

A. That's right.

Q. Court appointed counsel made a motion to the court to set aside the verdict.

A. I didn't say that. I didn't hear that if he did it. He might have done it, but he made a motion to the court to appeal my case. I'm just statin' exactly what I heared, you know, I mean, I don't know the meaning o' certain things, sometimes I do and don't, but he certainly got up and made a motion at once after I was tried to appeal my case. Whether he said anything about settin' aside the verdict or not, is beyond me.

Q. Well, what was his words?

A. I'll tell you that.

Q. What was his words when he

A. Well, a motion to ah—ah—appeal, for an appeal in this case, and I don't remember what else he said. He might o' said another word or two 'bout the sentence bein' so harsh or some'in', I don't remember whether he did or not. But I

page 53 } do know that he made a motion for an appeal and I know the words of it. And just the minute he spoke the Judge, Mr. Kellam said, "motion overruled," and something like there will be no trial—no appeal in this case but I can't—I can't swear to those words, I can't remember about those.

Mr. Douglas Perry Lawrence

Q. Did you ever give any written statement at all?
A. No, sir.
Q. Did not?
A. No, sir. Never took the witness chair at all. I saw—I saw it wasn't any use.

Mr. Mann: I have no further questions.

The Court: Sit right there, the Court wants to ask some. When—when you were tried on April 13th,
A. Sir?
The Court: When you were tried on April the 13th, of '65, didn't Judge Kellam on the day of your trial ask you if you were satisfied with your attorney?
A. Yeah, he asked me that.
The Court: Didn't he ask you if he had cooperated with you and if he hadn't done what you wanted him to do?
A. I wouldn't say it like 'dat, but he asked me
page 54 } was I satisfied with 'im.
The Court: And what did you say?
A. I—I'm—I'm pretty sure I told 'im so because the lawyer had already told me to agree to everything that ah—to every question.
The Court: And you knew you did not have to take the stand, did you not?
A. Sir?
The Court: You knew you did not have to take the stand?
A. Yes, sir, I think that—I don't
The Court: You
A. think that
The Court: you discussed that with Mr. Lam, too, didn't you?
A. Who was that?
The Court: With Mr. Lam?
A. No, Mr. Lam didn't tell me that, no, sir.
The Court: But you knew you did not have to take the stand?
A. Well, I didn't think I had to, no, sir.
The Court: And you elected not to take the
page 55 } stand, is that right?
A. Well, yes, under those circumstances, after I saw 'de way 'de thing was goin'.
The Court: And was there anything to keep you from writing to these people that you said that you wanted?

A. Yes, sir.
The Court: Well, you wrote to one, how did you do that?
A. Well, I just wrote right straight on out through the office and I heard from him.
The Court: You just wrote the one letter?
A. Yes, sir, I wrote two or three letters but I didn't write many.
The Court: I see. You didn't hear from the others did you?
A. No, sir.
The Court: All right.

Mr. Ansell: Let me ask him a couple things, Your Honor. He has asked me to bring these up here today and I want to bring them up.

page 56 }

RE-DIRECT EXAMINATION

MR. DOUGLAS PERRY LAWRENCE, THE PETITIONER

By Mr. Ansell:
Q. Now, number one, did you discuss with Mr. Lam the possibility of your intoxicated condition as a possible defense or mitigation of
A. Yes, yes, sir, I told him I didn't know what—I couldn't —I'd be glad to tell the

Mr. Mann: Your Honor, he's leading the witness, I mean, putting the words right in his own mouth.
The Court: Yeah, rephrase it, Mr. Ansell.

By Mr. Ansell:
Q. All right. Did you discuss with your attorney any defense that you could—could be made in your behalf?
A. Yes, sir, I did.
Q. All right, now, what was that?
A. Well, ah—my condition, not being able to be on trial and all that kind of stuff is all I know.
Q. Well, we are talking about the time that the alleged incident happened.
A. Oh. Well, would you ask me that over again one time.

Mr. Douglas Perry Lawrence

page 57 } Q. Did you discuss with your attorney any possible defense that you might have to your being mixed up in this alleged offense?

A. Well, I don't think

Q. Did you discuss your physical problem with him?

A. Yes, I discussed that more than anything else.

Q. All right. And tell—tell His Honor exactly what he said about it.

A. I can't very well remember the words—can't remember the words he said, but he told me it didn't make a great deal of difference about that.

Q. Was it ever brought up at the trial?

A. No, I didn't—he might o' said some'in' to Judge Kellam ah—aft—before he sentenced me or some'in' like 'at 'bout not bein' able to stand no si—stiff count or some'in' like at.

Q. Did you ever discuss with him the defense of insanity?

A. No, I did not, no.

Q. And what did you tell him about your health at the time this thing happened?

page 58 } A. I told him I was a diabetic, in bad shape and—and—had—was tryin' to get off a three months' drunk, that I was just shook all to pieces, didn't know what I was doin' at all, and I just really think that he for me just left the best he could. His own brother ain't even tried as I have been caught in a place and—and I was a victim of circumstances. Actually it's a, for a most o' 'de fact I asked him to help me.

Q. Did you tell him that you had been on a three months drunk?

A. Yes, sir. Yes, sir, and I told 'im the truth. And the Sheriff in my county and everybody in it down there where I come from can verify that, too. I have been—ah—I just couldn't get away from it. And see, that's—that's the whole I was—what I was tryin' in 'bout the sentence. I got on the stuff, I mean, that's the way I think it was kin to me 'til it kills me near about. I been on the bottle oh, for several years.

Q. All right, sir, now, finally. You've asked me to bring this to the Court's attention that the Supreme Court of Appeals ordered on October the 12th, 1966, that the said Douglas P. Lawrence demanding the Superintendent

page 59 } of the Virginia State Penitentiary to have the body of the said Douglas P. Lawrence before the Circuit Court of the City of Virginia Beach on the first day of

its next term, to-wit: December 5th, 1966, which court shall hear and determine the matters set forth in said petition. Now, will you explain to the Court what you want to say with regard to this order?

A. Well, how about to your attention with this order says from the Supreme Court of Appeals, here, says, "... directed to C. C. Peyton, superintendent of the Virginia State Penitentiary, commanding him to have the body of said Douglas P. Lawrence before the Circuit Court of the City of Virginia Beach on the first day of its next term, to-wit: December 5th, 1966," shouldn't I been here in December instead of having to just sort of stay on and struggle until now or should I?

Q. Then the important thing is that your trial should have been on December the 5th?

A. That's right, look's like to me so.

Q. Maybe Mr. Mann can

Mr. Mann: Your Honor, if I may say so, with as many habeas corpus cases that are now pending all over the state,

page 60 } it would be impossible for the court to hear every case when it's made returnable. It's made returnable to the first—first day of the next term, but that isn't always convenient with the court in which it's going to be heard.

The Court: Nor with

Mr. Mann: It

The Court: Nor with his counsel.

Mr. Mann: That's correct, Your Honor.

The Court: I understand. I—I'm glad you brought it to the Court's attention if it is any benefit to the petitioner.

By Mr. Ansell:

Q. All right, now, is there anything else that you want to state to the Court with regard to your petition here today? Have you got another point?

A. I can't say one word. I can't, my head is burnin' up in a

Q. Well, is there anything you can think of?

A. I don't know of anything only, we—we've covered the denial of right to an appeal of the case, it looks like to me, thoroughly and illegal search and seizure that hasn't been aired out thoroughly I don't think.

Q. Well, I think you got your point across.

page 61 } A. Well, maybe so, but

Mr. Henry Leslie Lam

Q. Is there anything you want to
A. and—ah—
Q. tell His Honor?
A. wait a minute, there was somethin' here, oh, yeah.
Q. Speak up, please, so we can hear you.
A. Well, 'dat's about it, 'de main thing is to deny a man a right to appeal his case on capital charges—a terrible feelin' to put on a man let it be or it may and it is, in my honest opinion, and I think you'll find it in the law the fourteen amendment, I think it's a constitutional right that a man has, Your Honor, and—ah—and that definitely happened to me, along with—among other things.
Q. All right, sir, thank you, Mr. Lawrence.

The Court: And that's all you want to say? And have you been treated fairly in this court today?
Q. Well, it seem fair today, yes, sir, fine that's what it seem so, fine.

The Court: All right.

(Whereupon, the petitioner was excused from the witness stand.)

page 62 } Mr. Ansell: I'd like to call Mr. Lam.

(Whereupon, Mr. Henry Leslie Lam, who previously had been duly sworn, was called to the witness stand on behalf of the petitioner, was examined and testified as follows.)

MR. HENRY LESLIE LAM

DIRECT EXAMINATION

By Mr. Ansell:
Q. Would you state your name

Mr. Mann: Your Honor, may I
Mr. Ansell: Excuse me.
Mr. Mann: say one word?
The Court: Yes, sir.
Mr. Mann: Sergeant Noble is here and since the petitioner has testified that he did not give any written statements, I would like for Sergeant Noble to be excused. I understand he is on a night shift now.

Mr. Henry Leslie Lam

The Court: You—you have inquired of him?
Mr. Mann: He has a
The Court: He may be excused. Just tell the Sergeant and he may go.

page 63 } (Whereupon, Sergeant Noble was excused by the Court.)

By Mr. Ansell:
Q. Would you state your name and occupation, please, sir?
A. Henry L. Lam, Attorney at Law.
Q. How many years have you practiced law, Mr. Lam?
A. Since 1952.
Q. Are you familiar with the petitioner here, Mr. Douglas Perry Lawrence?
A. I am, yes.
Q. You represented Mr. Lawrence in the trial of his case on April the 13th, 1965?
A. Yes, sir.
Q. Were you appointed by the court in that case, sir?
A. Yes, I was.
Q. Do you know when you were appointed?
A. September 28th, 1964.
Q. And can you tell me if that was prior to the preliminary hearing in this matter?
A. It was. The preliminary hearing was on Octo-
page 64 } ber the 12th.
Q. All right, sir. And was there other counsel in the case prior to your coming in?
A. Not to my knowledge, no.
Q. Did you ever have any conversation with Mr. Thomas McKee with regard to Mr. Lawrence, the representation of Mr. Lawrence?
A. Now, let's see. Ah—Thomas, let's see, Tom McKee I know represented M. Quincy Clark, whether or not he represented this man or not I don't know. It seems to me maybe he had,
Q. Well,
A. but I don't have any reference here to it.
Q. All right, sir. Do you—you have a fair recollection of the facts in this case?
A. Reasonable, yes.
Q. And do you have any records of—of what went on in the case?

Mr. Henry Leslie Lam

A. Yes, sir.

Q. All right, sir. And did you investigate the circumstances surrounding the alleged crime?

A. A reasonable investigation, yes, sir.

page 65 } Q. Did you have the opportunity to personally talk to prior to trial to any of the witnesses on either side?

A. Yes, I did.

Q. Do you recall who you talked with?

A. I talked with Officer Lambert. Now, I was speaking, which trial are you speaking of?

Q. I'm speaking of the trial on

A. Preliminary trial?

Q. April the 13th, 1965.

A. Prior to that time I had talked with Mr. Kay, who is the man in the taxi company, I talked with Officer Hath—Hathaway and I did not talk with, I do not recall whether I talked with Purnell, but I don't think so, and I had talked with Officer Lamber.

Q. You spoke with Mr. Kay, Mr. Lambert and Mr. Hathaway?

A. Um hum, that I recall, that I have reference to here.

Q. All right, sir. And did you go over the allegations of the warrant and later the indictment with Mr. Lawrence?

page 66 } A. I did.

Q. And did you have a full understanding of his case?

A. Did I have or did he have?

Q. Did you have?

A. I had a full understanding of it, yes.

Q. All right, sir. Do you think that he had a full understanding of it?

A. Well, you'll have to ask your question a little bit

Q. All right.

A. better. Do you mean,

Q. I'll

A. did I know whether he knew he was charged with robbery, yes, he knew.

Q. All right. Now, did you ever discuss with him any possible defenses that might be raised at his trial?

A. Ah—any possible defenses, again, you—that's a rather broad question. Can't you break it down a little bit to this case? I mean—

Mr. Henry Leslie Lam

Q. All right, did you—did you discuss any defense

A. All right, in a

page 67 } Q. with him?

A. general, let me put it this way, in response to questions that I had asked him, and so forth, his general defense, he never admitted to me that he had done it. He never admitted that he hadn't done it or stated that he hadn't done it. He said that if he had done it, it must have been because he was drunk. His general reaction to the questions, particular after Mr. Kay had pointed him out in the lower court at the preliminary hearing that, "This is the man that held a gun on me," was that, "Well, Mr. Lam, everybody knows I'm not a violent man." Now, this is the type of, in my estimation, he was no help at all in trying to prepare his own defense, none whatsoever.

Q. Did he tell you that he had been intoxicated for some long period of time prior

A. I've indicated

Q. to this offense?

A. that, yes, sir.

Q. Did you attempt to get any medical evidence through the jail physician or any other place to show whether he was intoxicated to the state that he might not know what he was doing?

page 68 } A. Well, the only evidence that I could—that I knew of was to ask the arresting officers, who indicated that it would appear to them that he had been drinking but was not intoxicated. Now, what other evidence you might get through the jail I don't know of.

Q. Did you inquire of him if he had ever been hospitalized for alcoholism?

A. To my knowledge, no, sir. I found that he had been in prison for some twenty years and I didn't, I mean that question didn't arise in my mind.

Q. That's evidence wasn't it?

A. It seemed to me he wouldn't be an alcoholic in there.

Q. All right, sir. Now, did you discuss with Mr. Lawrence any witnesses that ah—or ask him if he had any witnesses that could help him in the defense of his case, either as far as the alleged incident is concerned or any character witnesses?

A. Yes, sir.

Q. And did he tell you there were—did he note anybody he wanted you to get?

Mr. Henry Leslie Lam

A. He had no witnesses with respect to this case,
page 69 } but he had asked me to contact Mr. Fred Duckworth, he was formerly the mayor of the city of Norfolk, that he knew him well, and would help him. Now, I don't know to what extent or how he would help him but the reaction, if I contacted him he would help him. I did write, at his request, write after him telling me this to Mr. Fred Duckworth requesting that he contact me and said that Mr. Lawrence said that he might be of some help to him. No reply was ever received.

Q. Was Mr. Duckworth living in Norfolk at the time?

A. Yes, I wrote to him at Granby Street.

Q. Did you ever attempt to call Mr. Duckworth?

A. No, sir, I didn't.

Q. All right, sir. Now, I notice, I think you said the preliminary hearing was on October the 12th, and the case was tried April the 13th, was the case under a continuance for any reason?

A. Yes, sir, I have a note here that it was continued on March the 9th, 1965, at my request due to my illness, I think I had the flu. I have a

Q. You think it

A. notation in that respect.

page 70 } Q. It was continued one time?

A. It's the only one I have knowledge of here, yes, sir.

Q. All right, sir. Do you remember the last time you spoke with Mr. Lawrence prior to his trial on the 13th of April?

A. April 7th.

Q. Seventh, that's six days ahead of time. Did you tell him at that time that his case was coming up on the 13th?

A. I haven't any idea.

Q. To the best of your knowledge.

A. I haven't—I don't have any recollection of that, no, sir.

Q. All right, sir. And did you read over the indictment with Mr. Lawrence?

A. Read it to him?

Q. Go over it with him, in anyway?

A. You mean, the fact of what he was charged with in it?

Q. Yes.

A. Mr. Ansell, again you are—you mean to tell
page 71 } me at this time prior to going to court

Q. Prior to it.

A. did I ask him did I know whether he was charged with the robbery

Mr. Henry Leslie Lam

Q. Mr. Lam, what I'm

A. or not?

Q. asking you is, did you go over all the charges against this man?

A. What do you mean all the charges, he was charged with robbery.

Q. Well, I mean, there were several things to do with this particular robbery. Did you go over this with

A. Do you mean did I talk to him about defending this case?

Q. Right.

A. *Y-certainly,* I talked to him from the original time that I talked with him.

Q. All right, and do you know how many times you talked to him?

A. Well, I have notes here that I talked to him on October the 7th, talked to him at the preliminary hearing, which was on the 12th, I talked to him on November the 19th,

page 72 } in jail, talked to him on the 27th of February, in jail, talked to him on April the 7th, in jail, then I talked to him on April the 13th, he day he was tried in the Circuit Court.

Q. Six times?

A. I didn't count them, but that's what it is, I'm sorry. Did you make a note of the dates? One, two, three, six times, yes, sir.

Q. Do you know approximately how long you talked to him each time, or all total?

A. No, sir, I wouldn't, but they were varying lengths of time, I'm sure that none of them were the exact same time.

Q. I see.

A. Approximately an hour on the first time, I couldn't tell you on the other ones.

Q. You would say that you talked with him over an hour?

A. During the whole time?

Q. During the whole time, yes.

A. I talked to him, I would say, at least three or four hours or more over the period of time.

page 73 } Q. Oh, I see, and during that—during those discussions did you discuss with him what plea he would enter?

A. Yes, sir, I did.

Q. And did you advise him what to plead or force him in anyway what to plead?

Mr. Henry Leslie Lam

A. Now, you know I didn't coerce him. Now, to begin with, advising him what to plead, again, it was discussed what the various pleas are. I have a notation here that was made on the 19th of November, one of the questions, "What kind of trial?" I've got a question mark after it, when I get through talking with him I still don't know what his answer was, so I couldn't say that we were going to do this, that or the other. I, it was—

Q. Right.

A. The discussion, when I got through with it, I didn't know what he said either, I mean whether he was for it or against it or wanted the Judge or the Court or what. Later on, before the other trial and it's indicated in my notes on April the 7th, that he would enter a plea of not guilty, I have a—I also have in there with respect to a jury and his answer to me was, "Definitely no, what need there is for
page 74 } it. Now, again, is that an answer whether he wanted to be tried by a jury or not, I don't know, but I would agree with you but it's not one that normally you run into.

Q. Now, you—you—you did discuss with him the fact that he could have a jury or he could have a trial before the court? Did you tell him who the jury would be made up of?

A. No, sir, I did not.

Q. You didn't go into the fact that

A. You mean, whether they would be men, women, or their names, is that what you mean?

Q. No, no, I'm just talking about the fact that twenty people would be chosen and

A. No, sir, I'm sure I didn't tell him that twenty would be chosen and he could

Q. Did you tell him he

A. strike

Q. could have a jury trial or a judge trial?

A. Yes,

Q. And,

A. yes, sir.

Q. all right, now, did you discuss with him his
page 75 } right to remain silent and his right to take the stand?

A. Yes, sir.

Q. And do you know what he chose to do?

A. It was to remain silent.

Q. Was that your advise to him or was that his own decision?

Mr. Henry Leslie Lam

A. I would have to answer that, that it would be of his own choosing, Mr. Ansell, I don't recall. I certainly wouldn't tell a man not to say anything if he wanted to. In the discussion here I've got, "Defendant," this was on the 7th, the last, the 27th, no, this was on February 27th, "Defendant does not want to take the stand." It says here, "Ask him about his background." I told him that the only thing that they could ask him about was the fact of whether or not he had ever been convicted of a felony.

Q. All right, sir. Now, did you

A. Wait just a second. I want to see if there's anything more about taking the stand. On the 7th of April, I've got, "Talked to defendant, told him I couldn't suggest—that *I* couldn't suggest a probation report." "He agreed because of his past record. Defendant still doesn't want to take stand in his own defense."

page 76 } Q. All right. During the course of the trial, did the defendant ever ask you to ask any questions of the police officers that were testifying as to the arrest and the subsequent search and seizure, questions that you would not ask for him?

A. That I would not ask for him?

Q. Yes.

A. I don't recall him asking me to ask any questions.

Q. Don't recall that he ever asked you to ask any questions?

A. I don't recall that he ever asked me to ask any questions, no.

Q. All right, sir. And did you cross examine all of the police officers with regard to a possible illegal search and seizure of the automobile?

A. No, sir, I don't believe that I did.

Q. Did you discuss this with the petitioner here prior to trial?

A. I was familiar with the trial of the—of the Purnell case, in which I'd heard part of that because Mr. Lawrence was one of the three men involved and I had heard

page 77 } part of that when they had that particular trial and the motions and objections made in that with regards to the search and *siezure,* so I was familiar with it. I guess I'll answer it that way.

Q. All right, sir. No—no objection was introduced—was entered by you in your

A. No, I *wont* say that, you may find an objection on the record, I don't have it written down here. I feel certain that there were probably objections raised *althrough* I'm not—I'm not in a position to say so right now.

Mr. Henry Leslie Lam

Q. All right, sir. But then I believe you said that there was no cross examination of the officers with regard to it?

A. Yeah, I believe I said that, yeah.

Q. All right, sir. Now,

A. And again, there are no notes here on that.

Q. Do you have any notes with regard to—to what was going on during the trial?

A. Oh, yes, sir.

Q. Do you have any notes with regard to after the finding of guilty was made by the Judge and sentence was made, you know, in notes or your recollection did Mr.

page 78 } Lawrence ask you to appeal his case?

A. There is nothing in my notes with respect to whether he did or didn't ask me to appeal it. However, in a letter which I later wrote to a Mr. Wallace, an attorney from Richmond who was representing him in a recidivist hearing, I wrote to him that, "I am not undertaking any steps to appeal the Lawrence conviction and told this to Mr. Lawrence at the time of the conviction." This would indicate to me that he had said something to me about it because I indicated to him that I had told him that I was not doing it, so he would apparently have had to have spoken to me about it.

Q. So—now—in other words, you don't remember if he did say something

A. Well, no, but you asked me if I

Q. to you about it?

A. had it in my notes.

Q. Yes, I know, all you are—all you are

A. *Nore* do I have any recollection of him speaking to me about it, except that in my letter which I wrote to Mr. Wallace which was written to him in July, it was July the 20th,

Q. Of what year?

page 79 } A. Of '6—'65, the same year that he was tried in, I make reference in there that I told Mr. Lawrence at the time of the conviction. So I take it from this that I had at that time a memory of him having talked to me about it.

Q. Do you recall whether you discussed the right to appeal with him prior to trial?

A. No, sir, I do not recall that.

Q. And—and you—from your letter you—you—I think you say, "he apparently said something to me about an appeal," but you don't remember what he said?

A. No, I didn't, just didn't say it exactly that way, I said, "My letter would indicate that he did speak to me," I have

no recollection of it but in my letter to Mr. Wallace I said that, "I am not undertaking any steps to appeal the Lawrence conviction and told this to Mr. Lawrence at the time of conviction." Now, my memory at that time was that I told him that I was not doing it but I don't remember anything about whether he asked me or not, but I would have to assume from having told him that he'd—I wouldn't tell him unless he had made some reference to it.

Q. All right, now, your letter to Mr. Wallace, page 80 } that was—was that in answer to a

A. It was in answer to a letter to me as to whether any steps were being undertaken here to appeal his conviction, yes.

Q. All right, sir. And if you wouldn't mind I'd like to have you read your letter to His Honor.

A. Of the record, have you seen his letter? If you (could not hear balance of sentence.)

Q. I don't—I don't know.

A. The letter is July the—do you want me to read his letter to me or my letter to him?

Q. Well, I'd appreciate your reading both.

A. All right. On July the 13th, he wrote to me and this is Mr. Robert M. Wallace. You do have a copy of this letter, I would assume, because a copy of it, it would indicate here, was sent to Mr. Lawrence.

"Dear Mr. Lam:

"The Circuit Court of the City of Richmond has appointed me to defend Mr. Douglas Perry Lawrence in a recidivist trial and this case has been continued until July 28th, '65.

"Mr. Lawrence, according to the record, has been page 81 } four times convicted and sentenced to the penitentiary for felonies. Mr. Lawrence advises me that you represented him on April the 13th, 1965, in the Virginia Beach City Circuit Court on a charge of robbery in which he received seventy-five years.

"It is my understanding Mr. Lawrence was under the impression that you are handling an appeal or that you are taking steps for an appeal of his conviction on April 13th, '65. The court has instructed me to investigate and find what steps are being taken towards perfecting Mr. Lawrence's appeal, and also, whether or not you are continuing with Mr. Lawrence's case. Due to the time factor, would you please be kind enough at your earliest convenience to advise me what, if anything, that you may be doing in reference to Mr. Law-

rence's case, and also, if you have the time would you advise me some of the facts of the April 13, 1965, case.

"Very truly yours,
Wallace and McCordle
s/ Robert M. Wallace"

This was on July the 13th.

On July the 20th, I wrote to Mr. Wallace,

page 82 } "Dear Mr. Wallace:

"I am in receipt of your letter of July the 13th, 1965. Thank you for same.

"In answer to questions raised and for the purpose of brevity, I will try to list the various information desired as follows:

"1. I am not undertaking any steps to appeal the Lawrence conviction, and told this to Mr. Lawrence at the time of his conviction.

"2. I am not representing Mr. Lawrence any further.

"3. Mr. Lawrence was charged with armed robbery of the Beach Taxi Company.

"4. John W. Kay, an employee of the company, testified that Mr. Lawrence held him up with a pistol, took the company money and left. There was no question in his mind as to identification.

"5. A colored male by the name of Purnell was also charged with this robbery and sentenced by a jury to a term of ninety-nine years. He testified that Lawrence "stuck-up" the taxi company and that he, Purnell, at Lawrence's direction tied up Mr. Kay, a company employee, when the rob-
page 83 } bery occurred.

"6. Detective Oral Lambert of the Virginia Beach Police Department, testified that the .38 caliber revolver involved was found in the car in which defendants Lawrence, Purnell and Clarke were arrested. Also found in the car was the money bag containing money loose and in wrappings and taxi company manifestoes. He testified that Lawrence had been drinking but was not drunk.

"7. Lawrence was no help in his defense. I interviewed him numerous times and his sole defense was that he was drunk and remembered nothing about the matter. His additional statement to me on numerous occasions was to the effect, 'Mr. Lam, everybody knows I'm not a violent man.'

Mr. Henry Leslie Lam

"8. He refused a trial by jury and refused to take the stand in his own defense and a trial by the court on a plea of not guilty was had."

And the final paragraph,

"In brief, this is the information concerning his trial here. If I can be of any further help to you, please feel free to contact me.

"Sincerely,
s/ H. L. Lam."

page 84 } I later wrote him on November the 16th.

Q. All right, sir. Do you remember any statements made by The Honorable Richard Kellam with regard to the appeal of this case after sentence had been meted out by the court and your motion to set aside the verdict?

A. Again, I have to ask you, why do you say Judge Kellam, did he try it?

Q. Yes, sir.

A. I remember none, no, sir.

Q. All right, sir. Do your records show that you advised your various discussions with him at the jail?
your various discussioins with him at the jail?

A. If you will specify a particular right you have in mind I'll advise you whether I discussed them with him.

Q. All right, sir. We've been over most of them

A. All right, sir.

Q. but I'm going over some allegations in this petition and

A. Yes, sir, I'll be glad to answer on a specific thing. All of his rights is a right broad question and I'll

Q. All right, sir. You told him of his right to
page 85 } a trial by jury?

A. Yes, sir.

Q. To his right to remain silent?

A. Yes, sir.

Q. Was there any statement introduced at the trial against the petitioner here?

A. A written statement?

Q. Yes, sir.

A. No, sir.

Q. All right, sir. Did you advise him of any rights that he may have subsequent to the trial of the case?

A. With

Q. Any right

A. respect to an appeal?

Mr. Henry Leslie Lam

Q. Yes, sir.

A. If I go—I have no recollection of it. But if I go by my letter that I told him I wasn't, I would have to tell him, I think, what I wasn't doing, so I would assume that one would be in keeping with the other.

Q. Did you tell him that he had the right to call any witnesses that he wanted to in his behalf?

A. I would feel reasonably certain that I did.

page 86 } We had—he didn't have anyone to call but any witnesses that the others brought, the only witnesses that could be reached by the arm of the court, Mr. Ansell, I think. That's what you had in mind wasn't it?

Q. Yeah.

A. All right.

Q. Mr. Lawrence has got—got here in, let me see, under "J" on page 8, I read as follows: that he was

"... denied the right to communicate with his attorney .... and held incommunicado; ..."

Do you know how long it was after he was arrested before you spoke to him?

A. I don't, I—I do not have that information, now, let's see, let me. It was the, I find that, my notes indicate that I was appointed on September the 28th. The incident occurred on August the 31st, now, that's almost a month, so, I do not know, no.

Q. You were appointed on what day?

A. September the 28th.

Q. Two weeks prior to the preliminary hearing, was it not?

A. The preliminary hearing was on the ah—

page 87 } October the 12th, yes, sir.

Q. All right, sir. I think that's all I have.

Mr. Mann: I have no questions at this time.

Mr. Ansell: Just a—just a moment, now, 'till I

(Whereupon, there was a conference between the petitioner and his counsel, after which Mr. Ansell questioned Mr. Lam as follows.)

By Mr. Ansell:

Q. Mr. Lam, did you make a motion to the court to appeal this case?

Mr. Henry Leslie Lam

A. Not to my knowledge, no, sir. Any motion to set aside the verdict was overruled, I have no notes here, not a note nor any recollection of making a motion to appeal. The motion to appeal is made in writing and I certainly have no written appeal.

Q. To your knowledge you did not indicate to the court

A. That he wanted to appeal?

Q. Yes, sir.

A. Not to my knowledge or the notes that I've got in my file.

Q. That's all we have.

page 88 } The Court: Mr. Lam, did I understand you to say that it was his election to take the court?

Mr. Lam: Yes, sir.

The Court: He did not want a jury?

Mr. Lam: No, sir, he did not.

The Court: Did you hear Judge Kellam ask him if he was satisfied with counsel as of the day of trial?

Mr. Lam: Judge, I hate to answer you, but I'm not sure, but Judge has quite a few questions he asked and I'm sure that was one of them, but I—I

The Court: You didn't know you were ineffective at that time? He hadn't complained had he?

Mr. Lam: No, sir, I—

The Court: All right.

Mr. Lam: I hadn't heard him complain at that time.

The Court: All right.

Mr. Mann: (To Mr. Ansell) Are you resting?

Mr. Ansell: Yes, we are resting.

The Petitioner rests!

Mr. Mann: All right, I'll call Mr. Lam, now, to be questioned.

page 89 } The Court: All right.

(Whereupon, Mr. Henry L. Lam, who was on the witness stand remained there on behalf of the Commonwealth, was examined and testified as follows.)

MR. HENRY L. LAM

DIRECT EXAMINATION

By Mr. Mann:

Q. Mr. Lam, did the petitioner ever make any complaints to you about any illegal search or being searched without a warrant?

A. To my knowledge, the petitioner did not, no. The issue had been raised in this particular case, Mr. Mann. There were three different defendants involved in this thing and the—ah—Purcell, I think, the colored male had been tried at sometime prior to Mr. Lawrence's case. This was—the three—there were three attorneys at that time, Mr. McKee, Mr. Addison and myself involved as I recall. We had gotten together prior to the time that the earlier case was tried and discussed this matter. To my knowledge this was moved on and debated and so forth in the Purnell or Purcell trial, so,

page 90 } I don't know whether I've answered any of your questions directly or not. We all had knowledge of it, yes, and my—my recollection is, of course, in that case it had been overruled. I think that case was tried by Judge Wahab, that's right.

Q. I don't know whether you've answered this question or not, but did the petitioner ever complain to you about his being denied the use of using the telephone while he was in the jail?

A. No, sir, not to my knowledge.

Q. That's all, Your Honor.

MR. HENRY L. LAM

CROSS EXAMINATION

By Mr. Ansell:

Q. Mr. Lam, let me make—were you appointed on September the 14th, or September the 28th?

A. Mr. Ansell, my notes indicate on September the 28th.

Q. I show you the form from the Municipal Court

A. Um hum.

Q. and ask you if it shows who was appointed in this case and what the date was?

page 91 } A. All right. Judge, I—it's dated September the 14th, and appoints Kellam and Kellam, and then there's a line drawn through that and H. L.

Lam is written, and then, let's see, go on down, again on the 14th, is that right, the court appointed me on that date. I would say that would be the 14th. My notes that I have reference to, the probable date the information came to me, Mr. Ansell, all I have at the top of my notes is just September the 28th, of '64, appointed to defend.

Q. But you are not familiar with Kellam and Kellam's office being in this case?

A. No, sir, I'm not familiar with them being in it, no, sir.

Q. All right, that's all.

Mr. Mann: I'd like to call

The Court: You can stand down, Mr. Lam.

Mr. Mann: Detective

Mr. Lam: All right.

Mr. Mann: Oral Lambert.

The Court: Are you through with him, Mr. Ansell, are you through with him?

Mr. Ansell: Yes, Your Honor.

Thank you.

page 92 } Mr. Ansell: Wait a minute, Mr. Lam, if you would please.

(To the petitioner) Do you want to ask Mr. Lam any questions? Do you have anything you want me to ask him?

The Court: See if he wants to ask him any questions.

The Petitioner: Yes, sir. Something that is certainly hasn't been too good and I go out o' my mind, here in the court I guess.

Mr. Ansell: Maybe you could ask Mr. Lam, Your Honor, after the other witnesses if he would come back, before you go.

The Court: I know what

Mr. Lam: Not if I can avoid it.

The Court: it is, if you can avoid it.

Mr. Lam: I'll be glad to come back if you require it.

The Court: Well, now—now, let's

Mr. Ansell: Will that be all right, Douglas?

The Court: All right, Mr. Lawrence, we're going to let him go back to his office. If you think of the question we'll have to call him and bring him back.

page 93 } The Petitioner: Well, I hate to put him to that trouble, but it was something that was puzzlin' me. I'll thought of it then, too.

Mr. Lam: Well, I'll have to come back then.

(Whereupon, Mr. Henry L. Lam was excused from the witness stand, and former Detective Claudiust Oral Lambert, Jr., who previously had been duly sworn, was called to the witness stand on behalf of the Commonwealth, was examined and testified as follows.)

MR. C. ORAL LAMBERT, JR.

DIRECT EXAMINATION

By Mr. Mann:

Q. Would you please state your full name and occupation, sir?

A. Clauduist Oral Lambert, Jr., and I am now on a leave of absence from the Commissioner's, City Commissioner of Revenue's office, temporarily director of a political campaign headquarters.

Q. Are you a former detective?

A. Yes, sir, I am.

Q. Do you recall the case of Douglas P. Lawrence?

page 94 } A. Yes, sir.

Q. When Mr. Lawrence was arrested, was there probable cause for his arrest?

A. Yes, there was.

Q. Would you please relate that to the Court?

A. The—a robbery had taken place at the Virginia Beach Taxi office on Virginia Beach Boulevard, and we received from the victim a description of the two who had robbed him, they being a white male and a colored male. And he gave us a description of their clothing. Just prior to the robbery an automobile had been seen in the vicinity of the Beach Taxi office which was occupied by a white male and a

Mr. Ansell: Your Honor, I object, I mean unless he knows, unless he noticed the automobile himself I object to it.

The Court: That's all right if he knows what occurred, I mean, I don't—as a police officer.

Mr. Lambert: I received information by Police Radio.

The Court: I think he can say on information. I believe that's all right.

Mr. Ansell: Well, I'd like—I'd like to know who

page 95 } the information is from, Your Honor.

Mr. C. Oral Lambert, Jr.

The Court: All right, well, we'll ask him. Who was the information from, Officer?

Mr. Lambert: I'll have to check my report, Your Honor.

The Court: All right. Or if you want you can just say, on information you did so and so, you can say that.

Mr. Lambert: All right, sir.

By Mr. Mann:

A. I received, myself, from the victim a physical description of the two men who had robbed him. On information I went to a stop light located on Virginia Beach Boulevard at Thalia, where an automobile had been stopped. Upon approaching the automobile I saw it was occupied by two white males and a colored male. The one white male, occupying the passenger seat in the front, fitted the description as given to me by the victim of the robbery. The colored male, who was in the rear of the automobile, the back seat, fitted the description of the colored male that was given to me by the victim. It fitted it to a "tee", the clothing and their approximate ages, and what have you.

Q. Was there any

page 96 } A. Ah—excuse me.

Q. Was there any need for a search warrant?

A. No, sir. I don't—I didn't feel that there was any need for a search warrant. I knew that a robbery had taken place and I knew from what the victim had told me that the robbery, that he was robbed by a white male and a colored male and the two men before me at the automobile at Thalia fitted the description to a "tee", and acting on probable cause I looked in the automobile and

Mr. Ansell: Well, let me, Your Honor, I don't want to belabor the point, but I think if he had probable cause to be where he was at that point, maybe he had probable cause to go on further, but we haven't heard the least bit of probable cause to stop that car at the Thalia light.

The Court: Well, you'll have him on cross examination. I think he can tell

Mr. Ansell: Well, I think it's inadmissible.

The Court: He's merely—he's merely saying what he did.

Mr. Ansell: All right.

The Court: Just what he did, that's what he testified to.

page 97 } By Mr. Mann:

A. We then searched the automobile and found

under the right front passenger seat a bag containing money which was mark—which was wrapped in money bands, the paper bands around paper money and they were stamped, "Beach Taxi, Incorporated." We also found under the seat where Douglas Perry Lawrence was sitting a .38 revolver, the serial number on that revolver had been filed from the butt of the gun and I had received information from the victim that the person robbing him was armed with a blue .38 snub-nosed revolver, and this gun fitted the description given by the victim. We had also received information from the victim that the colored male had been armed with a tire tool and a tire tool was found in the floor board of the automobile in the back where the colored male was occupying the automobile.

Q. He's your witness.

MR. C. ORAL LAMBERT, JR.

CROSS EXAMINATION

By Mr. Ansell:

Q. Mr. Lambert, did you stop the car at the stop light?

A. No, sir.

page 98 } Q. You did not?

A. No, sir.

Q. So you don't know of your own knowledge whether there was any cause to stop that car at that point or not?

A. Yes, I do.

Q. All right, sir. Explain it, explain what the cause to stop that particular car was.

A. As a result of information received by the Police Radio we knew

Q. Well, who

A. that an automobile

Q. Well, let's—let's go back. Where did this information come from?

A. It came from an Officer in a Police Car. Now, if you'll give me a moment I'll tell you his name. This happened over two and a half years ago and I can't remember his name right now. Patrolman January and Patrolman Raiford. As a result of information received from Patrolman January and Patrolman Raiford, who were on duty at the time,

Q. Did you hear their report?

A. That's right, that a—that a 1956 or '57 Chevrolet, with a green bottom and a white top, bearing Virginia

page 99 } license 494 131 and occupied by a white male and a colored male had been seen in the vicinity of the Beach Taxi just prior to the robbery. After receiving a description that a white male and colored male had robbed the Beach Taxi, then, of course, we were on the lookout for that automobile and this automobile was seen going west on Virginia Beach Boulevard by Patrolman Clyde Hathaway. Patrolman Hathaway advised me, over the Police Radio that he had spotted this automobile traveling west on Virginia Beach Boulevard and advised me that he would follow the car until I could reach him. He was then instructed to go ahead and stop the car at any lighted intersection and when they—when they got to Thalia and Virginia Beach Boulevard, which was a lighted intersection, he stopped the car and I arrived on the scene just minutes after he stopped it.

Q. All right, sir. Subsequently to Lawrence's trial did you not testify with regard to this search and seizure in another trial?

A. Yes, sir.

Q. Here in court?

A. Yes.

page 100 } Q. And did not the court in that case say that in order for you to prove a valid search and seizure and your probable cause to stop that car that it was necessary that Patrolman January and Patrolman Raiford be called to testify on their own behalf? In order that the—in order that the defense counsel could cross examine?

A. I—I recall that there was some question about that, but I don't recall exactly what—what the question was.

Q. Well, one—one of those Officers was brought here was he not?

A. Yes, sir. I believe, I'm fairly certain one of them did —did come here. I don't know if he testified or not.

Q. All right, let me ask you this, did Mr. Henry Lam cross examine you in your—in—in the trial of Douglas Perry Lawrence? Did he ask you any questions that you know of, do you remember?

A. I don't recall if he did or not.

Q. I think that's all that I have.

Mr. Mann: That's all I have at this time. I'd like to call Patrolman—Patrolman Clyde Hathaway.

page 101 } Mr. Lambert: May I be excused, Your Honor?

The Court: Are you through with him?

Mr. Mann: Yes, sir.
The Court: All right. You may be excused.
Mr. Mann: Thank you.

(Whereupon, Mr. C. Oral Lambert, Jr. was excused from the witness stand, and Police Sergeant Clyde DeForest Hathaway, Jr., who previously had been duly sworn, was called to the witness stand on behalf of the Commonwealth, was examined and testified as follows.)

SERGEANT CLYDE DEFOREST HATHAWAY, JR.

DIRECT EXAMINATION

By Mr. Mann:
Q. Would you please state your full name and occupation, sir?
A. Clyde DeForest Hathaway, Jr., Police Sergeant, City of Virginia Beach.
Q. Sergeant, do you recall the case of Douglas Perry Lawrence?
A. Yes, sir, I do.
Q. Did you make an arrest in that case?
page 102 } A. Yes, sir, I did.
Q. Was there probable cause for the arrest?
A. Yes, sir, there was.

Mr. Ansell: I object to that type of question, Your Honor. It's asking for a legal conclusion.
The Court: Well, he can ask—I reckon he can ask him what he
Mr. Ansell: He got away with it last time.
The Court: I was going to say, you made no objection to it last time. He can ask him what he did, or what he knows about it that will show the cause.

By Mr. Mann:
Q. Tell the Court what you know about it.
A. I was a Patrolman then and I was assigned to a car that was primarily concerned with working Virginia Beach Boulevard, and when the first transmission of an armed robbery of the Virginia Beach Taxi cab office was put up

Mr. Ansell: Your Honor, I'm going to object again at this point that it is hearsay that Mr. Hathaway is going to testify

as to and the only way he has to rebut it is to have the people here who actually made this transmission.

The Court: I think he could ask—I think Mr. Mann can ask him what he did and he can say what he did on information, I think that's the way we are going to do it.

page 103

Mr. Ansell: Well, Your Honor, I note an exception.

By Mr. Mann:

Q. Go ahead, now.

A. On information that I had received, I observed a vehicle answering the same description as the information I'd received proceeding east on Virginia Beach Boulevard. I started following it and along about where Bonney Road intersects with Virginia Beach Boulevard I checked to make sure that I—that the license number corresponded with the one that I had received and it did. Upon reaching the traffic light at the—at Route 58 and Thalia Drive I stopped the vehicle. Upon arriving up at the driver's side of the vehicle I observed that there were two white males in the front seat and lying on the floor of the rear seat was a colored male. The driver of the vehicle proved to be Mr. Clarke and the passenger on the right front was Mr. Lawrence and the colored male in the back seat was Mr. Purnell. The—I then asked the—Mr. Lawrence corresponded physically in the description that I had received. I had all three of them get out of the car and held them in that manner until another car arrived.

page 104

Q. So there was probable cause to search the car?

A. Yes.

Q. Did you search the car?

A. I did not search it until Detective Lambert arrived.

Q. That's all.

SERGEANT CLYDE DEFOREST HATHAWAY, JR.

CROSS EXAMINATION

By Mr. Ansell:

Q. Mr. Hathaway, you received your information over the radio from Patrolmen January and Raiford?

A. Yes, sir.

Q. And they are not here today are they?

A. No, sir, I haven't seen them.

Sergeant Clyde DeForest Hathaway, Jr.

Q. All right, sir. And are you familiar with another trial of this case in which testimony required their presence?

A. I know one of them was present for the, I believe the last trial but I don't believe they were both here.

Q. Um hum. Now, are you—were you cross
page 105 } examined in this case by Mr. Henry L. Lam?

A. Yes, sir, to the best of my recollection.

Q. You were. All right, sir. Now, you had—you had no reason to stop that car other than the transmission that you had heard over your Police Radio?

A. Yes and no. I would have stopped the car anyhow, because when I first started following it, the car immediately slowed at the 55 mile zone and the car immediately when I swung in behind it slowed to between 30 and 35 and maintained that speed. At that particular hour of the morning I believe I would have stopped the car to check it out anyhow.

Q. But you wouldn't have stopped it for this particular offense?

A. I wouldn't have stopped it for this particular offense, no, sir.

Q. All right, sir. (Could not hear Mr. Ansell's question.)

A. We were right behind them.

Q. All right, and neither you nor Mr. Lambert had any warrant to arrest or search the automobile did you?

A. No, sir.

page 106 } Q. All right, that's

The Court: What—

Mr. Ansell: that's all.

The Court: What time of the night was it, Officer?

A. Approximately three-fifteen a.m., in the morning, Your Honor.

Mr. Ansell: I have nothing more.

Sergeant Hathaway: May I be excused?

Mr. Mann: Yes, sir.

The Court: Yes, sir, you may be excused. You might ask

Mr. Ansell: (To the petitioner) Is there anything you want asked of Officer Hathaway?

The Petitioner: No, I don't think—we were just stopped at the stop light when he come up.

Mr. Ansell: You all had stopped at that stop light when he stopped you?

Sergeant Hathaway: I had followed it and the light changed to red when we arrived at the traffic light.

Mr. Ansell: All right, sir. Thank you, sir.

Sergeant Clyde DeForest Hathaway, Jr.

The Court: You might ask Mr. Lawrence if he has thought of that question for Mr. Lam, we'll bring him
page 107 } back here.

The Petitioner: I don't think so, Your Honor.

Mr. Ansell: Have you—is there anything at all that you want to say before we have argument of the case?

The Petitioner: Not at all.

Mr. Ansell: All right, sir. If you think of anything after you let—you let me know.

The Petitioner: All right.

(Whereupon, Sergeant Clyde D. Hathaway, Jr. was excused from the witness stand.)

ARGUMENT MR. W. LEIGH ANSELL

Mr. Ansell: Your Honor, I want to go over these points and save my best point for last, if you don't mind. But we feel that the record shows here that there was another attorney appointed in this case, not that it makes any particular difference, but the fact that this man who was on trial in a capital offense had an attorney appointed for him and eventually, we—we don't know exactly what happened. Mr. Lam said his records indicated that he was appointed on the 28th, where the record shows that, I think, it appears to me the petitioner can show that Mr. Kellam's office was appointed in the case and later Mr. Lam was
page 108 } substituted or Mr. McKee, who turned out to represent another one of these defendants who, by the way, was sentenced to five years and it differs to ninety-nine and seventy-five for the other two defendants.

Mr. Lawrence I think has tried to tell the truth the best he can here today. He—he obviously doesn't remember a whole lot, I think the man is not in the best of health but he says that he did discuss his case with his attorney and he felt his attorney should have been familiar with the case but that his attorney did not properly cross examine witnesses with regard to the search and seizure which we have heard here today and also with regard to this fact which did come up at a later time that as to whether it was an illegal search and seizure or not. He testified—his testimony is that sometimes with Mr. Lam and how long and how many times he saw his attorney. Which again any one of these individual things might not add up to ineffective assistance of counsel

but all of it together certainly could. He testified that he talked with him two or three times for a total of approximately thirty minutes. The indictment was never read to him and my notes say that he doesn't know that if the warrant was read to him but he did go over the case

page 109 } with Mr. Lam.

You've got to remember here, Judge, that we are talking about a man with a sixth grade education and even though he's fifty-nine years old and I'm certain—I'm certain he has picked up some knowledge in that amount of time, we are dealing with a man who is not an educated person and doesn't know exactly what to do in a situation such as this.

With regard to any witnesses that were supposed to be called, he said that he did have some people, such as his nephews and what have you, which they could not—he testified on the stand there was no one he could call with regard to this particular offense but there were some people that he could call in his behalf, he told us that I think he had a nephew and whathaveyou. And from Mr. Lam's statement that he asked him to contact Mr. Fred Duckworth, Mr. Lam said he wrote a letter and never had any reply but this particular witness was only in the city of Norfolk which all of us call every day, and I think that in a case such as this, armed robbery which a man could loose his life and two people got seventy-five and ninety-nine years in, I think certainly it was worth a 'phone call to a man who used to be the mayor of Norfolk who, I'm sure, if he came down here and

page 110 } spoke to this man's behalf the jury or judge, whoever was trying the case would certainly sit up and listen, and I think that this is an important facet of this particular appeal here today to the court.

Now, Mr. Lam said that he had—he had with regard to cross examination of the witnesses, said that he heard the Purnell trial and that he had heard some of the court's rulings and whathaveyou and the petitioner takes the position that what the court may have ruled in a prior trial is not necessarily what the court would rule at a subsequent trial if the petitioner—if the defendant could come up with evidence and law to sustain his position and, of course, here we are talking about in regard to this illegal search and seizure and I think that through these witnesses that there were other witnesses that should have been called which were not called in this case, which we say should have been gone into. The Police—Police Officers should have been cross examined and the evidence should have been objected to and exceptions noted.

Evidently Mr. Lam did discuss the possibility of a probation report with the—our petitioner here, that's what the testimony is at this point. That also that the
page 111 } petitioner did and Mr. Lam did not object to the entry of it in the evidence of the case. This I feel is necessary in any case, whether what you are objecting to is allowed or not, I think you—you should always object to any evidence that can possibly send your client to the penitentiary for some period of time.

Now, there is a difference in the testimony, Mr. Lawrence has said that he asked Mr. Lam to ask several questions which he refused to do with regard to I think illegal search and seizure and he said he did not know of any questions that he asked. But I feel like the evidence here indicates that such questions would be normal to ask in a—in a situation like this where it's illegal search and seizure and lack of a probable cause to stop the car would certainly allow this man to be freed if the Police did not have any. These questions should have been asked whether it—whether they were heard in a prior court or not.

A defendant in a case always has the right of an appeal and just because in a circuit court he had heard something before I don't believe gives an attorney cause not to ask questions which should be potent in an appeal procedure from the Circuit Court up.

page 112 } Now, Mr. Lam stated this with regard to the man aiding himself in preparing his case, he said that, the note that I have is that he was no help in preparing his own case, and you must remember here that no defense was offered in behalf of this man and this man received a prison term of seventy-five years and it is my position that in any case in which there is a capital offense, period, and if the man is not able to aid in his own defense whether it is overruled or not the attorney should attempt to at least have the court the jail physician examine the man and come over here to the Circuit Court prior to trial and put on whatever evidence he has that the man is unable to aid in his own defense because if he can't aid in his own defense he shouldn't be tried and the man had told him, it's uncontradicted that the man had told him that he had been drunk for three weeks before this thing happened. And I'm not saying that—that alcoholism would alleviate what he did wrong, but I'm saying if—if it put his mind in such a state that he didn't know the difference between right and wrong then he certainly should have posed this defense at the trial. Mr. Lam says that to the best of his knowledge he didn't remember cross examining the—the Police Officers. This I realize could be

page 113 } considered as a trial technique but under the circumstances such as search and seizure I feel that it was—well, that it would be adequate counsel to go into that more, just as strongly as possible. Here was probably the only real defense, legal defense that he would have with which to get this man off.

Now, finally, Your Honor, it is our position that this man, and this is true in his own testimony, in Mr. Lam's testimony, and through a letter which he had sent to the court with a copy to the Supreme Court of Virginia, named a, not only an attempt but an expressed attempt to appeal his case after conviction and after sentencing and that nothing was done either by his court appointed counsel or by the Circuit Court in failing to send him, or to appoint him counsel and failing to send him the record in this case. And I think that the letter that Mr. Lam read all of this was within four months after the date of trial. The trial date in this case was April the 13th, 1965. Mr. Lam, my notes—my notation says, "He apparently said something to me, I wouldn't have told him . . . ." and I lost it right there, Judge, but I wouldn't have told him something with regard to an appeal unless he had asked me. So he made some sort of overt act to Mr. Lam with regards to an appeal. He had—he had an attorney in

page 114 } Richmond write to Mr. Lam later on. Now, I believe he, let's see, he wrote this it was after the sixty day period but it was within the four month period, he wrote to the court, he wrote to the—he wrote to the Circuit Court here to the attention of Judge Kellam on June the 1st, which is well within the appeal time, citing cases sending along with it his paupers affidavit that he did not have sufficient funds to pay for the transcript of this case. Now, he had—he was sending this to the court, this was number two of his affidavit that he is a pauper, in law, he is without sufficient funds to prepay the costs of this suit; and unable to secure the aid or assistance of counsel to represent his interests, now, this along with the letter to Judge Kellam, along with the testimony that we have here that he said something to Mr. Lam with regard to this and also this point which I think is very necessary that in ah—this is going back a little bit, if Your Honor will indulge me, and Mr. Lam said he didn't recall ever saying anything with regard to an appeal to him either before or after the trial, which I think it is necessary that a man be advised of his right to appeal prior to his trial—and subsequently to it. And I feel that the letter that Mr. Lam wrote to Mr. Wallace, that he felt that

page 115 } his representation of the man had ceased at the time of trial. Now, I'd like to quote, if I might,

it would be *Cabaniss* v. *Cunningham,* 206 Va. at page 334, Justice Spratley speaking for the court pointed to the holdings of the United States Supreme Court said that an indigent defendant has a constitutional right to a free transcript of the record of his trial and to have the assistance of counsel in perfecting an appeal with—from his conviction. There he said, ". . . The right to defend includes the right of assistance in perfecting an appeal." Further in the case of *Billy Junious Russell* v. *C. C. Peyton,* 207 Va., at page 469, in this the court erred it says. I'm going to read a couple of paragraphs if Your Honor please.

"Respondent, Peyton, concedes that Russell did raise the question of appealing his conviction, but he argues that there 'was merely a discussion of the possibilities of an appeal,' and that Russell 'did not make a specific demand of his attorney to appeal the case.' Thus the narrow issue before us is whether the conversation between Russell and his court-appointed attorney constituted a request for an appeal."

Now, this is the point.

"We cannot agree with the argument of the respondent that Russell had to make a specific demand of counsel for an appeal. It may be reasonably inferred from the evidence here that Russell desired an appeal and that he
page 116 } indicated to counsel that he wanted to appeal. . . ."

Now, it is my opinion here that Mr. Lawrence not only indicated to his counsel that he wanted to appeal but he wrote the court within the appeal period limitation that he wanted to appeal. Now, this—this letter is not an express requisition for a counsel to be appointed but he is asking—he's—he's telling that he is a pauper, he's asking for the court to furnish him a transcript and he is saying in his affidavit that he is a—that he is a pauper without sufficient funds to pay the costs and he is unable to secure the aid and assistance of counsel to represent his interests, and I don't see how the court can think any other way than that this man here was telling the court that he had no assistance of counsel and was asking to appeal his case well within the period of time. And it goes on here,

". . . . An indigent is entitled to an appellate review as adequate as that available to a person with funds to obtain a proper record. . ."

Now, I don't know what else this man could have done with a sixth grade education to show either his lawyer or to the court by, I mean, he even took the pains to right it himself that he asked the clerk to sign, he sent it registered so he would have a record of what he was trying to page 117 } do. I mean he wasn't trying to do it just to come here on *habeas corpus,* he was trying to do it so he could appeal his case. And it makes no difference whether—whether he had aplenty to appeal his case or not, the law of the land is now that a—a defendant once he is convicted has an absolute right to appeal his case, whether his counsel feels that he has a—has a case or not. And I would humbly ask the Court that this law is very strong and it is very recent law, it hasn't even been bound into a book yet at this point, and this is a law of the State of Virginia now and I think this man well comes under it.

The Court: What he said on the stand is in the transcript.

Mr. Mann: Sir?

The Court: I'm interested in the transcript from what he just said, of the trial itself.

Mr. Mann: I would like a transcript to be made of a portion of this trial.

The Court: All right, sir.

ARGUMENT: MR. CURTIS R. MANN

Mr. Mann: There is one recent case, *Peyton* v. *Webb,* 207 Va. 417, that holds that there is no duty upon page 118 } counsel or the court to advise every defendant of his right to an appeal in the absence of some indication that an appeal is desired. This is the question here. Are we going to believe his attorney or are we going to believe the petitioner? We don't know what he had in mind when he wanted his records from the court, but it would appear that he had in mind filing a petition for a writ of *habeas corpus.* This man is—it's not the first time he has been before a court. He was familiar with what goes on in the penitentiary and someone in the penitentiary could have very easily prepared the records for him to send on to the Supreme Court. In that *Peyton* v. *Webb,* that case went on to hold that even if the petitioner was detained without a warrant before he was indicted the Commonwealth is not deprived of its right to enforce its criminal laws if the petitioner's detention did not deprive him of obtaining evidence in his behalf. It has not been—it has been shown here today by the testimony of the Officers that there was probable

cause to arrest this man. It needed no search warrant to search the automobile.

The petitioner has testified that he had no witnesses that could have helped him as far as the case was concerned. He may have had some relatives but no one *would*
page 119 } could come in and testify that had any knowledge of what took place.

We say that the petitioner has not been denied his appeal and we do not feel that he has carried that burden to show that he has been denied an appeal. There was no statement given, he admits that himself and as far as the transcript is concerned, I'm not so sure that every petitioner or defendant is entitled to a transcript. If he's appealing from a *habeas corpus* proceedings which is taken care of by the appropriations act, well, I can go along with that, but I'm not so sure that every—every defendant is entitled to have a free transcript. He could very easily obtain a denied statement from the court. As a question, he should take his case to the Supreme Court of Appeals and request them to appoint counsel for him. This was not employed counsel. Counsel was appointed by the court, when the case was over with his duties ceased with the petitioner. The counsel has testified that the petitioner was not cooperative with him, so he had to get out of the case. He was—counsel not only talked with the petitioner, he listed the dates, six different times that he talked with the petitioner, so it wasn't a question of having ample time to prepare the case. It's been sometime since it happened, so naturally, everyone cannot recall
page 120 } every detail.

We say that the petitioner has not *born* the burden of proof here today to show that he was deprived of any of his constitutional rights. And we respectfully request that his petition for a writ of *habeas corpus* be denied and dismissed and the petitioner remanded to the custody of the Superintendent of the Virginia State Penitentiary.

Thank you!

REBUTTAL MR. W. LEIGH ANSELL

Mr. Ansell: I'd like to have a chance to rebut what he just said. The case that Mr. Mann referred to and he read to us from it doesn't make it—as far as this ah—he said that—I didn't catch the exact words but he mentioned that in the absence of some express showing that an appeal is desired, or some showing that an appeal is desired. Mr. Lam said on this witness stand that the man must have said something to him in regard to an appeal of his case, he doesn't remem-

ber what it was but he said he must have said something to him with regard to it. The letter from Mr. Wallace indicated that he said something to him because this man must have told Mr. Wallace that he was under the impression that Mr. Lam was handling something for him. And

page 121 } you can't give any more of a desire than you want to appeal, I don't believe, than to ask for a transcript. Now, why he would want to file for a *habeas corpus* within the appeal period I wou—I don't know. He's—he's trying to use the idea that this man has spent a lot of time in prison and knows all of the ins and outs of the appellant procedure. Now, this is to me, is just not an argument whatsoever. Now, this man, that's why—that's why we go to law school so we can learn the proper procedures and then people depend on us and I'm sure that—I think he did as well as he could to do exactly what he did. And I think that the evidence is overpowering that he—that he desired and asked for an appeal.

Then, he—he's mentioned that someone in the penitentiary could have prepared an appeal for him. Now, Your Honor, look here, I don't think this is any honor! I'm—granted, I'm sure that are a lot of people up there at the appeal—up there at the penitentiary that could have done it. There's an awful lot of them right through the—that we come up before everyday, but you're putting the burden on the defendant in a case like that to—to appeal his own case without having the assistance of counsel, and yet this is—this isn't at all what the law is—is telling us right here.

page 122 } And he says, "Do we want to believe the petitioner or believe the lawyer?" Well, let's take everything the lawyer said, let's forget about—now, I still think that the point of illegal search and seizure is important but I think that—that this petitioner ought to walk out of here today on this—this right of appeal. Let's look at everything Mr. Lam says. Mr. Lam said he must have said something to him with regard to the appeal and this—the petitioner here said the same thing. And if he lied about it to us he lied to the court, and if that matter is an express wish of an appeal I don't know what else it could be.

Now, with regard to the witnesses, the fact that there might—that they didn't have any knowledge of the crime doesn't make a bit of difference. If they could come into this courtroom and help him in any—in anyway they should have been called here, in anyway whatsoever, and—and I think His Honor knows that many times they parade people through that courtroom and they don't have the slightest idea about the crime that has been committed but they—they

put them up there to advance the character of the defendant and it's a very helpful way in which to carry on a case.

Now, he further said that—well, otherwise I
page 123 } heard it in argument of the facts of the case, I
don't think it—I don't think it makes any difference if—if this man here murdered, raped or robbed somebody and there was an eye witness, if he was denied his right to appeal it doesn't make any difference, guilty or innocent, he has a right to an appeal. And if that right was denied him then he should *pervail* here today.

Now, he mentions about the free transcript that he doesn't think they are entitled to it. Well, I'm reading out of this case which says that the holdings of the United States Supreme Court are that an indigent defendant has a constitutional right to a free transcript as a record of his trial, and to have assistance of counsel in perfecting an appeal of his conviction. Now, it can't be any plainer than that, that he is entitled to a free transcript of his trial.

Now, he said that Mr. Lam's duties ended when the case was over. Now, I don't have the case with me today, but there is a Virginia case which says the duties do not end when the case is over, it's a case, I believe, in Norfolk, a case, and it's either 206 or 207 which said that the counsel does not end when the case is over if the accused has any—anything to do
with trying to appeal their case, that it's up to—
page 124 } the duties are not over, it's up to counsel to
bring it to the attention of the court, and it was not done in this case, it was not brought to the attention of the court. And as he maintains it's so that he wanted to appeal that case then his attorney should have brought it to the attention of the court.

And the last thing that he said, and I didn't hear it if it was said, it slipped my ears, that he said that—that his counsel said that the—the petitioner was not cooperative with him and he had to get out of the case. Now, I nev—I never heard that. Maybe he did, I didn't hear it, but I can say this Your Honor, that illegal search and seizure business was not admissible in the third trial until they brought the man there who—who counsel had the right to cross examine, and January, I think, was his name, and this should have been done in this—this trial and this other trial. I feel that this denied this man a fair and equitable trial, but I think more so the evidence is more concerning that he did try to initiate an appeal, he did the best that a man with a sixth grade education could do under the circumstances and I don't see how it
can—I mean you just can't get away from this—
page 125 } from this language that he does not have to make

a specific demand of counsel for an appeal. It may be reasonably inferred from the evidence that Russell in this case desired an appeal and that he indicated to counsel that he wanted to appeal.

And we humbly ask the Court to grant this petitioner his *habeas corpus.*

The Court: No, I don't think the Court can say, after hearing the evidence of—of Lam, the two police officers, which is inconsistent in their instances with what the petitioner said. Now, isn't it the duty of a court to weigh the evidence and—and see if he has *born* the burden of proof? I think he has failed to carry the burden of proof.

I'll order a transcript of the record so that you might appeal this matter and it will be in the record, the Court after consideration thinks that the burden is on the plaintiff to prove and carry that burden throughout that he has failed to carry it. Now, we are going to dismiss the petition and remand him to the Superintendent of the Penitentiary, and to which ruling of the Court you except?

Mr. Ansell: Yes, sir. And Your Honor, will you order a transcript of the first trial and this trial—and this hearing?

page 126 } The Court: Well, I will, I had in mind the first one because that's what Mr. Mann said that he thought it ought to come into this, ought to be—to supply the record.

Mr. Mann: That's right, just incorporate it into the court order will do it.

The Court: That's right.

Mr. Ansell: Did—did you make a ruling with regards to his appeal? I didn't hear it if you did.

The Court: You excepted to the ruling of the Court in denying the petition.

Mr. Ansell: Yes, I understand that, I just wondered if

The Court: All right, then you

Mr. Ansell: you went further, and—and gave your reasons for doing so?

The Court: Well, I don't think in view of what he said, he said on the stand that he wasn't certain what was said, that he couldn't hear but the best of his recollection, the best he thought they said, I was overruled, I want an appeal. Well, now, in view of what Mr. Lam said, he said that he made a motion for a new trial, overruled. Well, we know as attorneys that's what happens, now, I don't think

page 127 } he was positive enough about his own appeal. But at the same time if I order a transcript of

the—of the first case and also in this case, so that all go up at one time.

Mr. Ansell: Yes, sir, well, ah—

The Court: Now, I suggest to you that you get the form for the appointment of counsel and

Mr. Ansell: Yes,

The Court: have him sign the affidavit and we'll put that in there also.

Mr. Ansell: All right, sir. Well, Mr. Lawrence has indicated that he does want to appeal this.

The Court: Well, that's what I—that's what I thought, and I

Mr. Ansell: I just want that to be

The Court: And you'll be appointed, I say there's probably no need of it, you—that's just been the custom is to put it here in that manner.

All right, gentlemen.

I want to compliment counsel, though, before I leave, your assistance in helping in this matter. The Court couldn't get along without able counsel to help them, I'll tell you that.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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