Return to
FILE COPY
Clerk Supreme Court of Appeals
Richmond, Va.

210 VA 199

Record No. 7050

In the
Supreme Court of Appeals of Virginia
At Richmond

ROY E. BRYANT

v.

C. C. PEYTON, SUPT., ETC.

FROM THE HUSTINGS COURT OF THE CITY OF ROANOKE

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. 7050

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 16th day of October, 1968.

Roy E. Bryant, Plaintiff in error,

against

C. C. Peyton, Superintendent of the Virginia State Penitentiary, Defendant in error.

From the Hustings Court of the City of Roanoke
Richard T. Edwards, Judge

Upon the petition of Roy E. Bryant a writ of error is awarded him to a judgment rendered by the Hustings Court of the City of Roanoke on the 29th day of January, 1968, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and C. C. Peyton, Superintendent of the Virginia State Penitentiary, was defendant; no bond being required.

This writ of error, however, is limited to the consideration of assignment of error No. 2, which reads as follows: "Further, it is set forth as an assignment of error that the evidence in this case is sufficient overwhelmingly to sustain the contention of the petitioner that he was unconstitutionally denied his right to appeal even though he had specifically requested the same within the time permitted by law."

RECORD

* * * * *

page 1 } VIRGINIA:

In the Hustings Court of the City of Richmond, Part II, the 27th day of April, 1967.

Roy E. Bryant, petitioner,
against
C. C. Peyton, Superintendent,
Virginia State Penitentiary, respondent,

ORDER

The Court having received from the petitioner a Petition for a Writ of *Habeas Corpus,* the Court doth order the same filed, and the petitioner is permitted to proceed *in forma pauperis.*

And it appearing proper, the Court doth order that the respondent do file an Answer on or before June 12th, 1967, and show cause, if any he can, why a Writ of *Habeas Corpus* should not issue herein returnable to the appropriate Court.

Enter this Order,
W.L.S., Judge

* * * * *

Received and filed June 20, 1967.

Patsy Testerman, Deputy Clerk

page 2 }

* * * * *

AFFIDAVIT OF POVERTY AND MOTION FOR LEAVE TO PROCEED IN *FORMA PAUPERIS*

Roy E. Bryant, being first duly sworn, states:

1. He desires to file the attached petition for writ of *habeas corpus ad subjiciendum* in the Hustings Court for the City of Richmond upon an unlawful and void conviction in the Hustings Court for the City of Roanoke.

2. He is presently a prisoner in the Virginia State Penitentiary and is without funds to pay the necessary filing fees and to procure counsel to assist him in the prosecution of his petition.

3. He desires to be permitted to proceed in *forma pauperis* and to have counsel appointed for him.

Roy E. Bryant
500 Spring Street
Richmond, Virginia

* * * * *

Filed Apr. 27, 1967.

Teste: Iva R. Purdy, Clerk

By R. W. McDonald, D.C.

* * * * *

page 15 } VIRGINIA:

In the Hustings Court of the City of Richmond, Part II, the 1st day of June, 1967.

Roy E. Bryant, petitioner,
against
C. C. Peyton, Superintendent,
Virginia State Penitentiary, defendant,

ORDER

This matter came this day to be heard upon the Petition for a Writ of *Habeas Corpus,* the Rule to Show Cause issued herein on the 27th day of April, 1967, and the Answer of the respondent thereto.

And it appearing proper so to do, the Court doth order that a Writ of *Habeas Corpus* do issue herein returnable to the Hustings Court of the City of Roanoke on the 2nd day of October, 1967. The motion of the petitioner that counsel be designated to represent him herein is likewise referred to the said Hustings Court of the City of Roanoke.

The Clerk is directed to transfer the papers in this case to the said Court.

Enter this Order,
W.E.S., Judge

* * * * *

page 17 } VIRGINIA:
In the Hustings Court of the City of Roanoke.

Roy E. Bryant, Petitioner,
v.
C. C. Peyton, Superintendent of
the Virginia State Penitentiary, Respondent.

ORDER

It appearing to the Court that on June 1, 1967, the Hustings Court, City of Richmond, Part II issued a writ of *habeas corpus* returnable to this Court on October 2, 1967, and it appearing further that this Court cannot hear this case on that date, it is ordered that Charles H. Osterhoudt, an able and competent attorney at law, whose address is 415 Shenandoah Building, Roanoke, Virginia, 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, the herein appointed attorney, and the Attorney General of Virginia.

Entered June 20, 1967.

R.T.E., Judge

page 18 }

* * * * *

ANSWER

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

1. At the July 1950 term of the grand jury of this Court, an indictment was returned, charging the petitioner with murder. (See exhibit I)

2. On July 3, 1950, P. H. Dillard was appointed by this Court to represent the petitioner. (See exhibit II)

3. On July 10, 1950, Dr. C. M. Irvin and Dr. E. J. Palmer

were appointed by this Court to examine the mental condition of the petitioner. (See exhibit III)

4. On September 22, 1950, petitioner appeared before the bar of this Court, was arraigned, entered a plea of guilty, and the case was continued until September 25, 1950, for a hearing of the evidence. (See exhibit IV)

5. On September 25, 1950, petitioner again appeared before the bar of this Court, and the Court, after having partly heard the evidence, continued the case until September 26, 1950. (See exhibit V)

6. On September 26, 1950, petitioner again appeared before the bar of this Court, and the Court, after having fully heard the evidence, continued the case until September 27, 1950. (See exhibit VI)

page 19 } 7. On September 27, 1950, petitioner again appeared before the bar of this Court, the probation officer's report was filed, and the Court, after having heard argument of counsel, but not being advised as to the degree of punishment, continued the case. (See exhibit VII)

8. Attached hereto and marked exhibit VIII is a copy of the pre-sentence report . (See exhibit VIII)

9. On September 29, 1950, petitioner again appeared before the bar of this Court, was given the opportunity to cross examine the probation officer; and was sentenced to serve life in the Virginia State Penitentiary. (See exhibit IX)

10. Respondent is now detaining petitioner pursuant to the aforesaid judgment of this Court.

11. Respondent denies each allegation set forth in the petition for a writ of *habeas corpus* which is not expressly admitted.

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

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

By: Curtis R. Mann, Counsel

* * * * *

Received and filed July 7, 1967.

Patsy Testerman, Deputy Clerk

* * * * *

page 21 }

* * * * *

EXHIBIT I

The grand jurors in and for the body of the said City of Roanoke, Virginia, and now attending said Court at its JULY TERM, in the Year 1950, upon their oaths do present:

That ROY E. BRYANT, heretofore, to-wit: on the ..... day of June, 1950, within the jurisdiction of this Court, in the said City of Roanoke, Virginia, feloniously did kill and murder one Virginia Morgan Bryant,

Against the peace and dignity of the Commonwealth of Virginia.

* * * * *

page 22 }

* * * * *

EXHIBIT II

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 3rd. day of July, 1950

* * * * *

It appearing to the Court that the defendants in the eight (8) foregoing cases are unable to employ counsel for their defense, it is ordered that P. H. Dillard be appointed to defend Roy E. Bryant.

* * * * *

page 23 }

* * * * *

EXHIBIT III

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 10th. day of July, 1950

* * * * *

Upon motion of the defendant, Roy E. Bryant, it is ordered that Dr. C. M. Irvin and Dr. E. J. Palmer be, and they are hereby, appointed to examine the mental condition of the said Roy E. Bryant.

* * * * *

page 24 }

* * * * *

EXHIBIT IV

In the Hustings Court of the City of Roanoke on the 22nd day of September, 1950

* * * * *

This day came the Attorney for the Commonwealth of Virginia, and the prisoner, Roy E. Bryant, was brought into Court in the custody of the Sergeant of the City of Roanoke, Virginia, and set to the bar.

Thereupon the said Roy E. Bryant was arraigned and pleaded guilty to the indictment in its entirety, whereupon it is ordered that this case be continued until Monday, the 25th day of September, 1950, for hearing of the evidence.

And the prisoner is remanded to jail.

* * * * *

page 25 }

* * * * *

EXHIBIT V

In the Hustings Court of the City of Roanoke on the 25th day of September, 1950

* * * * *

This day again came the Attorney for the Commonwealth of Virginia, and the prisoner, Roy E. Bryant, was brought

into Court in the custody of the Sergeant of the City of Roanoke, Virginia, and set to the bar.

Thereupon, the said Roy E. Bryant having been previously arraigned and pleaded guilty to the indictment in its entirety, with the consent of the Attorney for the Commonwealth and the Court, trial by jury was waived and this case submitted to the Court on the evidence of witnesses.

Thereupon the Court having partly heard the evidence was adjourned until Tuesday, September 26, 1950, at ten o'clock.

And the prisoner is remanded to jail.

* * * * *

page 26 }

* * * * *

EXHIBIT VI

In the Hustings Court of the City of Roanoke on the 26th day of September, 1950

* * * * *

This day again came the Attorney for the Commonwealth of Virginia, and the prisoner, Roy E. Bryant, was brought into Court in the custody of the Sergeant of the City of Roanoke, Virginia, and set to the bar.

Thereupon the Court having fully heard the evidence was adjourned until Wednesday, September 27, 1950, at ten o'clock.

And the prisoner is remanded to jail.

* * * * *

page 27 }

* * * * *

EXHIBIT VII

In the Hustings Court of the City of Roanoke on the 27th day of September, 1950

* * * * *

This day again came the Attorney for the Commonwealth and the prisoner, Roy E. Bryant, was brought into Court in the custody of the Sergeant of the City of Roanoke, Virginia, and set to the bar.

Thereupon the report of the Probation Officer having been filed, and the Court having heard the argument of counsel, but not now being advised as to the degree of punishment in this case, takes time to consider thereof.

And the prisoner is remanded to jail.

* * * * *

page 28 } EXHIBIT VIII

PRE-SENTENCE INVESTIGATION

September 27, 1950

Name: Roy Eldridge Bryant
Address: Anderson Hotel
Roanoke, Virginia
Age: 32
Sex: Male
Race: White

Citizenship: American
Occupation: Iron Worker
Ocupation: Iron Worker
No. of Dependents: One
Offense: Murder

Offense: The offense occurred June 16th, 1950, at approximately 10:50 PM, diretly in front of the Plaza Restaurant on Williamson Road. Subject, Roy Bryant, met his wife, Virginia Bryant, when she got off from work at the restaurant, after talking for several minutes, Bryant stabbed her in the neck with a long bladed knife. Mrs. Bryant was taken to the hospital and died about fifteen minutes after she was stabbed. Bryant was apprehended by the police about 3:30 AM on the morning of the 17th and placed in jail charged with murder.

Extenuating Circumstances: The subject, Roy Bryant, age 32, married Virginia Morgan Hudgins in July, 1947, at Chester, South Carolina, after a short acquaintance of about forty-eight hours. The wife, Virginia, had previously been married to one, Robert Hudgins, and has a child age six by this marriage. She divorced Hudgins while he was in the Service. Investigation shows that both subject and his wife drank extensively and on occasions had fights and were at odds with each other chiefly because of excessive drinking and jealousy. Many of these disagreements and arguments were occasioned by the wife's mother who thought Roy was not treating her daughter fairly and subject's parents took the

attitude that his wife was not faithful to her husband. Bryant was an iron worker and traveled from job to job; he worked in several states. Investigation shows that on occasions he and his wife would have arguments, she would return to Roanoke, and later Bryant would quit his job and follow her. The last separation occurred June 5th when Virginia left her husband at Dublin, Virginia, where he was working, took the baby, and went to the home of her mother. Bryant quit his job there, came to Roanoke, and made his home at the Anderson Hotel until the offense occurred. On June 10th he was arrested for going to his mother-in-law's home while his wife was living there and causing a disturbance.

On the night of the offense, Bryant was drinking and met a friend of his by the name of F. L. Jenkins, also drinking, in front of the New Market Lunch on Nelson Street. He asked him to go with him out to his sisters, Mrs. Maxie, who lived in the Williamson Road section. They got into a Checker cab driven by William Shelton, and proceeded to his sister's home. Investigation shows that they went to the sister's home, no one was there, Bryant got back into the cab, told the driver to take him to the Plaza Restaurant, he wanted to see his wife. This friend Jenkins stated that he had known Bryant for quite some time, knew that he was quarrelsome when drinking, and tried to persuade him not to go to the Plaza. Bryant stated that he knew what he was doing that he would not get either Jenkins or the cab driver into any trouble. They drove to the Plaza about ten minutes before closing time and parked in front of the restaurant. Shortly after they parked another car driven by Mr. Frank H. Rodgers drove up and parked near the cab and Mr. Rodgers went into the restaurant. According to witnesses, Mr. Rodgers and his wife, a waitress, and Nora Baker, another waitress, came out of the restaurant and Bryant's wife was with them. Questioning shows that the Rodgers were going to take Mrs. Bryant home. Bryant got out of the cab, approached his wife, they exchanged several words, Bryant pulled out a long hunting type knife, grabbed his wife, and stuck the knife in her throat. He then jumped back in the cab and told the driver to "get away from here fast." This friend Jenkins became *freightened* and jumped out of the cab before it left the restaurant. The cab driver later let Bryant out on the corner of Seventh Street and Lynchburg Road. Bryant was apprehended on Jefferson Street by Officer Carter about 3:30 AM. He was arrested (still had the murder weapon on his person) and placed in jail charged with murdering his wife.

Detective Belcher stated at the time Bryant was docketed he said he had done something he had been wanting to do for a long time and if they gave him the electric chair, he would be smiling when they turned the "juice" on. It is true that Bryant was drinking but the degree of intoxication is not known. Mr. Lavender, a clerk at the Anderson Hotel where Bryant had been staying, said that Bryant had been drinking heavily during the past week or ten days. He also stated that Bryant left the hotel on the night of June 16th about 10:00 PM, that he was drinking, but did not appear to be drunk. The arresting police officers also stated that at the time of the arrest Bryant was drinking, but was not drunk.

I think it significant to state here that both Bryant and his wife appeared before Judge Kuyk several days prior to the offense in answer to an injunction against Bryant restraining him from molesting his wife since Mrs. Bryant had instituted divorce proceedings. The custody of their young fourteen months old child has not yet been determined.

Prior Records: Subject has a rather lengthy police record in this city. Between July 4th, 1937, and March 30th, 1950, he has thirteen drunk convictions. The following are other records against subject:

7/4/37	Disorderly	$10.00
12/11/37	Disorderly	$5.00
4/8/38	Disorderly	6 months suspended
4/20/39	Disorderly	30 days suspended
9/16/39	Disorderly	$20.00
	Resisting arrest	$20.00
12/24/41	Disorderly	$10.00
11/8/42	Vagrancy	6 months suspended
11/15/42	"	"
	Disorderly	$10.00
11/23/42	Disorderly	$10.00
5/26/44	Disorderly	$20.00
page 29 } 7/18/44	Felonious Assault	$100.00 and 12 months suspended
8/11/45	Assault	$50.00
12/21/45	Disorderly	$20.00
6/28/47	Assault	$25.00
7/11/47	Assault	Absconded, $200.00 bond forfeited

3/17/48	Disorderly	30 days
	Assault on officer	30 days
6/19/48	Disorderly	10 days
9/12/48	Assault	30 days
	Destroying private property	$50.00
7/13/49	Disorderly	60 days suspended
12/10/49	Assault	$25.00 and 30 days
6/10/50	Disorderly	$20.00

In addition to these records his wife has had him in domestic court on two occasions for assault and non-support.

Family History: Roy Eldridge Bryant was born February 25th, 1919, in Roanoke, Virginia. He was the second of three boys and two girls born to Cora Linkenhoker Bryant, age 56, and William Wallace Bryant, deceased. Not much information is available on the father other than he had no record, his occupation was that of a painter and contractor, and he died of pneumonia in 1928. Several years after the father's death, the mother was re-married to E. J. Peters. The mother has a good reputation in the neighborhood, is a church member, and has no police record. She makes her home at 1218 Kirk Avenue, S.E., with one of her married daughters, Mrs. Louise Ferguson, age 28. The other daughter, age 35, is married to R. P. Maxie and makes her home at 2005 Wayne Street, N.E. Another son, William Wallace Bryant, age 26, is married and divorced, has a domestic court record and his whereabouts are unknown. The youngest son, Clifton A. Bryant, is married, makes his home at 23 Mountain Avenue, S.W., and is employed by a local insulating company. None of subject's brother and sisters have any police records with exception of William.

Roy E. Bryant has a very bad reputation in this city. He is a large bully type man who frequented low class restaurants and beer joints, engaged in numerous fights and seems rather proud of his powers with his fists. He is high tempered, unpredictable when drinking, and seems to revel in the fact that no one is going to run over him. After his father's death, the mother took in washing and did various odd jobs in order to support the family, consequently Bryant was not given proper care of supervision. The family always lived in poor class neighborhoods and the mother's second husband, Peters, was in bad health and on several occasions the family received Welfare aid. The mother and step-father did not get along and separated several times since their marriage.

Subject quit school at the age of fifteen, did various odd jobs in this city, and on several occasions was employed by the NYA, but Welfare records show that his work was unsatisfactory. In 1940 he married Pearl Sink, by this marriage there is a son ten years old who lives with the mother. They lived together for a short period of time and the wife divorced Bryant because of his instability. In 1945 he married again to Barbara Rush. They only lived together a short period and the wife was granted a divorce on grounds of adultery. In July, 1947, he married Virginia Morgan Hudgins in Chester, South Carolina. His wife had previously been married and divorced and had a child, age six, by Hudgins. This child is now with the father's parents. While Hudgins was in the Service, Virginia went to Reno and got a divorce, came back to Roanoke and met Bryant in a local confectionary, both were drinking and as a result of this chance meeting they were married forty-eight hours later. By this marriage there is a son, age fourteen months, custody of which is now unsettled, but who at the present time is also living with the Hudgins.

Education: Bryant entered school at the age of six and quit at the age of fifteen after completing the sixth grade. He states his reasons for leaving were to go to work to help his mother and his younger brothers. Bryant also received welding training and has used this knowledge in his employment.

Religion and Activities: When young, Bryant did attend Sunday School and church, but for years he has not participated in any religious activities. He does not have any particular leisure time activities or hobbies other than his work. He states that he likes to hang around with the fellows and drink beer or shoot pool. He belongs to the Iron Workers Local, No. 697.

Health: Subject is apparently in good health with exception of spells of pleurisy at times. However, he was medically discharged from the Service because of a trick knee and a bladder discharge. He entered Service November 10th, 1942, and on June 5th, 1942, was given a CCD discharge, which is an honorable medical discharge (verified).

Employment: Bryant's employment record is not very impressive, principally due to his numerous arrests. He worked on several local jobs but no records are available. Records show that his work when very young while in the NYA School was not satisfactory. He worked for Johnson-Carper Furniture Company and Montgomery *Wary* for short periods of time and was employed at the Hercules Powder

Company as a truck driver for about two years. After his discharge from the Service he went to work in Baltimore for a steel company and has since followed this type of work. He has worked for various steel and construction companies all over the country and when working regularly makes exceptionally good money. He belongs to the local Iron Workers Union. Mr. Stuart Carroll, president of the local *untion,* states that when Bryant works he is an exceptionally good worker, but because of his drinking, domestic troubles, and arrests, he is not too dependable.

Resources: Subject owns no property, has no income, and states that his total obligations probably amount to $1,500.00. These obligations are principally hospital and doctor bills.

Respectfully submitted,
E. W. Pendleton, Chief
Probation and Parole Officer

Sources: Police Records
Police Officers
Subject's mother
Subject's sisters
Subject's in-laws
Employers
Witnesses
Subject
Associates

Filed in open court, Sept. 27th, 1950.

S. S. Broone, Deputy Clerk

* * * * *

page 30 }

* * * * *

EXHIBIT IX

In the Hustings Court of the City of Roanoke on the 29th day of September, 1950

* * * * *

This day again came the Attorney for the Commonwealth of Virginia, and the prisoner, Roy E. Bryant, was brought into Court in the custody of the Sergeant of the City of Roanoke, Virginia, and set to the bar.

There also came into Court counsel for the prisoner, said counsel having been appointed by the Court to defend the said prisoner, and the Parole and Probation Officer for this district, who heretofore filed in open Court his written report on the prisoner, all being present at the same time in open Court, and the Court, having asked counsel for the prisoner if he desired to examine said Parole and Probation Officer in regard to his report, received his reply that he did not care to do so.

Thereupon the Court having maturely considered the evidence, argument of counsel and report of the Parole and Probation Officer and being of the opinion that the defendant is guilty of murder in the first degree, it being demanded of him, the said Roy E. Bryant, if anything he had or knew to say why the Court should not now pronounce judgment against him according to law, and nothing being offered or alleged in delay thereof, it is therefore considered by the Court that the said Roy E. Bryant be confined in the State Penitentiary at Richmond, Virginia, for the remainder of his natural life, and it is ordered that, as soon as practicable, the said Roy E. Bryant be removed from the jail of the City of Roanoke, Virginia and safely conveyed to said State Penitentiary at Richmond, Virginia, therein to be kept imprisoned and treated in the manner prescribed by law.

And the prisoner is remanded to jail.

* * * * *

page 37 } VIRGINIA:
In the Hustings Court of Roanoke

Roy E. Bryant, Petitioner,
v.
C. C. Peyton, Superintendent of
the Virginia State Penitentiary, Respondent,

ORDER

This proceeding came on to be heard on January 4, 1968 upon a petition for a writ of *habeas corpus* and the answer of the respondent, the petitioner appearing in person and by his attorney, Charles H. Osterhoudt, previously appointed

by this court, and the respondent appearing by Gerald L. Baliles, Assistant Attorney General.

Whereupon, after hearing the evidence and argument of counsel, and for the reasons stated from the bench at the conclusion of the hearing, it appearing that the writ should not issue as prayed; now, therefore, it is

ADJUDGED and ORDERED that the petition for a writ of *habeas corpus* be denied and dismissed, the writ discharged, and the petitioner remanded to the custody of the respondent, to all of which action of this court, the petitioner, by counsel, objects and excepts.

It is further ordered that the clerk of this court certify copies of this order to the petitioner, the petitioner's attorney, the respondent, and the Attorney General of Virginia.

It is further ordered that counsel for the petitioner be allowed a fee of $350.00 for his services rendered in this matter.

Enter this 29 day of January, 1968.

Richard T. Sloan, Judge

* * * * *

page 39 } VIRGINIA:
In the Hustings Court of the City of Roanoke

Roy E. Bryant, Petitioner,
vs.
C. C. Peyton, Superintendent of
the Virginia State Penitentiary, Respondent,

ORDER

DENIAL OF MOTION FOR REHEARING

This day came Roy E. Bryant, by counsel, on his motion for rehearing on his petition for a writ of *habeas corpus* which was denied by this Court by order dated January 29, 1968, but which was heard on January 4, 1968. And also came counsel for the respondent on his reply to a motion for rehearing.

It appearing to the Court that evidence was not such as was discovered since the trial, that in the exercise of reasonable diligence on the part of the petitioner it could have been secured at the trial, but no request was made for a continu-

ance, and that the rules of the granting of a rehearing on the grounds of after-discovered evidence have not been complied with, it is ordered that the motion for a rehearing be denied and this cause of action dismissed.

It is further ordered that the Clerk of this Court certify a copy of this order to the petitioner, the petitioner's attorney, the respondent, and the Attorney General of Virginia.

Entered: 2-8-68

Richard T. Edwards

page 40 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

To the Clerk of the Hustings Court for the City of Roanoke:

Counsel for the petitioner in the above styled cause in the Hustings Court for the City of Roanoke, Virginia, hereby gives notice pursuant to the provisions of § 4, Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia, of his appeal of the final judgment order of the Court herein entered in this cause on the 29th day of January, 1968, and sets forth the following assignments of error:

1. That the Court erred in denying petitioner's Petition for Writ of *Habeas Corpus* on the following grounds:

* * * * *

page 42 }

* * * * *

2. "Further, it is set forth as an assignment of error that the evidence in this case is sufficient overwhelmingly to sustain the contention of the petitioner that he was unconstitutionally denied his right to appeal even though he had specifically requested the same within the time permitted by law."

* * * * *

Received and filed March 26, 1968.

Patsy Testerman, Deputy Clerk

* * * * *

TRANSCRIPT OF THE EVIDENCE INTRODUCED AND PROCEEDINGS HAD upon the trial of the above styled case in the Hustings Court of the City of Roanoke, Virginia, on January 4, 1968, the Honorable RICHARD T. EDWARDS, Judge of said Court presiding.

APPEARANCES: Charles H. Osterhoudt
Attorney for the Petitioner

Gerald Baliles
Assistant Attorney General

* * * * *

page 13 }

* * * * *

MR. ROY E. BRYANT the petitioner, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Osterhoudt:
Q. State your name, please, sir.
A. Roy E. Bryant.
Q. Are you the petitioner in this petition for a Writ of *Habeas Corpus?*
A. Yes, sir.
Q. And you are presently an inmate of the Virginia State Penitentiary; is that correct?
A. Yes, sir.
Q. And you have been an inmate there since when, sir?
A. 1950.

By the Court: (interposing)
Q. 1950?
A. Yes, sir.

By Mr. Osterhoudt: (continues examination)
Q. 1950. And you are there on a conviction for what charge, sir?

A. Murder in the first degree.

* * * * *

page 22 } The Court: Do you wish to bring out that he did not have an attorney present at that time?

Mr. Osterhoudt: That I do wish to bring out.

The Court: If you wish to bring that out, I will be glad to let you put it into evidence.

By Mr. Osterhoudt: (continues examination)

Q. Did you have an attorney present with you at the preliminary hearing?

A. No, sir, I didn't.

Q. All right, and had anything been said to you relative to whether or not you had an attorney, or should obtain one?

A. Well, not till I had been asked several questions. Then Mr. Cuddy whispered something into Judge Price's ear and then he asked me—

Q. If you had an attorney?

A. —if I had an attorney and I told him, "No, sir."

Q. And I believe, at that point, further proceedings stopped, didn't it?

A. Yes, sir, he told me to stand back and he started questioning two witnesses there and Mr. Cuddy whispered into the Judge's ear again and he told them to take me and lock me up, and they took me back up.

Q. And then *yoy* left?

A. Yes, sir.

page 23 } Q. Subsequently to—subsequent to this hearing, did you employ an attorney to represent you?

A. No, sir; I didn't have any money.

Q. Did the Court engage an attorney to represent you then?

A. Not until—I think he was appointed July 3rd and I saw it in the paper and he came up a day or two later.

Q. Would this have been before or after you were indicted by the Grand Jury?

A. Well, I saw the indictment and it was a day or two, maybe three—I know it was sometime after—when he came up and it was only for two or three minutes then.

Q. Now,—

Roy E. Bryant

Mr. Baliles: If Your Honor, please, I would merely like to interject here that Exhibit Two filed with the respondent's answer shows that Mr. P. H. Dillard was appointed to defend Roy E. Bryant on July 3, 1950, which was the same day of the date of the indictment.

The Court: All right.

By Mr. Osterhoudt:

Q. You are not in disagreement with the Court record in that respect, are you? You are willing to state that he was appointed—Mr. Dillard, as stated in the Court record, was appointed—as your attorney on that date?

A. Well, the only thing that I can say was that he was appointed and I had been indicted before I ever saw him.

page 24 } Q. Before you ever saw an attorney?

A. Yes, sir.

Q. Now, you say it was some several days after that before you saw Mr. Dillard?

A. Yes, sir, a couple maybe. I am not positive exactly, but it was sometime because I read it in the newspaper.

Q. And where did you meet with him?

A. He came around to the jail, around to where I was locked up, and hollered and called my name and I went up there and he said, "I am Dillard" and I said, "Well, who is that?" and he said, "Well, I am your attorney", and "they appointed me." And then he lit into an act of cursing and so on and said, "They always give me these cases. Why do they do it?" and so on; said, "I'll be back to see you later."

Q. Now, that was all that took place at that time?

A. That's all, yes, sir.

Q. When did you next see your attorney?

A. Approximately between, say, the 8th and 10th, maybe the 9th or 10th, somewhere around there.

Q. Of July?

A. Yes, sir. Now, let's see—I believe that is right, yes, sir.

Q. Did you go into the facts of the case with him at that time? Did he question you about the case?

A. Yes, sir, we sat down and talked over the—

page 25 } you know, what I was here for and about the Court feelings and so forth; about witnesses and so I *summonsed*—who I wanted to summons and just about everything in general, I imagine.

Roy E. Bryant

Q. Did you request at that time that he seek a mental examination for you?

A. Yes, sir, yes, sir.

Q. Did he—

A. Yes, sir, he discused that, too, and he said, "Well, I'll check with the Court and see if you can have one." I told him that, since these statements had been made—something about me making these statements in there, you know, that I didn't make them and, if I did, I had to be out of my head, and so I asked him would he have me admitted to the mental hospital for ninety days for observation or something to help me to determine, see, because I wanted to find out the frame of mind I was in at the time.

Q. Subsequent to that, I believe you were examined by two doctors, were you not, that came up and talked to you in the jail?

A. Yes, sir, two. I think it was Dr. Irvin and some other doctor. They came up and talked to me, I guess, about ten—between ten and twenty—minutes.

Q. Now, was there anything else that you discussed with your counsel at that meeting on July 10th, other than the witnesses, mental examination and the general facts and circumstances surrounding the incident which I believe you told us you did discuss?

page 26 } A. Yes, sir, we discussed the hour; we discussed the arrest, the feeling of the Court; witnesses and mental examination at Marion and the possible postponement of the case and we talked for approximately thirty minutes—twenty to thirty minutes.

Q. You talked for about thirty minutes with him at that time?

A. Yes, sir, something in that neighborhood, yes, sir.

Q. Did you discuss with him at that time your plea in the case?

A. Well, he talked to me about making—entering a plea and I asked him—I told him I was scared to be tried by Judge Kuyk in this Court and Mr. Cuddy because I knew he was prejudiced against me and had told me if I ever got in this Court before them what they was going to do. They was going to sentence me to the extreme penalty. And I asked him was it possible for me to get it moved somewhere else. And he said it was not, that it cost money and I didn't—since I didn't have any money, it would be impossible to do it.

Roy E. Bryant

Q. Are you saying that he encouraged you then to plead guilty?

A. Oh, yes, from the time—the time that he first started talking, he told me that I didn't have much chance; that if I came down here and fought this court, I was going to go to the electric chair. And—but he said if I went along with the Court, that I would get a lesser sentence. And at the time they had a gentleman up there named Mr. Pearson and—

page 27 } By the Court:

Q. Mr.—who?

A. Pearson—Lester Pearson.

Q. Yes, I remember him.

A. He brought up the fact that this man had spent approximately ten—eight or ten—thousand dollars for an attorney and there wasn't much going to be done with him and, if I would enter a plea and go along with the Court, that he would talk to Judge Kuyk and my sentence would not exceed Mr. Pearson's, but I had to go and enter a plea of guilty and go along with the Court.

By Mr. Osterhoudt: (continues examination)

Q. On July 10th, or thereabouts, I believe you said you saw Mr. Dillard. Did he discuss with you the facts that you had a right to a jury trial?

A. Well, he brought it up, he brought the jury up, and we talked about it and my mother and my sisters came up and they begged me to take the jury and—

Q. Did this take place on the 10th of July now, or was this later?

A. No, sir, that was later—that was later because, after this, he come to see me in jail, in the cell block, and then we discussed, you know, about the mental examination and so forth. Well, I didn't see him any more for about maybe a month or six weeks.

Q. So then, at the July hearing, you didn't discuss the jury trial?

page 28 } A. No, sir.

Q. When you saw him in July?

A. No, sir; my mother—

Mr. Baliles: I object to the leading of the witness here. He is putting words in the witness's mouth.

Roy E. Bryant

The Court: Let him testify by himself, Mr. Osterhoudt.
Mr. Osterhoudt: Yes, sir.

Q. (Continued) All right now, Mr. Bryant, when did you next see your attorney, Mr. Dillard?

A. Well, after the 10th, he saw me. The—between that same date. I can't—I don't know what but it was when my mother and them came up. It was at least a month, or better and we talked again and then—

Q. How long did you talk on that occasion?

A. Well, a good thirty minutes anyway.

Q. You say your other members—your mother was present?

A. My mother and my sisters.

Q. Which sister?

A. Mrs. Ferguson, and I thought it was someone else, but my sister told me that she thought the only one it was, was my son, a small baby eleven months old boy.

Q. Now, what did you—did you discuss at that
page 29 } time with Mr. Dillard a plea that you would enter?

A. Yes, sir, my family begged me to take a jury trial. Told me not to let the Court have it, you know, handle it and so this—Mr. Dillard told me that if I would go along with the Court that he had talked with Judge Kuyk, I think he said, an hour on the telephone and an hour and a half in his office, and said that my sentence would not exceed Mr. Pearson's if I went along with the Court, and so on. And he wanted me to plead guilty, and I wouldn't. I told him that I was—that I didn't think that I could because after he told me what he said, you know, about working on me if they ever got me, I was kind of scared. So I—and he said—so that is when my family came up, so they all insisted that I get a jury trial, and so I asked him what he thought and he told me, he said, "Well, I tell you I talked to members at my lodge," I believe he said the Elk's Club, "and everyone I asked said they hoped they were on the jury so they could hang you." And he said he had even stopped people on the street and asked them and everyone he talked to said they wished they were on the jury so they could burn me or hang me is the way they put it.

Q. So, at that time then, he encouraged you to enter a plea of guilty?

Roy E. Bryant

A. He did, yes, sir.

Q. At that time, did you agree to enter such a plea?

A. No, sir, no, sir; I told my family and my family was after me so and I told them, well, I didn't know
page 30 } and I didn't make up my mind, and I left them that way—that I was still thinking about it.

Q. All right, now was there anything said at that time about any witnesses or anything further said about witnesses that you wanted to testify?

A. Oh, I had already—I had talked to him about these witnesses. We discussed that earlier though and about the witnesses and a colored fellow came around that morning after I was taken up and told me that the police was questioning everyone in the bull pen about some statement I was suppose to have made and some fellow that worked for the Times Office, as a night watchman, or something, was supposed to have been listening, you know, outside the steel door and so, when I saw my attorney, I asked him about this and he said, "Well, I don't know," said he would check into it. So I said, "Look, I want every—". The boy told me they got two—two witnesses, two people to testify. So I asked that all members of the bull pen be *summonsed.*

Q. All members. You mean all inmates?

A. All inmates in there, yes, sir, is what I meant. At the time, I think there was ten or fifteen, somewhere between ten and fifteen, in there and because I told him, I said, "Now, if only two people would testify"—this now, I understood now that they turned them loose in order for them to come back and testify. I am not positive and I can't say for sure to that now.

Q. Well, did the inmates then all—the inmates,
page 31 } were they present to testify at your trial?

A. No, sir, none of them came.

Q. Why not?

A. They had not been *summonsed.*

Q. They had not been *summonsed?*

A. No, sir, and he told me when I asked him, I said, "Now, how about all these inmates?" and he said, "Some of those fellows got phony names;" and said, "they are from all over the country and, man, they never would get here." And I told him that there was a colored fellow, one or two, on the other side that was in jail there but I didn't know whether they was still there when I come to trial.

Roy E. Bryant

Q. But, at any rate, they did not testify in your behalf, at the trial?

A. No, sir, and I also asked that a police officer who had had me under arrest a few hours before this be *summonsed*—

Q. Two hours before this, two hours before—

A. Few hours.

Q. Few hours?

A. Few hours before the crime.

Q. All right. You mean you had been arrested earlier that night?

A. Yes, sir. Well, what happened, I lived in a hotel, and, right around at the corner was a beer joint, and we was up there drinking and, when I started out, the officer

page 32 } arrested me and two friends came out and asked him would he—if they would put me in a cab and send me home, would he, you know, let me go. And he said, "Well, call a cab and put him in and I will let him go." So I lived right next door at the hotel, but I didn't tell anyone. So we got in the cab and we drove around the block and I said, "Listen here, I am going further away from home." I said, "I am going to have to get back up to the hotel, but I'll give that policeman time to leave." And so I had a fifth of whiskey, about half of it was gone, and I gave it to them. I said, "You all take that. I got some more up at the hotel."

Q. So you wanted this police officer then to be *summonsed;* is that correct?

A. Yes, sir, and he asked me who he was and I told him that I didn't know but I thought he could check downstairs at the Detective—the Police Bureau—and find out who was on the beat that night.

Q. Did this police officer testify at your trial?

A. No, sir.

Q. Do you know why he did not?

A. Because he wasn't *summonsed,* I don't suppose.

Q. And the other witnesses, do you know why they did not?

A. They weren't *summonsed?*

Q. All right. Was there any other witnesses that you requested to have testify that did not testify that you can recall?

page 33 } A. Well, no, sir; I think the ones—the hotel manager and all—did testify.

Q. All right, now did you discuss with Mr. Dillard then

at this meeting anything in relation to having the evidence recorded?

A. Yes, sir, Mother—my mother brought it up with Mr. Dillard and he said, "Well, you will have to hire someone." So I said, "Well, I don't have the money." So my mother said she would see some of my friends, a couple of my friends, and Mr. Bieler, the Court Reporter, to take down the evidence.

Mr. Baliles: Your Honor, I object to going into this matter. one of my friends would let them have enough money to hire First of all, the fact that the evidence is not recorded is not contained in the petition as one of the allegations. Second of all, it was not until the 1964 General Assembly passed the Act that such recording of felony cases was required. So that, going into this matter, certainly doesn't aid his own cause, and it is certainly taking up the Court's time. I object to going into it.

The Court: Well, did you get Mr. Bieler?

A. Yes, sir.

Q. Did you have the money to get him?

A. Well, I paid him a hundred dollars down—a hundred and fifty down—and the balance was to be paid when I had it translated from the shorthand. It was fifty
page 34 } cents a sheet. I think it was something like that.

The Court: Well, I think we have gone into that far enough.

Mr. Osterhoudt: All right, actually that is all I wanted to show, sir.

Q. (Continued) And how long did this conference then take place that you just talked about? You talked about you saw him right after the appointment for a few minutes; is that correct?

A. Yes.

Q. Then you saw him some weeks or so later for about a half an hour; is that correct?

A. Yes, sir.

Q. Now, I believe your testimony is that this was now a month or six weeks later?

A. Yes, sir.

Q. And how long did this interview with Mr. Dillard take place?

Roy E. Bryant

A. Well, this was the one when I had my family up there.

Q. How long did it take?

A. I would say a good thirty minutes, or maybe forty-five.

Q. Now, when did you next see Mr. Dillard in relation to the case?

page 35 } A. The next time I saw him was the morning—let's see, the evening before the day that I came down to enter my plea. I can't remember; I think it was on a Friday and that must have been a Thursday evening.

Q. All right, tell us how long did this interview last?

A. Well, he came there in the jail where I was locked up and talked with me and he said, "Now, you—" "I have told you what the Judge has promised and you understand now, if you fight the Court, you are going to the electric chair. Whatever you do, go down there and enter a plea of guilty." And I said, "Mr. Dillard, I just—" I said, "That is hard to do because," I said, "I am throwing myself there and why?" And he said something about having a few days trial or something and I said, "Why am I having a trial, if I go down there and enter a plea of guilty?" And he said, "Well, you will show the Court that you want to go along and cooperate", and said by doing this, he said that everything is going to work out right and he says that I would not—I mentioned first degree murder and I said, "Now, if I enter a plea", I said, "I am not guilty of first degree murder and I am not going to plead guilty to it", and he said, "You are not pleading guilty to any specific degree," said that "We would be having a hearing and go through the trial and the Judge then would decide what it was going to be."

Q. Well, what did he tell you to plead to then? What plea did he tell you to enter?

A. Just to murder—he said, to killing my wife. He said to "plead guilty to killing your wife."

page 36 } Q. Just to murder but not to plead guilty to any degree of murder?

A. No, sir, and then he said I would not be pleading to any specific degree, that the trial would determine what degree it would be.

Mr. Baliles: Your Honor, please, the order shows that he plead guilty to the indictment. And, furthermore, on a plea of guilty, he is pleading—he is presumed pleading to guilt to a charge of murder in the second degree. I think that has

been assumed in Virginia for a long time. I don't know why we would have to decide whether he is pleading guilty to murder one or murder two.

The Court: In other words, whether or not he knew what he was doing at the time?

Mr. Osterhoudt: I think that is correct, Your Honor. It goes to the issue of effective assistance. Now,—

The Court: But you didn't allege that.

Mr. Osterhoudt: Sir?

The Court: You didn't allege that the plea of guilty was coerced from him.

Mr. Osterhoudt: Well, I think it goes on—we are not specifically saying it was coerced, Your Honor, except that—

The Court: Ineffective assistance?

page 37 } Mr. Osterhoudt: It goes to the issue of ineffective assistance.

The Court: All right.

Mr. Osterhoudt: I think it covers it.

Q. (Continued) Now, Mr. Bryant, were you told by Mr. Dillard anything as to the effect that your plea would have on your exposure to capital punishment at that time?

A. He said that—he said, if I entered a plea of guilty and he said, "I'll guarantee you that you won't get the chair"—something to that effect. And I said, "Well, I don't see how you can do that if you are going to have a trial." And he just contradicted himself back and forth. He said, "They cannot give you the chair if you enter a plea of guilty," and he told me, specifically said, "You go down there and fight—you fight that Court, boy, and you are going to the electric chair."

Q. Was it that time, the time of this interview, the night before trial?

A. That was before this—now, that wasn't the trial.

Q. No. All right, let's just—but this is the conversation you are talking about anyway. Did you discuss with him, at that time, a jury trial?

A. Sir?

Q. Did he discuss with you a jury trial at that time?

A. Well, he told me that I had better not let a jury have it. He told me that on several different occasions.

page 38 } Q. Did you decide what you were going to do on that night? Did you make a decision with him as to what you would do relative to a plea?

Roy E. Bryant

A. No, sir, I still held off and told him no, no, and I kept asking him if I could get this thing changed or some other Judge and prosecutor to try, you know, to hear it and he said I couldn't, that I didn't have the money to get it.

Q. Now, Mr. Bryant, how long did this interview last, the night before you were brought down here to enter your plea?

A. Just a few minutes. He and I both kind of got mad and he took off and—

Q. Now, the next day I believe—now, the next day, what happened?

A. Well, the next day, Mr. Winstead and—

Q. Who is he?

A. He was the City Sergeant.

Q. All right.

A. —and Mr. Burney Cannaday—

Q. Who was he?

A. Assistant to Mr. Winstead. And they came up and told me to get ready to come down to Court. Well, they brought me down and they brought me in here—

Q. Had you known the day before this that you were coming to Court the following morning?

A. No, sir, I thought he said it commenced December the 25th—I mean, September the 25th, or something.

page 39 } Q. All right, sir, so you came down here the following morning. And what morning would that have been?

A. Now, I will tell you something else before we go any further, sir. He did say, "Now, I want you to go ahead and enter a plea now," and said, "When they come and get you, you go down and enter a plea of guilty." That's what he said—said, "They will be coming to get you."

Q. All right now, they came and got you then the following morning after this conversation had taken place?

A. Friday morning, yes, sir; yes, sir.

Q. All right, on a Friday morning?

A. Friday morning.

Q. Do you remember what day of the month?

A. The 22nd, I think.

Q. All right, tell us what happened then when you got down here?

A. Well, they brought me down here and I was taken up here. And Mr. Cuddy and Judge Kuyk was here and Mr. Winstead and Mr. Cannaday and myself, and he said, "I understand you have a plea to a charge of murder", said, "How

do you plea?" So I just said, "Well, plea guilty to killing my wife," because I had no alternative. I felt that, either way I went, I was whipped. I just didn't know what to do but I was sure of my life for one thing if I made that plea.

Q. Did you—was your attorney present at that
page 40 } time?

A. No, sir.

Mr. Baliles: (interposing) Excuse me—at what time?

By Mr. Osterhoudt:

Q. At the time you entered your plea, was your attorney present?

A. No, sir.

Q. He was not in the Courtroom?

A. No, sir. He saw me the evening before was the last time I saw him until the Monday morning when I came down on the 25th.

Q. Did they read the indictment to you—the charge; did they read it to you?

A. No, sir, I don't believe they read anything to me because I don't recall it.

Q. All right, sir. Now, after you had said that you plead guilty to killing your wife then, what did they say?

A. He just told them to take me back and lock me up. He said something about the hearing of the evidence or something will commence on Monday, the 25th, I believe it was.

Q. All right, now the following Monday, did they hear your case?

A. They started hearing it, yes, sir. Mr. Dillard came up that morning before I came down and he said, "Well, let's go down and see what we can do." And we came
page 41 } down here and they had the witnesses and all, and it lasted for about two and a half days, Monday and Tuesday and part of Wednesday. And something else I would like to mention is when he—when I told him the story of this crime, how it happened and everything, he said, "Son", said, "I believe you," and said, "I am a drinking man myself and" said, "I know that such things can happen but," he says, "the Court will never believe such a tale and," says, "my advice to you then is to pretend that you were drunk and know nothing." So, when I got here, I heard evidence of such stuff said, that I knew wasn't so, and I couldn't say a word to object to it or anything.

Q. In other words, he advised you to take the position that you were drunk and didn't know what happened; is that right?

A. Yes, sir, that is what he wanted me to do, was just pretend you don't know a thing about it.

Q. Was that the position you took then in the trial?

A. Yes, sir, I told them as much as I had told him and he said, "As far as arrest, and being out there and all, just don't know nothing."

Q. Was that, in fact, the truth—that you didn't know?

A. Well, to be frank, I did come and go. Now, certain things, I remember and certain I didn't, and I told him exactly where it was and when it was. I don't re-
page 42 } member getting or moving or doing something. And he says, "Now, I tell you—" he told me, said, "Well, I one time—" said, "I know you are telling the truth, believe me," he said, "because one time I woke up in Washington, D. C. with a corn cob pipe in my satchel and didn't know how I got there." Said to me—that is when he was talking about—that is the way he put it, but he said that, "If you went down to Court with that, the Court will never believe you," and said, "My advice is to pretend you were drunk and know nothing."

Q. And you followed his advice, did you?

A. Yes, sir.

Q. All right. Now, during the course of trial—no, I'll let the Attorney General do that. Now, did you have witnesses testify in your behalf, Mr. Bryant?

A. Well, there was some witnesses, yes, sir, to testify to the fact that I had been drinking heavily for approximately ten days or two weeks, and the man where I lived at the hotel, two more—I think that the witnesses more or less was just to maybe let the Court know that I had been drinking heavily.

Q. That was apparently your only defense?

A. Yes, sir.

Q. Now, you say the trial lasted two and a half days?

A. Yes, sir.

Q. At the end of the trial, did the Court pronounce sentence at that time?

A. No, sir, they said the Court was adjourned;
page 43 } they would sentence me later. And I remember very distinctly about that because my family asked when it would be—the sentencing would be—and they told her that they didn't know but they would notify her and then the

next day, in the morning, they come up and got Mr. Pearson and brought him down and sentenced him. He had been tried for about two or three months and they had put sentencing off. And then they came back that afternoon and brought me down and I was kind of hurt about that, too, because they hadn't notified my family or any of my friends and then they put a piece in the paper that I was sentenced to—it said, "Bryant gets life and Pearson gets twenty years" and none of his family or friends or any of the relatives were present.

Q. Well, of course, that isn't material here today, Mr. Bryant, but what is material is when did the sentencing take place then—the next day?

A. The next day after; it was the 28th of September.

Q. Was your attorney present at that time?

A. Yes, sir.

Q. Were any—did he make any motions to the Court on your behalf at that time?

A. No, sir.

Q. Did he reconsider your sentence or reduce your sentence or anything of that nature?

A. No, sir.

Q. Well, after the trial once the evidence was all

page 44 } in, did he make any further—any motions at all in behalf of your defense?

A. Not a single motion that I know of, that is.

Q. Now, subsequent to your sentence, did you ever convey to your counsel your desire to appeal the case?

A. Well, he came upstairs after I had got back. He came up, well, I was pretty much upset, and I lit in on him as to why—

Q. What did you tell Judge Kuyk relative to your asking for your attorney to take an appeal, and would you go on and pursue the answer to this?

A. Well, when he came up, and as I say I was right much upset and, when he came in, well, you know, I got after him as to why I didn't get the sentence that he said I would and I said, "Mr. Pearson received a twenty-year sentence and you said my sentence would not exceed his, and if he received a life sentence that mine would stay in the neighborhood of approximately twenty to twenty-five years." He said, "You may be convicted of first degree but", he said, "I don't think your sentence will exceed his." Well, when this happened, I

got onto him about it and he said—we just had a real good argument and he said, "Now, just hold it, hold it, I don't know what went wrong down there but something has gone wrong. I don't know why Judge Kuyk got mad but," says, "you just hold your head." And I says, "Well, I want to tell you something right now." I said, "I have not had page 45 } a fair trial and also you have lied to me and," I said, "I want you to either get me a new trial or take an appeal on this thing." And he threw his hands up and he said, "I'll come back and talk to you when you can talk a little better." He said, "But you hold your head and be quiet," said, "Judge Kuyk, as soon as he cools down, there is a possibility he will call you back and change that sentence."

Q. All right. Did you ever discuss with him again in conversation a taking of an appeal?

A. Yes, sir.

Q. When was that time?

A. Well, I wrote to him.

Q. Did you have a direct conversation with him is my question, a face-to-face conversation?

A. I don't think he came back up there, no, sir. No, sir, after that, he didn't come back.

Q. All right, now did you ever mail a letter to him or communicate with him in any other way your desire to take an appeal of your trial?

A. Yes, sir—well, after I went to the penitentiary.

Q. Now, when would that have been that you went to the penitentiary?

A. I entered the penitentiary on October the 21st,

Q. All right, now when did you write Mr. Dillard?

A. I wrote to my mother the first week-end and page 46 } my sister the following, and I would say somewhere in the neighborhood of between the 1st and 15th of September—I mean November.

Q. And what did you ask him then?

A. Well, I wrote Judge Kuyk and asked Judge Kuyk—

Q. Now, let's just take them one at a time. Now, when did you write Mr. Dillard in reference to an appeal?

A. Well, approximately the same time.

Q. Sometime between the 1st and 15th of November?

A. Yes, sir.

Q. What did you say to him?

A. Well, I told him that, since nothing had been changed in my sentence and the way that I was brought down here and

sentenced and re-sentenced, and so forth, that I knew there was something wrong and that I should have a right for a new trial and for him to talk with the Court and tell them that he had told me this about the sentencing and to ask that I be given a new trial and get a change of venue.

Q. Now, did you ask him also—did you say anything about an appeal?

A. I did in the same letter, yes, sir, and I said, "If this can't be arranged, I definitely want you to enter an appeal." See, some of the fellows down there told me that he had done me wrong, that I could take an appeal on it.

Q. Did you receive any answer from him in reference to your request in this matter?

page 47 } A. Well, I received an answer.

Q. What was the answer?

A. It was pertaining to a letter that I had written to Judge Kuyk and he said that "Judge Kuyk gave me a letter which you wrote to him requesting your Court papers and all, that maybe you were going to want, you know, a new trial or if there is no grounds to get a new trial to note an appeal." He says he told me in the letter that I had no grounds for a new trial nor did I have any grounds for an appeal.

Q. Was there any further reasons given why he would not represent you?

A. Oh, this here happened—I do remember something, yes, sir, but it happened in the jail.

Q. Well, what was it?

A. We were discussing this appeal and he said, he said, "Roy", he said, "you know it costs five hundred dollars to enter your case in the Supreme Court and another five hundred when it comes up and", he says, "if you had that kind of money, you wouldn't have me." And I said, "Well, how right you are!" But he left me under the impression that it would cost me. But, when I got down there and talked to some of the fellows, they come around and talked to me, well, they told me that I could get an appeal in whether I had the money or not.

Q. All right. Now, you say you wrote a letter to Judge Kuyk in reference to this matter, too, and Judge

page 48 } Kuyk at that time was the Judge of the Hustings Court; isn't that correct?

A. Yes, sir.

Roy E. Bryant

Q. And when did you write him?

A. About—I wrote to him, say, first and then two or three days, or a week, later I wrote to Mr. Dillard. So it was in between that November the 1st and the 15th, somewhere in there.

Q. All right, now you say you also wrote to your family about this matter, too. Who did you write and when did you write them, and what did you say to them?

A. Well, before we go into that, sir, if I am not mistaken, I believe I wrote Judge Kuyk two letters and wrote my lawyer, too, but I never did hear anything from them, a couple of them. So then I—when I wrote my sister, I asked her to—

Q. When would that have been that you wrote them?

A. Well, I had just got down there and I was in the receiving unit when I wrote them; probably October maybe. I don't know what day. It was the week-end that Sunday came on—they give you a letter Saturday and I wrote my mother first and told her to call Mr. Dillard to see if he had done anything about this thing, about noting an appeal. And she got my brother to call. And then, the following week, I wrote to my sister, Mrs. Maxey, and asked her to call because Mother was all upset and I didn't know if she would, you know, take care of it properly. So I asked her and then she wrote me back and told me that the page 49 } attorney said I lost all rights to any appeal or something to that effect when I entered a plea of guilty—

Q. Which—

A. —something to that effect. Now, I am not positive, she can tell you more about that than I can.

Q. Which sister is this?

A. Mrs. Hicks. Now, she lost her husband since I went down there.

Q. Now,—

A. And my sister, Mrs. Ferguson, she happened to be present at the time Mr. Dillard—you remember I was telling you we made this—we was talking about this jury?

Q. Uh-huh.

A. And she was present when Mr. Dillard made this remark, "If I came and fought this Court, I would go to the electric chair." And, after I left and went back in the lockup, I understand that my mother asked him if there was something that he could do, that I was tore all to pieces and I

wasn't myself, and I was in no shape to fight, you know, stand up in Court, and asked him if something could be done. So he told her, then he said, "I'll take care of that on Court day. Don't worry about it. When he goes down there to testify, I will give him a little something to straighten him out." So that is where that liquid I was referring to in there came from.

Q. He gave you something then on Court day?

page 50 } A. Yes, sir.

Q. What effect did it have on you?

A. It fixed me. Well, it made me—just settled me real good, made me numb like I didn't care. About act almost like whiskey might—a little more so maybe.

Q. Now, Mr. Bryant, do you have at this point anything that you would like to add to the testimony that you have already given?

A. Well, I can't—right off, I can't think of anything. Well, I guess not, sir. I mean, right off, I can't think of anything but it is pretty hard to sit up here and think It has been awhile back and there may be something that could be of help to me but it is pretty hard to do that.

Mr. Osterhoudt: All right, if the Attorney General or the Court have any questions, Mr. Bryant, you answer them to the best of your ability.

The Witness: Yes, sir.

CROSS EXAMINATION

By Mr. Baliles:

* * * * *

page 52 }

* * * * *

Q. Now, Mr. Bryant, you also stated to your attorney just a few moments ago on direct examination that, when you were present in this Courtroom for arraignment, that the—that not only was your attorney not here but the—indictment was not read.

A. No, sir, there was nothing read—nothing at all read to me.

Roy E. Bryant

Q. How did you know then that you were supposed to enter a plea at that stage?

A. Well, he asked me, he said, "I understand you want to enter a plea", and evidently the lawyer had told him, talked to him or something, and he said, "How do you plea?" and I said, "I plead guilty of killing my *life.*"

Q. Mr. Bryant, the order does show that the page 53 } indictment was read at your arraignment.

Let's go to your next allegation, that you were denied witnesses. Now, do you recall that on the date of trial that certain evidence was put on by the Commonwealth?

A. Beg your pardon?

Q. Do you recall on the date of your trial that the Commonwealth put on evidence as to the charge of murder? Do you recall the Commonwealth putting on witnesses here to testify?

A. Yes, sir.

Q. And do you recall how many witnesses were called in your behalf?

A. I think maybe a couple members of my family, the man from the hotel, and maybe one more, I am not—I would say about four maybe; I am not positive on that, though.

Q. Your Honor, I would introduce Respondent's Exhibit Number Two, which indicates that there were at least fourteen witnesses called on behalf of the petitioner.

A. Well, sir, they didn't all take the stand, I mean, in my behalf. I don't think they called all of them many to the stand.

Q. Now, you have alleged that you were denied witnesses but, now, as I understand your testimony here this morning, these witnesses were inmates in the jail; is that correct?

A. In the bull—the place they call the bull pen, yes, sir.

That was the main witnesses that I wanted most page 54 } and the Officer who had me under arrest.

Q. All right, let's go to the inmates in the jail cell. Did you know the names of those people or did you know that they had been in there at the time? Were the same people in jail?

A. There was two at the time that I told him about and I don't think he even bothered to go around and see them, and they volunteered to appear in my behalf. Now, as far as knowing the rest, no, sir, but I suggested that he go down and get the docket books and summons them from that.

Roy E. Bryant

Q. Now, Mr. Bryant, isn't it true that the reason that your attorney declined to call those witnesses is for the simple fact that they gave statements with regard to statements that you had made and all those statements were very damaging as far as your defense was concerned?

A. No, sir, that is not so. There was two witnesses that was supposed to testify for the State out of the bull pen and only one testified.

Q. Do you recall the names of any of those people in jail, Mr. Bryant?

A. I'm—there is one maybe called Christley was the one that testified in Court against me and there was another boy was supposed to testify who left town or something; I don't know, he just didn't show up. But, in my behalf, none showed up.

Q. Do you recall your attorney telling you that
page 55 } they should not be called for the simple reason that their testimony would be damaging?

A. My attorney said that the reason he said they had phony names and was from all over the country and he said it would be impossible to get them.

Q. Your Honor, I submit that this is Respondent's Exhibit Three, statements made by the inmates to the police officials with regard to what this man stated and we submit that this would indicate why the petitioner's attorney refused to call his witnesses.

The Court: Do you want to see them?

Mr. Osterhoudt: Judge, I have no objection to entering these statements but, of course, I think this is purely surmise. I haven't compared them. We are not concerned with his guilt or innocence here.

Mr. Baliles: Well, he is merely making the allegation that he was denied these witnesses and we know that the statements of those witnesses would not have helped his cause and he has no merit to that allegation.

Mr. Osterhoudt: Well, I don't know.

Mr. Baliles: I know they are not in the file.

The Court: I don't think you can use them except to cross examine.

Mr. Osterhoudt: They are really different; they
page 56 } are all different.

Roy E. Bryant

By Mr. Baliles: (continues examination)

Q. Mr. Bryant, you say your attorney was aware of the fact that there were inmates in the jail who could help your case? You told him that, did you not?

A. Yes, sir.

Q. And do you know for a fact whether or not he consulted with those people?

A. He did not, as far as I know, because they weren't *summonsed.*

Q. As far as you know?

A. At the time, this boy was a runner up there in the jail and I asked him if the attorney had talked with him and he said no. And he said another fellow on the other side—

Q. You don't know from your own knowledge whether or not this man had examined any statements these people made, or whether he actually talked with them?

A. I can say that he said, "Oh, there ain't no use to fool with them. They have got all this here and they are all over the country, phony names and everything."

Q. And the other witness was a policeman who had arrested you earlier in the evening; is that correct?

A. Yes, sir.

Q. But you did state that the hotel manager, who was involved in this proceeding, did testify as to your condition?

page 57 } A. He merely testified that I came by the hotel.

Q. Let's look at your allegation that you were ineffectively represented by Mr. Dillard. I believe that you stated you saw him on three occasions; is that correct?

A. Three or four.

Q. Four?

* * * * *

AFTERNOON SESSION

The Court: Mr. Bryant was on the stand. What did you all decide to do about Judge Kuyk?

Mr. Osterhoudt: Sir?

The Court: What did you all decide to do about Judge Kuyk?

Mr. Osterhoudt: We decided we are not going to call him, Your Honor.

The Court: All right.

Roy E. Bryant

By Mr. Baliles: (continues examination)

Q. Mr. Bryant, I believe we had just started on the allegation that you were denied effective assistance of counsel. I believe you testified that you saw your attorney on several occasions. Now, let me see if I have you correct. You did state on this stand that you discussed the case with your attorney, that you discussed witnesses, that you discussed the pleas, a mental examination which was sought at your request by your attorney, that you tried to get several continuances, and I believe, in fact, the record shows

page 58 } that. You *all so* stated to your attorney or conferred with him and agreed that you wanted to be tried by the Judge and, on your second visit or his second visit, that you talked for at least thirty minutes or more with regard to your plea. I believe some of your family was there, and so on. So that there is no question, is there, that your attorney was prepared to represent you in this case?

A. Well, you say that I discussed it with my attorney and agreed to let the Judge try it. I never agreed to let the Judge try it until I was in the Courtroom.

Q. But you did talk about it?

A. We discussed it, yes, sir. Our minds never did get together on it exactly.

Q. What did you do, Mr. Bryant, to help your attorney prepare for your defense?

A. Well, I don't know. There wasn't much I could do, no more than tell him exactly what happened and what witnesses I knew and that was very little. And I mentioned witnesses in the bull pen, and what this fellow up there that was a runner in the jail told me about the other witness.

Q. Well then, I wonder, if your attorney did these things for you, Mr. Bryant, I wonder if you would state for the record then just why you are dissatisfied with the way Mr. Dillard handled your case?

A. Well, the main—one of the main reasons is that he led me to believe, if I entered a plea of guilty, that I

page 59 } would get less—no more time than this gentleman Pearson and he led me to believe that if he got a life sentence that I would not exceed twenty-five—possibly twenty.

Q. Well now, is your only complaint against your attorney the fact that you got more time than he told you you would get?

Roy E. Bryant

A. No, sir, he led me astray.

Q. How?

A. By telling me—I mean, by saying I couldn't get,—take an appeal because I didn't have the funds—he—

Q. All right,—

A. —because he didn't go get these witnesses.

Q. What do you mean, he didn't get witnesses?

A. In the bull pen, they were the main ones that I wanted. The other ones, I didn't care much—they weren't any use much to get.

Q. Let me ask you this, Mr. Bryant. Do you know whether or not your attorney tried to get a recommended sentence from the Commonwealth Attorney's office?

A. He told me he would talk with the Judge. Now, he didn't say whether he got—he said that Mr. Cuddy told him that he was going to electrocute me. And he said that he had talked to Judge Kuyk and led me to believe that my sentence would not exceed this other fellow's, just like I told you.

Q. Now, he cross examined the witnesses for the
page 60 } Commonwealth at your trial, did he not?

A. Well, yes, sir.

Q. And he made quite an argument on your behalf, did he not?

A. Well, in some cases. Now, I think that some places, he probably went to extremes and I was told that was why Judge Kuyk got mad and sentenced me to life because he come out here and brought some lady that sat out there and then got up here and acted like a bantam rooster; that is the words I got now. I don't know.

Q. He did make an argument on your behalf, though, did he not?

A. Well, he didn't try to—only the testimony from people in the bull pen here where I think was the most damaging—

Q. Just answer the question, Mr. Bryant. That is all I wanted is whether or not he made an argument on your behalf and whether he cross examined the witnesses at your trial.

A. Well, I will have to say in some cases.

Q. Well then, I take it your only objection to his representation is that he did not appeal your conviction and that you got more time than you thought you were going to get?

A. No—

Q. Well, what else?

Roy E. Bryant

A. Well, he put me in a position where that I was scared and didn't know which side I was going to get
page 61 } cooked on. That is the way I was, just sitting up there just waiting to get the worst over.

Q. Well, let me ask you this question, Mr. Bryant. You were convicted in 1950 and when did you become dissatisfied with the way he handled your case?

A. From the beginning.

Q. I wonder if you would state for the record then, Mr. Bryant, why you waited so long to bring this petition for a Writ of *Habeas Corpus?*

A. Well, sir, I didn't think that I had any special time. I will tell you along—give you an idea of what held me up is when I first entered the penitentiary, the Assistant Superintendent, Mr. Durene, called me off the yard one day and called me in the office and he asked me was my name Bryant and was I sent up from Roanoke and I told him, yes. And he said, "You have a life sentence; is that right?" And I said, "That's right." And he said, "Well, listen, son," he says, "we here at the penitentiary don't feel that you are guilty of any planned and premeditated murder," said, "There is a great deal of difference between the two sentences." And he says, "Would you like to go down and work for the criminal identification and so forth and so on?" and he says, in five years time that he would help me to get out of the penitentiary.

Q. Well now, as a matter of fact, Mr. Bryant, you did get out of the penitentiary; did you not?
page 62 } A. In 1960, yes, sir.

Q. And you were out for approximately what—two years?

A. Fourteen months.

Q. Did you, at anytime during that time when you were out, seek to contest the validity of that 1950 conviction?

A. No, sir. When you are on parole or pardoned or something like that, you start that and they put you right back in the penitentiary and you can't take no chances. I was really trying to stay out. I did write for my Court records several times and they never would send them, maybe one or two pieces, and even this last time, I had to get an attorney to get my arraignment papers for me.

Q. You came—you stated here just a few moments ago, Mr. Bryant, you stated that you came into this Courtroom on the 22nd of September, 1950, and entered a plea of guilty,

at which time the case was continued for a period of about three days.

A. Til Monday, yes, sir.

Q. But you just stated on direct examination that, after you entered the plea of guilty that you didn't even know when you were going to be brought back into Court?

A. No; if you will check back a little further, I think you will see that I testified that he had already told me my case would start September the 25th and then he brought—this come up prior to that Court.

page 63 } Q. Now, I believe you also stated that actually your attorney visited you in July, at which time you discussed the various aspects of the case, as well as the plea. Now, you did not enter a plea until September of that year, approximately some three or four months, so that during that period of time you did, I take it, consider whether or not you were going to enter a plea of guilty?

A. Well, sir, that was a matter of about six or eight weeks there; I think about six weeks.

Q. Two months.

Q. Well, I didn't see him for about thirty days or six weeks, didn't even know where he was and my people would try to locate him and they said they understood he was in some hospital getting off of a drunk. That is just what I was told—couldn't even locate him.

Q. Okay now, after your conviction, you specifically requested him to appeal your case or get a new trial and he failed to do it; is that what you have alleged?

A. Yes, sir.

Q. Do you happen to have copies of those letters?

A. No, sir.

Q. You don't have any—

A. When I was released from the penitentiary and was over at this rooming house, well, I noticed that somebody had been checking—going in my stuff and so I just took

page 64 } my pardon and all papers pertaining to anything to the penitentiary and disposed of them—even my pardon and all so nobody would know. I wanted to keep it as quiet as I could.

Q. Now, you stated also that at the end of your trial, or at the end of the presentation of the evidence, that your attorney made no motions. Is this your first time in Court, Mr. Bryant?

Roy E. Bryant

A. No, sir; I have been—I mean, the first time I have been up here—any serious crime, yes, sir.

Q. And you are sure that he never made any statement to the Court after the Court pronounced sentence?

A. If he did, I don't remember it, sir.

Q. Well, Mr. Bryant, it seems from the summation of your testimony that your attorney gave you his advice as to what should be done or not done and, according to your own testimony, you took his advice and it appears that your only dissatisfaction is with the results.

A. Well, I took that under duress, you might say, because I just didn't know which way to turn. I really didn't want to take a Judge's trial because I didn't think I stood much chance, but after him explaining that he had talked with the Judge an hour on the telephone and an hour and a half in his Chambers, and promise this, promise that, well, I had no alternative but to do that when Mr. Cuddy was fixing to send me to the chair and told my people and people on page 65 } the street even talked about it—what was said.

Q. Of course, you are aware of the fact, Mr. Bryant, that Mr. Dillard is deceased and can't be here to testify; are you aware of that?

A. Well, at the time I wasn't when I started my petition, but I have heard, yes, sir.

Mr. Baliles: That's all.

RE-DIRECT EXAMINATION

By Mr. Osterhoudt:

Q. Have you got that Exhibit, Mr. Baliles? Mr. Bryant, there is a series of names of witnesses which were *summonsed* by the defendant in your case. Can you go down and identify, please, to the Court who these witnesses were? You know what they did or what they had to do with the case?

A. Now, these names here are a little confusing because I thought it was Mr. Hurt who was up there when they talked to me, and the paper said it was two other doctors.

Q. All right now, Dr. Palmer, was he—Edwin J. Palmer, was he one of the witnesses that was called in your defense?

A. I can't say for sure but his name was mentioned. Now, there was two gentlemen came up—doctors—and one of them was Dr. Hurt.

Mrs. Maggie Lee Hicks

Q. Well, there are two doctors on there—right?
A. Two doctors.

* * * * *

page 74 }

* * * * *

MRS. MAGGIE LEE HICKS a witness called on behalf of the Petitioner, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Osterhoudt:
Q. Will you state your name, please?
A. Mrs. Maggie Lee Hicks.
Q. Mrs. Hicks, where do you live?
A. 2005 Wayne Street, N.E.
Q. In the City of Roanoke?
A. That's right.

The Court: I cannot hear you, Mrs. Hicks.

Q. What is your address?
A. 2005 Wayne Street, N.E.
page 75 } Q. 2005?
A. That's right.

By Mr. Osterhoudt:
Q. Now, Mrs. Hicks, are you related to the petitioner in this case, Roy Bryant?
A. Sister.
Q. Mrs. Hicks, I direct you attention to the Summer of 1950, at which time your brother was charged by the authorities of the City of Roanoke with murder of his wife. Did you have occasion during that Summer to visit your brother in jail in the City of Roanoke?
A. Yes, I did.
Q. Well, did you visit him on an occasion when his counsel was present?
A. Yes.
Q. And can you tell us approximately when this would have been, in point of time, during the time of the Summer?

Mrs. Maggie Lee Hicks

A. No, I don't remember exactly.

Q. Was it before or after the trial of this case?

A. It was before.

Q. All right, can you tell us what was discussed at that time with reference to your brother's trial?

A. Well, about a jury trial and how he should plea?

Q. Well, can you be a little more specific?

A. Well, he was told to plead guilty.

page 76 } Q. By whom?

A. By Pat Dillard.

Q. Mr. Dillard, I believe, was his attorney; is that right?

A. That's right.

Q. Did Mr. Bryant, your brother, accept this advice at that time or what did he say about it?

A. Well, he didn't accept it at that time. He wanted to think about it and talk it over.

Q. Was there anything said with reference to the—obtaining of a court reporter?

A. Yes.

Q. Was one subsequently obtained?

A. Yes, it was.

Q. Do you know who that was?

A. No, I don't. I have forgotten his name; it has been so long.

Q. If I am right, would it have been a Mr. Marcus Bieler?

A. I can't say for sure but that does sound like the name.

Q. Subsequently to the trial, did you talk with your brother again before he went to the State Penitentiary?

A. We talked to him on visiting days up there.

page 77 } Q. During your conversation with him, was there ever anything said about an appeal or a new trial on this case?

A. Yes, he wanted to make an appeal. He also wrote to me after he was in the pen about it.

Q. And when would this have been?

A. Oh, around in October, or something.

Q. What did he ask you to do?

A. To call Mr. Dillard for him.

Q. Did you do so?

A. After several times, I finally got ahold of him.

Q. And what did you request of Mr. Dillard?

A. I told him that Roy wanted to appeal his case and he said that it wouldn't do any good, there is no use to try.

Mrs. Maggie Lee Hicks

Q. All right, was there ever any discussions with the Judge concerning an appeal?

A. Yes, Mother, she talked to the Judge about it.

Q. Is your mother living at this time?

A. No.

Q. Would this again have been in October or November of 1950?

A. Yes, it would.

Q. Was there ever any reason given to you for the taking —for Mr. Dillard to refuse to appeal the case other than the fact that it wouldn't do any good?

A. That is the only reason he ever had. That it wouldn't do any good.

page 78 } Q. Did he refuse to accept the appeal then?

A. He just said it wouldn't do any good, wasn't no use to take one. That is all we ever got out of him.

Q. Was there ever any discussion relative to the cost of such an appeal?

A. No, because the cost of the reports was the only cost that was ever discussed.

Q. What about that?

A. Well, we received a letter, but I don't remember exactly what the cost would be.

Q. But there was to be a cost?

A. Yes; on that, yes.

Q. Did you yourself ever discuss an appeal of your brother's case with any other Court officers?

A. No.

Q. Like the Clerk or the Commonwealth Attorney, or someone else?

A. No, I did not.

Q. All right. That's all.

CROSS EXAMINATION

By Mr. Baliles:

Q. Mrs. Hicks, you said that you discussed that you were present in the jail at the time the attorney was there. Did you notice in any way that the petitioner was being forced in any way or persuaded to plead guilty back in July of 1950?

page 79 } A. The only thing he was just told that it would be better if he pleaded guilty; it would be better for him, he would have a lighter sentence.

Mrs. Maggie Lee Hicks

Q. Now, you just mentioned a reporter was obtained. How was your brother—was not your brother appointed counsel in this case?

A. I don't know.

Q. Well, would you mind telling us how the money was obtained to pay for the court reporter?

A. I don't know that.

Q. You did not pay the court reporter?

A. I did not, no. I just know there was one there.

Q. Now, how many times after the trial did you talk with your brother?

A. As often as I could.

Q. And did he mention an appeal each time?

A. Yes, he did.

Q. And you stated that he wrote to you about the appeal. Do you happen to have a copy of the letter?

A. No, I do not. You know, if I keep them all, I would never have anyplace to put them.

Q. Well, did you keep—do you have anything that would show that you had a conversation with the Judge about this or that your mother did or that someone in your family had tried to get an appeal?

page 80 } A. No; the only thing that we happen to have left is my sister found in my mother's letters was the cost of this reporter, you know, that did the reporting.

Q. Uh-huh.

A. That is the only thing we have. And we still have that yet.

Q. Do you have that with you?

A. No, I don't but it is over at my sister's. I can get it anytime. I didn't think you would want it. She told me they had it over there today, but I can get it.

Q. And you stated that this attorney, Mr. Dillard, refused to take this appeal?

A. Yes, he did.

Q. Well, now this was seventeen years ago, Mrs. Hicks; do you recall these incidents surrounding the conversation very well?

A. What do you mean?

Q. Well, after all this happened seventeen years ago—

A. Yes, I know.

Q. Do you recall what your brother said, how it was brought up that he wanted to take an appeal after all that?

Mrs. Maggie Lee Hicks

A. Well, he just wrote and said he wanted to. Just was the second letter that he ever wrote from the pen. Mother got the first one and I got the next letter. That was the second letter he ever wrote.

page 81 } Mr. Baliles: That's all.
The Court: May I ask a question?

Q. Mrs. Hicks, did he say he wanted Mr. Dillard to go to appeal to Judge Kuyk to lower the sentence or to appeal to the Supreme Court of Appeals?
A. To appeal to the Supreme Court.
Q. He said that specifically?
A. Yes, sir.

The Court: All right, thank you.

The witness stands aside.

Mr. Osterhoudt: Judge, there are two things that I would like to have the opportunity to do. I did not know until today that there was a letter referred to as in existence.
The Court: All right.
Mr. Osterhoudt: Mrs. Hicks advises me that her sister is ill and I cannot obtain that, and I wonder if we could have permission from the Attorney General's office to submit that letter containing—
The Court: Who is it from and to whom is it addressed?
Mrs. Hicks: It is addressed to my mother.
The Court: Who is it from?
Mrs. Hicks: And it is from—
page 82 } The Court: The court reporter?
Mrs. Hicks: The court reporter, yes.
Mr. Baliles: Well, I don't see the relevancy of that. It is already in the record that they somehow did obtain the funds to hire a court reporter, and apparently there was some sort of a record taken. As to how this would affect the allegations—
The Court: What is it—just a bill? What is it?
Mr. Osterhoudt: Apparently, it is a letter, Judge, stating what the charge is for writing it up. I am sure that is what it is.
Mr. Baliles: If it were a hundred dollars, or three hundred dollars, I still don't see how that would affect the case.

The Court: Well, get the letter; I will hold it up.

Mr. Osterhoudt: All right, I don't know that I can get it in this afternoon but I want the Attorney General's permission to enter this in this record.

Mr. Baliles: Well, I hate to, say, sight unseen.

Mr. Osterhoudt: Can you get the letter for me this afternoon? Can you go and get it at present?

Mrs. Hicks: Yes.

Mr. Osterhoudt: Would you do that for us, please?

Mrs. Hicks: Yes, sir, it will take about an hour.

The Court: All right, we will be here.

page 83 } Mr. Osterhoudt: In addition to that, Judge, there is a letter—earlier today, and frankly I haven't picked it up from my office; it just came in the mail this morning—a statement from Mr. Bieler relative to his participation in Court and I would like to call my office and have my secretary to bring it up here while we go forward with this case.

The Court: All right.

Mr. Osterhoudt: The evidence of the Attorney General will be ..... at this time.

Mr. Baliles: Your Honor, I still don't see the relevancy of all of this as far as the allegations are concerned.

The Court: Well, I think I can see the relevancy. He proposes to show that a transcript was made and maybe the Supreme Court will be a little more lenient toward granting him a late appeal except for one thing, the records were destroyed.

Mr. Baliles: Do you have copies of that?

Mr. Osterhoudt: No, I do not. That is why I want to show to the Court that Mr. Bieler's records have been destroyed. May I call my office?

The Court: Yes, proceed.

Mr. Baliles: Due to the fact that petitioner doesn't have counsel sitting by him at all stages of the proceeding—

The Court: Well, you can call him in here.

page 84 } This is a civil suit anyhow.

Mr. Baliles: All right.

The Court: Wait until he comes before you ask any questions.

Mr. Baliles: Yes, sir, if Your Honor, please, we call Mr. Cuddy.

The Court: Take the stand, Mr. Cuddy.

C. E. Cuddy

MR. C. E. CUDDY a witness called on behalf of the Respondent, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Baliles:

Q. Mr. Cuddy, will you please state your name and occupation?

A. C. E. Cuddy, Attorney at law.

Q. Mr. Cuddy, what was your occupation in 1950?

A. Commonwealth Attorney for the City of Roanoke.

Q. Mr. Cuddy, I direct your attention to September of 1950, and ask you if you recall the case of Commonwealth against Ray Bryant?

A. Yes, sir, I recall that.

Q. Do you recall who represented the petitioner during his trial?

A. Yes, Mr. Pat Dillard.

page 85 } Q. Mr. Cuddy, I ask you, what kind of a reputation did Mr. Cuddy enjoy as an attorney?

A. You mean Mr. Dillard?

Q. I am sorry; yes, Mr. Dillard.

A. Mr. Dillard enjoyed a very good reputation as an attorney and especially as a trial lawyer. He was a real scrapper.

Q. Do you recall how long he had been a lawyer prior to the time that he represented the petitioner?

A. He had been practicing law quite a while in Rocky Mount and Roanoke before I came to the bar.

Q. And when was that, sir?

A. I started in 1929. I would say that Mr. Dillard, at that time, had probably been practicing law for ten or fifteen years or more.

Q. Well, do you recall his role or his participation, or his efforts, on behalf of the defendant in this case?

A. Yes, sir, I recall very much because of the—several conferences that Mr. Dillard and myself had prior to the disposal of the case here in Court, and the reason I recall it is there was quite a discussion between Dillard and myself on not one occasion, but two or three, with reference to a plea of guilty. And it was my contention that we would go along if he would plea guilty to first degree murder. And, of course, his contention was that he didn't have to plead guilty to first degree

C. E. Cuddy

page 86 } murder, that he could just plead guilty to the indictment. And we had several conferences about it and, finally, that is what he did in open Court—plead guilty to the indictment.

Q. Now, Mr. Cuddy, I believe the record will show, but perhaps your memory does recall the fact, that the petitioner did enter a plea of guilty?

A. Yes, sir.

Q. Now, I believe that there was some presentation of the evidence. Do you recall what Mr. Dillard did do in the trial? What his efforts were during the trial or during the presentation of the evidence?

A. As I recall, Mr. Dillard, he just never quit and during the trial, even though it was on a plea of guilty, he questioned all of the witnesses that were submitted to the Court. Now, I don't recall how many but there were—as I recall it, the taking of the evidence consumed the greater part of two days.

Q. I see. There were witnesses that testified on behalf of the petitioner, were there not, or do you recall?

A. I don't recall that he had witnesses. Some of them, they put on just for the defendant—no, I do not recall. I know that we put on a number of witnesses and that they were questioned in right much detail and length by Mr. Dillard.

Q. Do you recall whether or not the petitioner took the stand?

A. To my recollection, he did not.

page 87 } Q. All right, sir, do you have any knowledge, so far as you are concerned with this case, that the petitioner was denied any witnesses in this case?

A. No, sir, not as far as I know, there was no denial of witnesses.

Q. Mr. Cuddy, so far as you are concerned, and as far as your knowledge of the case is concerned, do you know whether or not the petitioner's attorney, Mr. Dillard, refused to appeal his conviction?

A. No, sir, I have no knowledge of that at all.

Q. Have you ever known or did you ever know Mr. Dillard to refuse to appeal a case even when there was no merit to it?

A. Well I, of course, would have very little knowledge of cases after we disposed of them in the Hustings Court here but, knowing Mr. Dillard, I mean, as long as there was any possibility—I mean, he was a fighter all the way through.

C. E. Cuddy

Mr. Baliles: That is all, sir. Thank you.

CROSS EXAMINATION

By Mr. Osterhoudt:

Q. In relation to the calling of witnesses for the defendant, you stated that you didn't recall that he had any witnesses?

A. I don't recall that he put on any witnesses in defense.

Q. And you don't know whether or not he re-
page 88 } quested Mr. Dillard to summons any witnesses?

A. I would not know that, no, I would not know.

Q. At any time during your contact with Mr. Dillard in his representation of Mr. Bryant, was he ever under the influence of alcohol or intoxicants of any kind?

A. No, sir, he was not.

Q. And you have no knowledge of whether or not he refused to proceed with an appeal?

A. No, sir.

Q. Direct knowledge?

A. I have no knowledge of that.

Q. You say that you don't recall the petitioner taking the stand?

A. I don't recall whether or not he took the stand, no, sir. I do not recall whether he did or not.

Mr. Osterhoudt: All right, sir.

By the Court:

Q. Mr. Cuddy, there is in the mind of the petitioner some feeling that his sentence should have gone along with Lester Pearson, who was tried about the same time. Were they similar offenses?

A. Judge, in my opinion and having investigated and prosecuted both, there was a tremendous lot of difference in the situation.

Q. Both of them killed their wives, didn't they?
page 89 } A. That's right, yes, sir.

Q. Was this a—

A. Sir?

Q. Would you say that this was a pretty horrible affair, this Bryant murder?

A. Well, it was. It is my opinion that it was a rather heinous situation.

C. E. Cuddy

The Court: All right. Thank you, sir.

The witness stands aside.

Mr. Baliles: The respondent rests, Your Honor.

Mr. Osterhoudt: I would like to file these as Exhibits B and C for the petitioner. One is a letter of January 3, 1968, Exhibit B, from Mr. Marcus Bieler, and Exhibit C, his letter of January 7, 1951.

(Letter to Mr. Osterhoudt from Mr. Bieler, the court reporter who took the criminal case in 1950, dated January 3, 1968, was received, filed and marked, Petitioner's Exhibit B.)

(Letter to Mrs. Edward J. Peters from Mr. Bieler, dated January 7, 1951, giving cost of transcript of evidence of trial of September 1950, was received, filed and marked, Petitioner's Exhibit C.)

The Court: Well, the Court has heard the evidence in the case of *Roy E. Bryant* vs. *C. C. Peyton* and the page 90 } contention of the petitioner on grounds 2, 3, 4, 5, and 9 were all eliminated prior to the taking of testimony, on the grounds of either being irrelevant or immaterial insofar as a *Habeas Corpus* is concerned. Evidence was heard on questions one, six, seven and eight. Question Number One contends that the petitioner did not have the effective assistance of counsel at several critical stages in the proceeding against him.

While the evidence clearly shows that he has not borne the burden of proof, that the evidence clearly shows that he did have the assistance of counsel at every critical stage of the proceeding against him, either shown by the record itself or by the evidence as produced.

Ground number Six, the petitioner contends that he was denied the right to have witnesses called to testify in his behalf. While the evidence fully shows a number of witnesses were subpoenaed to be here, including witnesses who were in, as he quoted, "the bull pen", to testify relative to certain admissions he may have made.

Ground number Seven, the petitioner contends that he was denied the effective assistance of counsel and counsel committed gross irregularities during his representation. He has

not carried the burden of proof in that respect
page 91 } whatsoever. He had the assistance of Mr. Pat
Dillard, who was an effective trial lawyer and an experienced attorney who apparently, according to Mr. Cuddy, was a scrapper and rendered as long a service with this petitioner as the petitioner stated. He had many conferences with him and spent two days trying the case on a plea of guilty. It is not up to the Court to go into the question of his trial tactics, whether he did, whether he was correct or incorrect in the procedures he used, but simply to say whether or not he rendered effective assistance, and he did.

Question number Eight is the only question which, as I see it, has any bearing whatsoever on his right for a Writ of *Habeas Corpus*. That is that he was denied the right of appeal solely because of his financial ability to pay for the same. The evidence is that this defendant was tried in the month of September, 1950, and at the trial he was arraigned on one day, on about the 22nd, that his case was continued over the week-end. The 25th and 26th, it was heard and the 28th, the Court entered an order sentencing—finding this defendant guilty of first degree murder, and sentencing—him to life imprisonment and, then on the 29th, there is another order which essentially does the same thing but shows that
the pre-sentence report was presented, and that
page 92 } the Probation Officer was present in Court. So,
obviously, the Court can only reach the conclusion that the Probation Officer was not in Court on the 28th and was called into Court so that he could be cross examined by counsel for the then defendant.

The petitioner now says that he was denied the right of appeal because he requested Mr. P. H. Dillard, after his trial, to appeal his case. It is somewhat contrary to what the defendant said on direct examination in response to a question by his attorney. He said, in response to an answer, to something Mr. Dillard said, "If you plead guilty, I will guarantee you you won't get the electric chair." He now says something about another defendant in jail at the time who was up for a similar offense, and he wanted his sentence to run the same as that defendant, named Pearson. Well, I am impressed by the fact that Mr. Dillard must have stated that "If you plead guilty, I will guarantee that you will not get the electric chair." So apparently his guarantee worked out. This defendant pleaded guilty and he doesn't raise the question of coercion or duress of any kind. He pleaded guilty of

his own volition. Now, having pleaded guilty, of his own volition, the Court of Appeals has held in *Hobson* v. *Yowell,* 177 VA. 906, and again in *Crutchfield* v. *Commonwealth,* 187 VA. 291, that when that plea is given and accepted by the Court, it also authorizes the imposition of the punishment prescribed by law only for the offense admitted and it waives all defenses other than that no offense is charged. Now, whether or not he had the right of appeal on his plea of guilty was probably open to question even at that time, but whether he actually did notify in good—in earnest seek an appeal through his attorney, you have two witnesses, Mrs. Hicks, his sister, and this petitioner, both of whom said they made certain inquiries about an appeal, and there is not one shred of real evidence, letters of any kind, the attorney is dead. Time has passed so long that a man's memory runs rather to the contrary. And it is very difficult for me to believe and to think that the petitioner has carried the burden of proof in respect to noting an appeal.

page 93

So, therefore, this Court will rule that, having not carried the burden of proof, the *Habeas Corpus* will be denied and henceforth dismissed.

The right will be granted for this defendant to carry forth the appeal of this *Habeas Corpus* if he so desires, and I request that the Attorney for the petitioner so advise Mr. Bryant.

* * * * *

PETITIONER'S EXHIBIT B

Marcus A. Bieler
Court Reporter
1743 Devon Road S.W. - P. O. Box 4071
Roanoke, Virginia
Telephone DI 4-4372
January 3, 1968

Charles H. Osterhoudt, Esq.,
Langhammer & Osterhoudt,
Attorneys at Law,
Shenandoah Building,
Roanoke, Va.

Dear Mr. Osterhoudt:

Complying with your request of January 2, the following information is furnished:

I reported the proceedings of the *Commonwealth of Virginia* v. *Roy E. Bryant* in the Hustings Court for the City of Roanoke, Virginia, on the dates of September 22, 25 & 26, 1950. I think that the reason the dates do not follow consecutively was because of the fact that the case commenced on a Friday, and the trial was recessed during Saturday and Sunday, and recommenced again the following Monday.

My records disclose that the defendant was represented by the late P. H. Dillard, Esq., a local Roanoke attorney, who, I think, was Court appointed. However, Mr. Dillard paid my fees out of his own pocket because, if memory serves me right, in 1950 were were no provisions for an impecunious defendant to be supplied with court reporting facilities. The first statute enacted by the Legislature providing for the Commonwealth furnishing reporting costs for insolvent litigants came some few years later. Mr. Dillard also paid my traveling expenses at the time since I was not then a resident of Roanoke, but was domiciled in Bedford, Virginia.

I regret that it was my practice at that time (as did all Virginia reporters) to destroy my notes after the lapse of five or six years; therefore when some years ago I received a communication requesting that a transcript be furnished of the proceedings, I had to reply that the request could not be complied with. I trust that the above information may be of assistance.

Respectfully yours,

Marcus A. Bieler

MAB:dr

Filed: 1-4-68

PETITIONER'S EXHIBIT C

Marcus A. Bieler, Court Reporter
Bedford, Virginia
Masonic Building
January 7, 1951.

Mrs. Edward J. Peters,
1218 Kirk Avenue, S.E.,
Roanoke, Virginia.

Dear Mrs. Peters:

This is being written in answer to your letter of Decem-

ber 26th, 1950, in which you ask if a transcript of the record of the case of the *Commonwealth of Virginia* v. *Roy E. Bryant* can be obtained, and the approximate cost thereof.

I am sorry that I have not had the opportunity to answer your letter sooner; but the reason for this late reply is due to the tremendous amount of work I have had to accomplish, in addition to the fact that New Year's Day resulted in my becoming a proud father again—and that is an experience that causes one to sidetrack other important matters.

I have taken my notes of your son's case from the files, and have roughly estimated the amount of pages the transcript will come to. I figure that the transcript will be somewhere close to 420 pages, which, of course, makes it a considerable record. The rates for transcribing the evidence are 50¢ a sheet for the original copy, and 15¢ each for each duplicate, triplicate, etc. Ordinarily, for appeal or other purposes, an original and duplicate are asked for. If only an original copy is needed, the cost will be approximately $210.00; if an original and duplicate are necessary, the cost will be approximately $273.00. Please understand that these are estimates, and that there may be a variance due to the fact that I can only approximate the number of pages the transcript may run to.

Please let me know if you decide to have the transcript written.

Yours very sincerely,

Marcus A. Bieler.
Trail's End, Rt. 2,
Bedford, Va.

Filed: 1-4-68

PETITIONER'S EXHIBIT A

Virginia:

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof on the 28th day of September, 1950

COMMONWEALTH OF VIRGINIA,
v. 21645
ROY E. BRYANT.

This day again came the Attorney for the Commonwealth of Virginia, and the prisoner, Roy E. Bryant, was brought

into Court in the custody of the Sergeant of the City of Roanoke, Virginia, and set to the bar.

Thereupon the Court having maturely considered the evidence, argument of counsel and report of the probation officer and being of the opinion that the defendant is guilty of murder in the first degree, it being demanded of him, the said Roy E. Bryant, if anything he had or knew to say why the Court should not now pronounce judgment against him according to law, and nothing being offered or alleged in delay thereof, it is therefore considered by the Court that the said Roy E. Bryant be confined in the State Penitentiary at Richmond, Virginia, for the remainder of his natural life, and it is ordered that, as soon as practicable, the said Roy E. Bryant be removed from the jail of the City of Roanoke, Virginia, and safely conveyed to said State Penitentiary at Richmond, Virginia, therein to be kept imprisoned and treated in the manner prescribed by law.

And the prisoner is remanded to jail.

* * * * *

Filed: 1-4-67

RTE

DEFENDANT EXHIBIT 1

VIRGINIA

In the Hustings Court for the City of Roanoke.

COMMONWEALTH OF VIRGINIA
v.
ROY E. BRYANT.

PLEA

The defendant, by counsel, and in person, comes in open court and pleads guilty to the entire indictment which has been found against him, said indictment reading as follows, to-wit:

'Virginia: In the Hustings Court for the City of Roanoke.
Commonwealth of Virginia
City of Roanoke, To-wit

The Grand Jurors in and for the body of the said City of Roanoke, Virginia, and now attending said court at its July term in the year 1950, upon their oath do present:

That Roy E. Bryant, heretofore, to-wit, on the ..... day of June, 1950, within the jurisdiction of this court, in the said City of Roanoke, Virginia, feloniously did kill and murder one Virginia Morgan Bryant.

Against the peace and dignity of the Commonwealth of Virginia.

Witnesses appearing before the Grand Jury:

F. H. Webb

Fred Lewis Jenkins.'

And being No. .....

* * * * *

Filed: 1-4-68

RTE

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Writ of Error Awarded	1
Record	2
Judge's Certificate	2
Affidavit of Poverty	2
Order entered by the Hustings Court of the City of Richmond, Part Two—June 1, 1967	3
Order—June 20, 1967	4
Answer of Respondent with Exhibits	4
Judgment—January 29, 1968	15
Order—Denial of Motion for Rehearing—February 8, 1968	16
Notice of Appeal and Assignments of Error	17
Witnesses:	
Roy E Bryant	18
Mrs. Maggie Lee Hicks	45
C. E. Cuddy	51
Proceedings	49, 54
Petitioner's Exhibits	56