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Clerk, Supreme Court of Appeals
RICHMOND, VA.

Record No. 7057

In the Supreme Court of Appeals of Virginia at Richmond

HANSFORD B. ELLER

v.

C. C. PEYTON, SUPT., ETC.

FROM THE CIRCUIT COURT OF STAFFORD COUNTY

RULE 5:12—BRIEFS

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7057

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.

HANSFORD B. ELLER, Plaintiff in error,

against

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

From the Circuit Court of Stafford County
S. Bernard Coleman, Judge

Upon the petition of Hansford B. Eller a writ of error is awarded him to a judgment rendered by the Circuit Court of Stafford County on the 13th day of March, 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.

* * * * *

CERTIFICATE

Upon my investigation, I hereby certify that I am of the opinion that Hansford B. Eller, Petitioner in Error in the captioned proceeding, is unable to pay or secure to be paid the cost of printing the record in this case.

S. Bernard Coleman
Judge of the Circuit Court of Stafford County
Oct 29, 1968

Rec'd 10-30-68 HET

* * * * *

AFFIDAVIT

I, Hansford B. Eller, do hereby make oath that I am unable to pay or secure to be paid the cost of printing the record in the captioned proceeding.

COMMONWEALTH OF VIRGINIA
COUNTY OF POWHATAN Hansford B. Eller

Subscribed and sworn to before me this 6 day of November, 1968.

Wm. P. Jones
Notary Public

My commission expires: August 6, 1972.

Recd 11-12-68 HET

* * * * *

RECORD

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* * * * *

ORDER

It appearing to the Court that on October 10, 1967 the Supreme Court of Appeals of Virginia issued a writ of *habeas corpus* returnable to this Court on January 8, 1968, and it appearing further that this Court cannot hear this case on that date, it is ordered that Benjamin H. Woodbridge, Jr., and Thomas F. Williams, Jr., able and competent attorneys at law, whose addresses are Fredericksburg, Virginia, are appointed to represent the petitioner; and it is further ordered that this matter be continued to a date convenient to said attorneys and the Office of the Attorney General.

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

Enter:

S. Bernard Coleman Judge.
Nov. 17, 1967

* * * * *

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* * * * *

ANSWER

Now comes the respondent, by counsel, and for answer to the petition says as follows:

1. Respondent is now detaining the petitioner pursuant to a judgment of this court of February 16, 1967, wherein petitioner was sentenced to serve a term of ten years in the Penitentiary, having been convicted of armed robbery. (See Exhibit I—Copy of Prison Record.)

2. Respondent denies each allegation set forth in the petition which is not expressly admitted.

Wherefore, respondent prays that the petition be denied and dismissed.

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

By: Edward J. White
Counsel

Filed Clerk's Office Dec 7 1967 Stafford County, Va. By S. L. Alexander Clerk.

* * * * *

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* * * * *

ORDER

This day came the Petitioner by Counsel and asked leave to file an Amended Petition and the Court being of the opinion that it is proper to do so hereby orders that Petitioner be allowed to file an amended petition and that the Respondent be permitted to file an Answer thereto on or before the 26th day of February, 1968.

And, it appearing to the Court that the Petitioner is incarcerated in the State Penitentiary, State Farm, Virginia, it is ORDERED that he be brought forthwith to the Fredericksburg City Jail to await hearing on his Amended Petition.

And, it further appearing that Romeo Vance, State Convict Road Force Camp #4, Baskerville, Virginia, has been summoned to appear as a witness, it is ordered that he be brought forthwith to the Fredericksburg City Jail to await the trial.

Enter:

S. Bernard Coleman, Judge
Date: Feb. 17, 1968

* * * * *

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* * * * *

AMENDED PETITION

Pursuant to an order entered on the 17th day of February, 1968, allowing petitioner to file an amended petition in this proceeding, your petitioner would respectfully represent unto the Court as follows:

1. That on the 15th day of December, 1966, your petitioner was convicted in the Circuit Court of Stafford County, Virginia, of robbery, after having pled "Not Guilty" to said charge and after having waived trial by jury; and that on the 16th day of February, 1967, the said Court sentenced your petitioner to ten years in the State Penitentiary as a result of said conviction.

2. That prior to said trial your petitioner advised his court-appointed attorney, Ralph M. Whitticar, III, that he wished to testify in his own behalf; that, however, said Ralph M. Whitticar, III, at said trial, advised your petitioner not to testify, advising him that his testimony would not materially aid his defense; and that your petitioner would represent unto the Court that, had he testified, he would have been able to materially aid his de-
page 33 } fense; and that said Ralph M. Whitticar, III, in this respect, did not effectively represent your petitioner.

3. That prior to said trial, and during the course of said trial, your petitioner requested said attorney to call one Romeo Vance to testify on behalf of your petitioner; that said Romeo Vance was then incarcerated in the Stafford County jail and was immediately available to so testify; and that, notwithstanding said request, said attorney did refuse to call said Romeo Vance to the witness stand on the grounds that this individual could make no statement which would aid your petitioner, even though said Romeo Vance was present during the entire time that your petitioner allegedly committed the offense for which he was convicted and the testimony of said Romeo Vance would have completely exonerated your petitioner of any guilt; and that, in this respect, said attorney did not effectively represent your petitioner.

4. That subsequent to his conviction and sentencing defendant requested said attorney to perfect an appeal of this Court's Order of Conviction; that, thereafter, your

petitioner was advised that said attorney was of the opinion that there was no basis for an appeal, whereupon said attorney resigned as your petitioner's counsel; that, thereafter, Mr. James Ashby, Jr., an attorney, was appointed by the Court to perfect an appeal for your petitioner but that said James Ashby, Jr., did subsequently resign as counsel for your petitioner on the grounds that he was related to a witness who testified against your petitioner at said trial; and that no other counsel was appointed to represent and advise your petitioner, which resulted in your
page 34 } petitioner remaining ignorant of his rights and of the steps necessary to perfect his appeal, all of which caused your petitioner to fail to exercise his rights of appeal within the period required by law; that, therefore, your petitioner would represent to the Court that he was denied effective counsel during the period within which he could take an appeal from the conviction of this Court.

WHEREFORE, For the foregoing reasons, your petitioner prays that this Court declare the aforesaid judgment of the Circuit Court of Stafford County, Virginia, null and void and direct the respondent to forthwith release him from custody.

Hansford B. Eller

Filed 2-26-68 SBC

* * * * *

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* * * * *

This proceeding came on to be heard on February 26, 1968, upon a petition for a writ of *habeas corpus* and the answer of the respondent, the petitioner appearing in person and by Benjamin H. Woodbridge, Jr., and Thomas F. Williams, Jr., attorneys previously appointed by this Court to represent the petitioner, and the respondent appearing by Overton P. Pollard, Assistant Attorney General;

Whereupon, counsel for the petitioner moved the Court to allow the filing of an amended petition for a writ of *habeas corpus,* and there being no objection on the part of the respondent, the Court granted the filing of the amended petition and thereupon heard the evidence and argument of counsel with reference to said amended petition, 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 be, and hereby is, 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, excepts, and notes an appeal.

It is further ordered that Benjamin H. Woodbridge, Jr., and Thomas F. Williams, Jr., discreet and competent attorneys practicing before this Bar, be hereby appointed to represent the petitioner in applying to the Supreme Court of Appeals of Virginia for a writ of error.

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

Entered this 13 day of March, 1968.

S. Bernard Coleman
Judge

I ask for this:
Overton P. Pollard
Counsel for Respondent

Seen and objected to:
Benjamin H. Woodbridge, Jr.
Counsel for Petitioner

Thomas F. Williams, Jr.
Counsel for Petitioner

* * * * *

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

The Petitioner, Hansford B. Eller, hereby appeals to the Supreme Court of Appeals of Virginia from the judgment of the Court entered on March 13, 1968, in the above styled

cause, and the Petitioner hereby gives notice of appeal to the Supreme Court of Appeals of Virginia from the said judgment entered on March 13, 1968.

The accused assigns as error the following actions of the Court.

1. That the Court erred in dismissing the Petition of Hansford B. Eller for a writ of *Habeas Corpus*.

2. The Court erred in refusing to allow the Petitioner to state what his testimony would have been had he taken the witness stand and testified in the trial of case before the Circuit Court of Stafford County on December 15, 1966.

Respectfully submitted.

HANSFORD B. ELLER

By Thomas F. Williams, Jr.

Filed Clerk's Office May 6 1968 Stafford County, Va. By S. B. Coleman, Clerk

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page 1 }

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TRANSCRIPT of the evidence and other incidents of the above when heard on February 26, 1968 before Hon. S. Bernard Coleman, Judge.

APPEARANCES

MR. BENJAMIN H. WOODBRIDGE, JR., 918 Princess Anne Street, Fredericksburg, Virginia, and

MR. THOMAS F. WILLIAMS, JR., 321 Williams Street, Fredericksburg, Virginia,
counsel for the petitioner

MR. OVERTON P. POLLARD, Assistant Attorney General of the State of Virginia, counsel for the respondent

* * * * *

page 3 } NOTE: Court convenes at 2:20 o'clock P. M. After the swearing of the court reporter, the hearing is begun, viz:

The Court: Gentlemen, are you ready?

Mr. Williams: Yes, sir. If Your Honor please, we waive opening statements.

The Court: Very well.

Mr. Pollard: If Your Honor please, I have no opening statement. I would appreciate it if counsel for the petitioner would clarify whether or not they are solely relying on the amended petition or whether both petitions will be covered here today. In other words, is the evidence going to be confined to the amended petition?

Mr. Williams: Yes, sir. If Your Honor please, when we filed the amended petition, we are relying solely on that. The petition filed by Mr. Eller will not be relied on.

The Court: Very well.

Mr. Williams: Your Honor, I would like to move for the exclusion of the witnesses.

The Court: Who are the witnesses?

page 4 } Mr. Pollard: Mr. Whitticar will be the only witness for the respondent.

Mr. Williams: We have one witness, too.

The Court: Very well. Take the witnesses out.

NOTE: At this point the witnesses are excluded upon motion made by counsel for the petitioner. Thereupon the hearing continues, viz:

Mr. Williams: We will call the petitioner, Hansford Eller.

HANSFORD BRISTOL ELLER, the petitioner herein, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Williams:

Q. State your name, please.

A. Hansford Bristol Eller.

Q. Are you currently serving a ten year sentence in the Virginia State Penitentiary for armed robbery?

A. Yes, sir, I am.

Q. You were convicted by the Circuit Court of

page 5 } Stafford County, is that right?

A. Yes, sir.

Q. Who was your attorney for the proceedings?

A. Mr. Ralph M. Whitticar, III.

Q. He was court appointed, is that right?

A. Yes, sir.

Q. Did you discuss the case with Mr. Whitticar prior to the trial date?

A. Several times I discussed it with him.

Q. What did he tell you as far as your testifying in your own behalf in this proceedings in the Stafford Circuit Court?

A. We discussed that part several times. And before the trial he had told me to think about it, before the morning of the trial, as to whether I wanted to testify on my own behalf or not. So that morning during the trial I told him that I had decided that it would be best that I would testify on my own behalf.

So after my brother had testified, Mr. Whitticar advised me, he said, I think it's best that you don't testify, because there is nothing, I feel, that you could say that would help you any more than what has already been said. So I was nervous and didn't really understand it all anyway, so I told him I would leave it up to him. Because I page 6 } didn't know what to really do. That I would leave it up to him.

Q. Had you taken the stand and testified, what would your testimony have been?

Mr. Pollard: I object to that, Your Honor.

The Court: Objection sustained.

Mr. Williams: If Your Honor please, I don't think I can rely on the failure to call a witness without stating the materiality of the testimony.

The Court: You may, because the Supreme Court of Appeals has held that the trial tactics are entirely in the hands of the lawyer. I am not going to retry this case.

Mr. Williams: I respectfully except to Your Honor's ruling.

Q. Mr. Eller, were there any other witnesses that you advised Mr. Whitticar that you wanted called in your behalf?

A. Yes, there was—

Mr. Pollard: Just a moment before you answer. The ques-

tion was were there any other witnesses. I don't remember there being any witnesses that he said he wanted, other than testifying in his own behalf.

page 7 } Mr. Williams: I'm sorry. I will rephrase the question.

Q. Were there any witnesses that you told Mr. Whitticar that you wanted called in your behalf?

A. Yes, there was. My cousin, Romeo Vance. I had asked Mr. Whitticar about having Romeo Vance and my brother, James Edward Eller, summonsed to testify on my behalf. So he said okay with my brother, but by my cousin not being as close to me as my brother was, he felt as though he shouldn't put hisself in a place to incriminate his ownself because he hadn't been tried yet.

So I had discussed it with my cousin several times and he said he would. And I told Mr. Whitticar that my cousin would testify and he could talk to him about it, but he never did.

Q. Your brother did testify, didn't he?

A. Yes, he did.

Q. Do you feel that Vance would have made a better witness for any reason?

A. Yes. For one reason my brother has a speech defect and he can't be understood clearly. And I feel that my cousin could express his opinion more clearly.

Q. Was Mr. Whitticar ever approached by Vance, to your knowledge, and advised by Vance that Vance would testify in your behalf even though he hadn't been tried yet?

page 8 } A. Yes, he has. Mr. Whitticar came down to talk to me one morning, and he talked to my brother. And Romeo Vance went up to the bars and told him that he would testify in my behalf if he was summonsed. But Mr. Whitticar didn't pay him no attention and ignored him. So my cousin just walked away.

Q. After your conviction did you advise anyone connected with the court that you wished to appeal?

A. Yes, sir, I did. I advised Mr. Whitticar of it. But I never did get no response from him.

Q. What happened?

A. Well, after the trial I was taken back downstairs. And I was down there a few moments and I had decided, was

thinking of an appeal. So I asked one of the deputies to come back upstairs and get my lawyer, that I wanted to discuss about an appeal with him. So the deputy said he would be down after while, but he never did come down.

Q. Was someone appointed by the court to represent you in the appeal?

A. Yes, sir. There was a Mr. James Ashby, Jr. was appointed later on. But I had never talked with him anyway about it.

Q. He never perfected the appeal, is that right?

A. That's right.

page 9 } Q. Did you hear from the court at all regarding your appeal?

A. Yes, I did at one time. I can't remember the date. I had written a letter to the Court advising them that I was filing a petition for Writ of *Habeas Corpus*. And later on I received a letter from the Court asking me which one I rely on, the Writ or the appeal. And in the meantime I had received a letter from Mr. Ashby. And I wrote a letter back to the Court, or Mr. Ashby, I can't remember which one.

Q. Did you know what a Writ of *Habeas Corpus* was?

A. Not at the time I didn't. No.

Q. Did you know that an appeal, filing an appeal and filing a petition for *Write* of *Habeas Corpus* were different things?

A. Not exactly I didn't. I never had the expression that if you had an appeal in court you could still go ahead and file a petition, too. That was the understanding I had. So I didn't know one way or another.

Q. Did you think that you were appealing your case, the decision?

A. Yes. I was under the expression that it was meant for an appeal.

Mr. Williams: Answer Mr. Pollard's questions.

page 10 } CROSS EXAMINATION

By Mr. Pollard:

Q. Mr. Eller, had you been convicted of a felony before this?

A. No, sir, I haven't.

Q. You have not. How far had you been in school?

Hansford Bristol Eller

A. I finished the eighth grade.

Q. I assume you can read and write?

A. Yes, sir.

Q. I believe there was a period of about two months between the time that you were tried and the time you were sentenced, or possibly not two months, maybe it was six weeks, is that correct?

A. Yes. Approximately.

Q. You were tried in December and sentenced in February, is that right?

A. Yes, sir.

Q. During that time did you ever express a desire to anyone that you wanted to appeal your case?

A. No. Because I hadn't never been given any time. We were waiting on a presentence report.

Q. So you were only concerned with the amount of time you got, is that correct?

A. I don't quite understand.

page 11 } Q. You say that you hadn't— You had been found guilty, had you not?

A. Yes, sir.

Q. The Court said you were guilty.

A. Yes.

Q. All right. Now, you said you were not interested in an appeal because you hadn't been given any time.

A. I had really never done nothing of an appeal. I had discussed it with different people, but I was on a presentence report and I didn't feel there was much use in asking for an appeal before I had ever been given any time.

Q. You say you discussed it with different people. Who had you discussed it with?

A. Mr. Whitticar and other inmates.

Q. I am talking about the time before you were sentenced. I assume you were in jail after you were found guilty, and then while you were waiting on the presentence report before you were brought back into the court—

A. Yes.

Q. —did you discuss it with anyone during that time?

A. Yes, I did.

Q. Who did you discuss it with during that

page 12 } time?

A. Well, Mr. Whitticar came down there once or twice after that, and I had asked him about an appeal,

and he was the one that—he told me that I hadn't never been sentenced, that it would be useless to think about an appeal yet.

Q. All right. Then when did you ask him to appeal, or when did you ask him if it would be advisable to appeal? I think you testified that you asked him to appeal.

A. This was after— I had discussed an appeal before I had been given any time. Then after that I had written him letters and tried to get in touch with him of an appeal. I had been brought to Stafford County on February 28th. Mr. Whitticar was here, and they were having court, and he said he would discuss, discuss it with me after court. But after court was over he was gone. I never seen him no more.

Q. You did not discuss it with him after you were sentenced.

A. No.

Q. All right. Let me go back a minute. You say as to whether or not you should testify or you should have testified was discussed with Mr. Whitticar, and it was your decision to leave that up to him, is that right? Whether or not you would testify at your trial.

page 13 } A. Yes. I had told him.

Q. You were actually concerned as to whether or not your testimony would be the same as that of Romeo Vance, weren't you?

A. Sir? I didn't quite understand you.

Q. I think you were concerned that your testimony might be different from that of Romeo Vance.

A. Yes. I don't believe it would have been any different.

Q. But you weren't sure what Romeo Vance was going to say, were you?

A. Not exactly sure.

Q. That's the reason he didn't testify, isn't it?

A. No, it isn't.

Q. You don't think that is the reason Mr. Whitticar didn't call him?

A. The only reason he gave me why he wouldn't have him summonsed is because he felt that Mr. Vance didn't want to incriminate himself because he hadn't been tried yet.

Q. He did not tell you that he was a little bit afraid of what Vance might say?

A. No, he didn't.

Hansford Bristol Eller

Q. And you did not tell Mr. Whitticar that?

A. No, sir.

page 14 } Q. That you were a little bit afraid of what he might say?

A. No, I didn't.

Q. You say the reason you wanted Vance to testify was that he could express an opinion better than your brother?

A. Yes. Yes, sir. I believe so.

Q. Was this the only reason that you wanted him to testify?

A. It's not the only reason I wanted him to testify. It's just I felt it would help me. He would tell the truth about it and he could—That's about the only thing I could really think of.

Q. You were not so sure at the time whether he was going to say what you wanted him to say, were you?

A. I don't know about saying what I wanted him to say, but he was going to tell the truth. I mean—

Q. All right. And you decided not to testify yourself, is that correct?

A. By being advised by my attorney and by not knowing anything about court.

Q. You did not know anything about court, and your attorney advised you not to testify, so you decided that would be the best thing for you to do, is that right?

A. With the persuasion I told him I would leave it up to him.

page 15 } Q. Did you tell him you wanted to testify?

Mr. Woodbridge: I think Mr. Eller should be allowed to testify without being interrupted by Mr. Pollard.

Mr. Pollard: He seems to be continually evading the question.

Q. Did you want to testify?

A. Yes, I did.

Q. Did you tell Mr. Whitticar you wanted to testify?

A. I told him that I wanted to testify on my own behalf. He said, well, I don't think it would be wise to do it.

Q. All right. Then did you tell him that you thought it would be wise?

A. Yes, I did.

Q. He said he still didn't think it would be wise. Do you

remember the Court asking you if you understood you could testify if you wanted to testify, but that you didn't have to testify?

A. Yes, sir, I remember it.

Q. Did you ever tell the Court that you wanted to testify?

A. No, I didn't.

page 16 } Q. You never actually told Mr. Whitticar, did you, after he advised you that it would be better not to testify?

A. Yes, I did.

Q. You still told him you wanted to testify.

A. Yes.

Q. All right. Now, after the trial, when you got the letter from the Court, from Judge Coleman, asking you whether or not you were going to proceed on *Habeas Corpus* or whether or not you wanted to appeal, you said you did not write to the Court, is that correct?

A. I wrote to the Court, or the Clerk of the Court, or Mr. James Ashby one. I don't remember which one I had written to.

Q. What did you tell them?

A. At the same time I had received a letter from the Court I received one from Mr. Ashby. And I had written them a letter back, one or the other of them, and told them I didn't quite understand it, which one I should be in. I asked Mr. Ashby's advice on which to do. Because I felt that a Writ was the same thing as an appeal.

Q. You thought the Writ of *Habeas Corpus* was the same thing as an appeal.

A. At the time.

Q. You really don't know the difference, do you?

A. No, sir.

page 17 } Q. You really didn't know what you wanted to do, did you?

A. I didn't know what I wanted to do, which one to rely on, because I thought they were both the same.

Q. What did you want to do?

A. I wanted a new trial. I wanted to appeal my case, and I wanted to testify on my own behalf and have the witness that I wanted.

Q. But you never wrote to the Court after that, or at least you don't know whether you wrote to the Court or not.

A. I don't remember.

Hansford Bristol Eller

Q. Did you keep copies of your letters that you sent?
A. Yes, I did.
Q. Do you have a copy of the letter that you sent to anybody?
A. Not here with me.
Q. Where do you have it.?
A. Out in the deputy's car, I think. If they left them out there.
Q. Have you told your attorneys about copies of letters that you sent? Have you told Mr. Woodbridge and Mr. Williams?
A. I believe so.
Q. You believe so.
page 18 } A. Yes.
Q. You talked to them today, didn't you?
A. Yes.
Q. You are not sure whether or not you told them about that?
A. I'm sure I told them. I showed them letters.
Q. Do you know what an appeal is?
A. Not exactly. No.
Q. Well then why would you tell somebody that you wanted to do something that you don't even know what it is?
A. I didn't—I don't know exactly, but I was under the expression that an appeal is to, to have a new trial.
Q. This is your understanding.
A. Yes.
Q. Did you get this information from people in the penitentiary?
A. Yes.
Q. Did you prepare the petition that was filed in this court originally, the *Habeas Corpus* petition?
A. With some help.
Q. You read it, I assume?
A. Yes.
Q. And you swore to everything contained in
page 19 } it—
A. Yes.
Q. —as being correct?
A. (Nodding head indicating yes)
Q. All right. You said that Mr. Whitticar was ineffective and inadequate, or something to that effect, and you testified today that you wanted Mr. Vance as a witness. Was there

any other reason that you feel Mr. Whitticar was not effective as your attorney?

A. Well, I wanted a trial by jury and by listening to him I decided to take a judge's decision.

Q. You decided to take his advice.

A. Yes.

Q. Because Mr. Whitticar is an attorney.

A. Yes.

Q. You signed the statement that you desired to be tried by the judge, did you not?

A. Yes.

Q. All right. Is there anything else?

A. I, when I tried to get him to have my cousin, Romeo Vance, summonsed to court, he was against it.

Q. I don't mean that. You have already testified to that. Is there anything else?

A. Not as I recall right at the moment.

Q. Did you ever complain to him in any way, to Mr. Whitticar, about the way he represented you?

page 20 } A. Several—couple times.

Q. You did complain to him?

A. Yes, I did.

Q. In writing?

A. No, not in writing. In discussions.

Q. Where and when did you complain to him?

A. In the sheriff's office when we were having discussions about the matter.

Q. Before trial.

A. Yes.

Q. In the sheriff's office before trial. Do you know when?

A. I don't remember the exact dates. He came down several times.

Q. What was the nature of your complaint, or what did you complain about?

A. Different things. Like when I asked him to have my cousin summonsed and he just kept saying, advised me it wouldn't be wise. And he kept talking of the jury trial. I told him I wanted a trial by jury. He said, no, said you're going to get off lighter for one thing, and another he said your cousin and brother are not having no jury, said I think it's best that you don't have any.

Q. Is this all you complained about?

A. As I recall at the moment.

Hansford Bristol Eller

page 21 } Q. Did you give him any information that would be helpful in your defense?

A. Yes, I did.

Q. What was that?

A. I told him different things about the case, about what had happened and everything.

Q. Well, what would have been helpful to you?

A. What would have been helpful to me if he would have brung it up in court that I had discussed with him?

Q. Yes. What did you tell him that would be helpful to you?

A. There were several things. Like I told him what part that I had in the crime, and what I did, and what I didn't do.

Q. Did you tell him anything else?

A. No.

Mr. Pollard: All right. I believe I have nothing further, Your Honor.

By the Court:

Q. Mr. Eller, how old are you?

A. Twenty-three.

Q. So you were twenty-two when you were tried, is that correct?

page 22 } A. Yes, sir.

Q. Now, do you recall when you were asked by the Clerk how you pled to the indictment charging you with armed robbery? Do you remember that?

A. Yes, sir.

Q. Do you remember just before then when I proceeded to tell you your constitutional rights in this matter? Do you remember that?

A. Yes.

Q. Do you remember me telling you this: When this indictment is read to you, you have the right to plead not guilty to the charge, and in that event you will be tried by a jury; the jury will determine your guilt or your innocence of the charge, and if found guilty, fix your punishment, unless on your motion, with the consent of the Commonwealth's Attorney and the Court, you waive a jury. Do you remember me telling you that?

A. Yes.

Q. Now, later on do you remember me telling you this: As

to the trial of the case: You have the right to have witnesses summonsed to appear here to testify in your behalf, and if the names of those witnesses are given to the Clerk of this court, they will be subpoenaed and compelled to appear. Do you remember that?

A. Yes.

page 23 } *A.* As a matter of fact, you signed a certificate that you were advised of those, didn't you?

A. I don't remember.

Q. You don't remember signing a certificate to that effect?

A. No, I don't.

Q. Look at that and tell me if that is your signature?

A. Yes, that's my signature.

Q. You signed it, didn't you?

A. Yes.

Q. I will read this to you: First, I have been advised both by my counsel and by the judge in open court of my rights to a trial by jury; that I may plead guilty or not guilty to the charge and that in event I plead guilty, the court will try and determine the case in the absence of a jury. If I plead not guilty, I will be tried by a jury unless a jury is waived by me with the consent of the Commonwealth's Attorney and the Court; that I may plead insanity and have been afforded an opportunity to enter such a plea.

I have also been advised that I have the right to testify in my own defense or to remain silent and that if I testify, I may be cross examined as any other witness. If I remain silent and decline to testify, my failure to testify page 24 } cannot be used or considered against me in any manner in the determination of this case; that I have the right to have witnesses summonsed to testify in my defense.

You signed that, didn't you?

A. Yes, I did.

Q. Well then, when you went to trial you knew first that you had a right to trial by a jury, and that you could only waive it with the consent of the Commonwealth's Attorney and the Court, didn't you.

A. Yes, sir. I knew it.

Q. And you also knew that all you had to do was to tell the Clerk of the Court the names of these witnesses and they would be subpoenaed here, didn't you.

Hansford Bristol Eller

A. At the time I didn't realize it. That I had to get in touch with the Clerk of the Court.

Q. You didn't tell the Court, did you?

A. No. I was being advised by Mr. Whitticar to tell me what I should do and shouldn't do.

Q. You and the Court were talking, not Mr. Whitticar and the Court. You didn't advise me about wanting any witnesses, did you?

A. No, I didn't.

Q. After this conviction which took place on February 16, 1967, and you had correspondence with Mr. Whit-
page 25 } ticar, on March 20, 1967, you forwarded to me a petition, did you not?

A. Yes.

Q. Did you write that petition?

A. Yes, I did.

Q. You wrote it yourself.

A. I copied it. Off of another record.

Q. Well now, you said just a while ago you don't know the difference between an appeal and a *habeas corpus*.

A. That's right. I didn't.

Q. Well now, this is what you said: I am in receipt of your order dated March 15, 1967, of which I sincerely thank you for. Prior to receiving said order I acted on my own and filed a petition for a Writ of *Habeas Corpus*—now listen—*ad subjiciendum* in the Supreme Court of Appeals. And you did not know the difference between *habeas corpus* and appeal.

A. No, I didn't.

Q. Kindly inform my new court appointed attorney of my foregoing stated actions. Whereas, I want said attorney to pursue, prosecute, and to defend said petition. In the meantime, I, too, shall inform said attorney of my desire.

Thanking you in advance for all of your kind
page 26 } consideration on my behalf. I remain, most respectfully yours, Hansford B. Eller.

You signed that, didn't you?

A. Yes.

Q. That was on March 20th. You got a letter from me dated March 24th, didn't you?

A. I don't remember the date exactly.

Q. Let me read this copy to you and see if this is a copy of the one you got. March 24, 1967. Mr. Hansford B. Eller, 89260, 500 Spring Street, Richmond, Virginia. Dear Sir:

Hansford Bristol Eller

Referring to your communication of March 20th, I do not understand just what procedure you desire to take regarding your conviction. I had, heretofore, understood that you wished to appeal the judgment in your case and I appointed Mr. Ralph M. Whitticar, III, to assist in perfecting your appeal. He later advised that from communication received from you it would not be proper for him to represent you on the appeal, and he was relieved as your counsel and Mr. James Ashby, Jr. was appointed, Mr. Ashby has now requested to be relieved as your counsel.

Your communication of March 20th states that you have filed a petition in the Supreme Court of Appeals of Virginia seeking a Writ of *Habeas Corpus,* and requesting that your counsel be directed to represent you in this procedure. As long as the petition is filed in the Supreme Court

page 27 } of Appeals and is pending there this court does not have the jurisdiction to appoint counsel in that proceeding.

Will you please advise me immediately whether you desire to appeal the order of conviction or whether you expect to rely on the petition of *Habeas Corpus.*

Yours very truly.

And you never did reply to that, did you.

A. I wrote a letter to the Clerk of the Court or Mr. Ashby, Jr. I don't remember which one I written to.

Q. You never wrote one to the Court, though, did you.

A. To the Clerk of the Court.

Q. You addressed the one just before this to the Judge of the Court. Why would you send one to the Clerk of the Court the next time?

A. I don't know. I don't know the reason if I did.

Q. The one on March 20th was directed to Judge S. Bernard Coleman, Circuit Court of Stafford County, and I replied to it on the 24th. As a matter of fact, you never replied to this letter, did you.

A. Yes, I did.

Q. Who did you write it to, Mr. Eller?

A. I said the Clerk of the Court or— I wrote it to the Clerk of the Court from Southampton Farm.

page 28 } The Court: We'll see whether you did or not. We'll find out. That's all.

Mr. Woodbridge: Your Honor, since the Court has asked

questions relating to the document Mr. Eller signed at date of trial, I would like to ask—

The Court: No more will be asked him on that because that has been gone over.

Mr. Woodbridge: Your Honor, the questions relating to the advice the Court gave him, I want to establish the date that was given.

The Court: The date what was given?

Mr. Woodbridge: The Court has asked Mr. Eller questions about the advice the Court gave him, the instructions the Court gave him regarding his constitutional rights: the right to summons witnesses, the right to—

The Court: Apparently it was done on the date he was arraigned in this court.

Mr. Woodbridge: And also the date he was tried?

The Court: I don't know whether it was the date he was tried or not.

page 29 } Mr. Pollard: If Your Honor please, I was planning to make this motion, anyway; I will make it now. I move that we make the criminal file, or copies thereof, a part of the proceedings here as well as the transcripts.

The Court: Very well. It will be incorporated. It is so ordered. All right.

Mr. Woodbridge: That is all, Your Honor.

Witness stood aside.

Mr. Woodbridge: Call Romeo Vance.

The Court: He is not going to testify to anything that happened during the commission of this alleged crime.

Mr. Woodbridge: Your Honor, in the case of *Yates* v. *Peyton* this very question came up, and the Supreme Court of Appeals said—

The Court: Mr. Woodbridge, I am not going to retry this case. Now the question here is whether Mr. Whitticar was careless or negligent in not representing this man. That is the issue.

page 30 } Mr. Woodbridge: Your Honor, if I can quote from the case, the language of the case, one sentence—

The Court: I am familiar with the case that you are talking about.

Mr. Woodbridge: The Court clearly says: Petitioner also

alleges that his attorney should have called Losie Browning, who was present in the courtroom, as a witness in his behalf. Blandford, the attorney representing the petitioner, Yates, had conferred with Browning and was of the opinion that it was in the best interest of the petitioner not to elicit his testimony. There was no showing of what his testimony would have been at the time of the trial. Now in other words, there was no showing in the *Habeas Corpus* proceeding what the uncalled witness' testimony would have been.

The Court: Suppose I let this man get up here and he goes around all over the place and comes up with some great long alibi or something of the sort; then we are in the position, I assume, that either Mr. Whitticar is telling the truth or he is telling the truth; then we have to try the case over again.

Mr. Woodbridge: Your Honor, my only point is this, if the Court of Appeals has indicated that what
page 31 } the uncalled witness' testimony would have been is relevant in the *Habeas Corpus* proceeding, then our failure to elicit or to ask what the uncalled witness would have testified to at the trial would be negligence on our part.

The Court: What about it, Mr. Pollard?

Mr. Pollard: If Your Honor please, I am not as familiar with this case as I should be; I don't think that case states that you should go into what the witness would have testified to.

The Court: I never heard of it before.

Mr. Pollard: The language "there was no showing as to what he would have testified to" infers that maybe it would have been better. I think the question here is whether or not this witness talked with Mr. Whitticar after assuming that Mr. Whitticar knew about the witness. Now, of course, I think counsel could ask this witness if he conferred with Mr. Whitticar.

The Court: He can ask him that.

Mr. Pollard: But not actually what happened at the time of the offense, this type thing.

Mr. Woodbridge: For the record then I am not to be permitted to ask this witness what he would have testified to had he testified in the original trial of this case?
page 32 } The Court: That is correct.

Mr. Woodbridge: I respectfully note an exception to the Court's ruling.

The Court: All right. You know, one of our great difficulties in the criminal law now is that we never get through trying a man. Never.

Romeo Vance

Mr. Woodbridge: I know, Your Honor, Our, Mr. Williams' and my duty here is to effectively as possible represent Mr. Eller in his petition.

The Court: Your next witness.

ROMEO VANCE, upon being called by counsel for the petitioner, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Woodbridge:

Q. State your name.

A. Romeo Vance.

Q. What relationship do you bear to the petitioner?

A. Second cousin.

Q. Without stating what your involvement was, did you at the time Mr. Eller was tried have knowledge con-
page 33 } cerning the alleged offense he committed? He being Mr. Eller.

A. I did.

Q. Were you aware of who was representing Mr. Eller?

A. Yes, sir.

Q. Do you know the gentleman's name?

A. It was Ralph Whitticar, III.

Q. Where were you say for the thirty days prior to Mr. Eller's trial in the Circuit Court of Stafford?

A. Stafford County jail.

Q. That would be the jail downstairs?

A. Yes, sir.

Q. During that time did you have an opportunity to see Mr. Whitticar in Mr. Eller's presence?

A. Yes, sir. When he would come downstairs to see Mr. Eller.

Q. Did you ever have any conversations with Mr. Whitticar regarding Mr. Eller's case or Mr. Eller's trial, or your testifying?

A. On my part; yes.

Q. What was said by you?

A. He was talking to Mr. Eller, and I walked up to the bars, and Mr. Eller had said something, asked me once about once would I testify, go on the stand for him. I told—I said, made the remark that if he needed me I would
page 34 } be willing to testify for him. He—

Romeo Vance

Q. Wait a minute. Was this remark made in Mr. Whitticar's presence?

A. Yes, sir.

Q. Was it directed to Mr. Whitticar?

A. Yes, sir.

Q. When was that remark made? Can you approximate the date?

A. I may be wrong, but I think it was the day prior to Mr. Eller's trial. It was either the day of the trial or the day prior to it. I'm not sure which.

Q. Go ahead. You say what was Mr. Whitticar's response?

A. He looked in my direction. Either he didn't hear me or chose to ignore me. So I just walked away.

Q. How far away from him were you when you made this statement?

A. I was standing at the bars. I would say within five feet of him or less.

Q. Had you been tried for any offense relating to—

A. No, sir.

Q. —this charge—

A. No, sir.

Q. —at that time?

page 35 } A. No, sir.

Q. Were you tried subsequent to Mr. Eller's trial?

A. A week after.

Q. Notwithstanding that fact, are you stating now you would have appeared as witness for Mr. Eller had you been requested?

A. Yes, sir.

Q. All right. Now—

The Court: I am going to let you go ahead and ask him just what he would have testified to.

Mr. Woodbridge: All right, sir. I will go on and develop this then.

The Court: Go on and develop it now. Get to it. Get to it. Ask him what he would have testified to.

Q. Did Mr. Whitticar ever ask you at any time prior to Mr. Eller's trial if you would testify?

A. No, sir.

Q. Did Mr. Whitticar ever ask you what you knew about

Mr. Eller's involvement in the alleged offense, or what Mr. Eller's activities were during the course of the alleged offense?

A. No.

page 36 } Q. Did Mr. Eller ask you to testify in his behalf?

A. He asked me if I would. I told him yes, that if it would help him I would be glad to.

Q. Did you ever discuss the question of testifying with your attorney?

A. No, sir. It was only on my behalf was all.

Q. Who was your attorney?

A. Mr. Coleman. Stokeley Coleman, I believe they call him.

Q. Did Mr. Coleman ever give you any advice about the propriety of your testifying in Mr. Eller's trial?

A. No, sir.

Mr. Woodbridge: All right. Your Honor, I can ask him—

The Court: Go ahead and ask him. I will let you put it in.

Q. Mr. Vance, if you had testified in Mr. Eller's trial, what would you have testified to? As briefly as possible state what your testimony would have been with respect to the events that took place say the afternoon of the alleged offense through the commission of the offense and directly afterwards.

A. Well, I was working as a mechanic in Rich-

page 37 } mond. Mr. Eller pulled in, wanted me to do some work on his car. And in the meantime, while I'm working on the car, my wife—to start with my wife and I were separated. She was in Washington and I was in Richmond. He said his wife had a letter from my wife wanting me to come to Washington. Said if I wanted to go he would drive me up. So, we started to cleaning the car up—

Q. Who is we?

A. Mr. Eller and his brother, James. We started cleaning—and myself. We started cleaning the car and he went to get some cokes or something, went inside the building. And while I was sweeping the inside of the car I found this homemade pistol. And I gave it to James. And a few minutes later he gave it back to me, and stuck it in my pocket.

Q. At this time did Mr. Eller know that you had found the pistol?

Romeo Vance

A. No, sir. We didn't know whether he would want us to throw the gun away or what he would want us to do with it so we kept it to ourselves.

Q. All right. Go on.

A. We started drinking about 3:00 o'clock I guess, and the time we got ready to leave Richmond I was pretty well drunk.

page 38 } On the way up we stopped in to gas, stopped somewhere to get something to eat and something else to drink. And he said something about the car was smoking or something and pulled in some gas station.

Q. You keep referring to "he". Identify him by name.

A. Mr. Eller.

Q. The petitioner, Hansford Eller?

A. Hansford Eller. Pulled into some gas station to get something, Motor Medic, STP, something in that order to put in the motor. Bill and I walked inside.

Q. Who is Bill?

A. James. I'm sorry. I know him as Bill. James and I walked inside.

Q. Was that Mr. Eller's brother you are referring to?

A. Mr. Eller's brother. We walked inside the station, bought the STP and brought it back to the car. Hansford Eller was putting the STP in the car. When James Eller, Hansford's brother, and I walked back inside. We got to the door of the station—

Q. What was your purpose in going back the second time?

A. We were going to get a coke. But in the mean—James Eller just kind of nudged me with his arm, and I guess I

page 39 } knew what he meant. I handed him the gun and walked inside. I was standing at the end of the desk. And James pulled—When I looked around James had the gun on the boy. Said this is a stickup. I stepped around behind the desk, got the money. And the boy aimed to run out the front door, when I hit him. We took him in the back room, come out to the car and told Hansford let's get out of here.

Q. At this time did Hansford have any knowledge of what you and James, Hansford's brother, had intended to do?

A. No, sir.

Mr. Pollard: If Your Honor please, I would like for the record to be clear as to whether or not this information was conveyed to Mr. Whitticar, I mean rather than getting off

into what went on without that qualification. In other words, I would have an objection to going any further unless it was conveyed to Mr. Whitticar.

The Court: Well, we will get to that.

A. Do you want me to continue?

Q. Yes, sir.

A. He pulled out into the street, or Route 1, I think it is, and headed north. And then five or ten miles, probably ten miles up north of here a state trooper pulled in
page 40 } behind the car. And James Eller, Hansford's brother, said there's a state trooper behind us. Get off the road.

Q. Up to this point had any information been communicated to Hansford Eller regarding the commission of this crime?

A. At about that time I pulled the money out of my pocket and Hansford said, where did you get that? Excited. It was expressed a little different than that. I'd rather not repeat it. I said we picked it up at this gas station. And I started counting the money out. When he turned off on this side road I handed part of the money to James Eller and part of it to Hansford. I think Hansford stuck the money in his shirt pocket.

We were following this side road that we thought was coming out to another road. It come back out to Route 1. We turned left and it brought us back to Stafford. He pulls into the gas station to get some gas, and as it happens the gas station was the one that was just robbed. And the state trooper and the deputy sheriffs got us.

Q. You got caught.

A. We got caught.

Q. Had you testified at Mr. Eller's trial, is the testimony you have just given now the testimony you would have given then?

page 41 } A. Yes, sir.

Q. In all respects?

A. Yes, sir. I already decided to plead guilty, throw myself on the mercy of the Court. It wasn't actually going to hurt me.

Q. Did you tell Mr. Eller prior to his trial that you would so testify?

A. Yes, sir. I don't know that we set down, discussed out

what I would tell. I told him I would testify in his behalf if it would help him. That's what I would have told.

Q. Is this the truth what you are testifying to now?

A. Yes, sir. This is the truth.

Mr. Woodbridge: That is all, Your Honor. Answer Mr. Pollard's questions.

CROSS EXAMINATION

By Mr. Pollard:

Q. Mr. Vance, were you present in the courtroom when Hansford Eller was tried?

A. No, sir.

Q. You were not. But from what you have just said Hansford Eller's brother was present during this whole affair, is that right?

page 42 } A. Yes, sir.

Q. So he would have known the same thing or he could have testified to the same things that you just testified to, or could have testified to.

A. He could have, yes, sir.

Q. When you say you saw Mr. Whitticar at the jail, the time that you mentioned that you made a remark that if Eller needs me I'll testify, you don't know whether Mr. Whitticar heard you or not.

A. No, sir. All I know he looked in my direction but he didn't ask—answer me. He didn't say anything. I figured he just chose to ignore me. I just walked away.

Q. What do you mean you walked away? What do you mean?

A. From the bull pen to my cell. Back down the bull pen to my—I walked in my cell.

Q. You did not bother to wait to see whether or not he might have something further to say to you.

A. No, sir. I didn't. He hadn't bothered to call me out and ask me.

Q. Is that the only time you ever mentioned testifying?

A. Only time I mentioned it to Whitticar; yes, sir.

Q. You had talked to him before.

A. No, sir.

page 43 } Q. Didn't you talk to him one time and he asked you about the offense?

A. Sir, I don't remember ever talking to Mr. Whitticar. The only attorney I talked to was Mr. Savage once, and to my lawyer, Mr. Coleman.

Q. Well, let me ask you this. Were you ever present when he was talking to Hansford Eller? I mean just in the immediate proximity. Were you close to him when he was talking to Hansford Eller?

A. Not right up to him; it couldn't been too far away because the jail was only eighteen to twenty feet long.

Q. But you never told Mr. Whitticar what you would testify to then, I guess.

A. No, sir.

Q. Have you ever been convicted of a felony—

A. No, sir.

Q. —before this?

A. No, sir.

Q. But you decided to plead guilty at that time.

A. Yes, sir.

Q. You say it wouldn't have affected you any. It could have affected your sentence, couldn't it?

A. If I was going to plead guilty anyway, I don't see how it could have affected my sentence any.

Q. Did you testify at your trial?

page 44 } A. No, sir.

Q. You did not.

A. No, sir.

Q. Did anybody else testify? Did Hansford Eller or his brother testify?

A. No, sir. No, sir.

Q. Did you testify at the brother's trial?

A. No, sir.

Mr. Pollard: I believe I had nothing further, Your Honor.

By the Court:

Q. Mr. Vance—

A. Yes, sir.

Q. —this gun that you spoke of, where did you find that gun?

A. Under the seat of the car. It was partially under the floor mat.

Q. Whose car?

A. Mr. Hansford Eller's. He had just bought the car a

couple days before that. After the robbery was over he said he didn't know it was in there.

Q. Maybe so, but it was in his car.

A. Yes, sir.

Q. That is the gun you used in the robbery.

page 45 } A. Yes, sir.

The Court: That is all.

Mr. Woodbridge: No further questions, Your Honor.

Witness stood aside.

Mr. Woodbridge: That is all, Your Honor. The petitioner rests. Your Honor, I would like to reserve the right to rebuttal, if it appears that would be appropriate.

The Court: All right. Proceed.

RALPH M. WHITTICAR, III, upon being called by counsel for the respondent, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Pollard:

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

A. Ralph M. Whitticar, III. I am a licensed

page 46 } attorney at law in the State of Virginia.

Q. What is your address, Mr. Whitticar?

A. Fredericksburg, Virginia.

Q. Mr. Whitticar, do you recall representing Hansford B. Eller on an armed robbery charge in the latter part of December, 1966?

A. I do. I was first appointed to defend him in October of 1966, and my representation continued through early March of 1967.

Q. I notice you have a file. Could you state with any degree of exactness how many times you consulted with Hansford Eller prior to trial about the charges against him?

A. All told, I looked through this file last night, which is all of the file that I ever had or made on this case, I believe that including the day of trial it's—and not including one visit after the trial and the time of sentencing—I conferred with him at least seven times that I'm sure of.

Ralph M. Whitticar, III

Q. Now, during those times—I don't want to get into too much about the offense itself, but during those times were there discussions as to whether or not he should testify in his own behalf?

A. Yes, there were. We talked quite a bit from the very beginning, when I spoke with him prior to the—

page 47 } when I was first appointed and prior to the time even of his preliminary hearing we talked about two things other than the facts of the crime and the defense and so forth. One was whether or not he would testify, and the other one was whether or not—how he would plead, and whether or not he wanted a jury trial. We did discuss these matters at some length. As a matter of fact, as far as the jury trial goes, he changed his mind at least two times on that. I actually had the Clerk summon a jury that we later had to call off because Mr. Eller had, after a rather lengthy discussion with me on three separate dates, changed his mind back and forth as to whether or not he wanted a jury. And we also had discussed whether or not he wanted to testify in his own behalf, and talked about the brother's testifying and the consequence of that from a standpoint of the content of his testimony, from the standpoint of trial strategy and so forth; and his final decision, which I reaffirmed with him I believe the day of the trial, was that he decided that he did not want to testify. And I think you will find in the court file a statement which he signed, I believe, the very day of the trial to that effect.

Q. All right, sir. Did you represent him at the preliminary hearing?

A. I did.

Q. Do you recall if anybody testified at the

page 48 } preliminary hearing?

A. At the time of the preliminary hearing he was charged with three offenses, only two of which I was appointed to defend him. I was successful in getting one of them nol-prossed on October 25, 1966, which was the assault with a deadly weapon, because it seemed to be included in the greater offense of the armed robbery. And at the preliminary hearing the Court heard testimony from, I believe, Deputy Sheriff Ashby, Deputy Sheriff Sullivan, and Trooper Foxwell and the filling station attendant. I believe they were the four witnesses. There was no testimony put on by any of the defendants at the preliminary hearing.

Ralph M. Whitticar, III

Q. During the course of your handling of this case did you talk with Romeo Vance, a cousin of Hansford Eller, who was also, I believe, charged with this offense?

A. The only time that I had any conversation of any length with Vance was the afternoon prior to Hansford B. Eller's trial. That day his younger brother, James, or Bill, had been tried in the Circuit Court here and had been found guilty, and sentencing was postponed until the presentence report could be obtained. After his brother's trial I went down to the cell block downstairs and spoke with Hansford again at some length, telling him what—his brother had already told him what had happened at the trial—and talking with the brother to see whether

page 49 } or not his brother was willing to be a witness for Hansford the next day at Hansford's trial. And at some length, not to any great extent, talking with Romeo Vance. As I recall it the gist of our discussions was the brother would come up and testify. Vance couldn't add anything to the story he was going to tell, and furthermore Vance was yet to come to trial. His trial was December 21st and Hansford's was on December 15th, and his brother's was on December 14th. And my discussions with Vance were held on the afternoon of December 14th, just the day before Hansford's trial. And the reason that—I had two reasons for not summonsing Vance, after again, I think, talking about this at some length with Hansford. The first was that Hansford and Vance apparently hadn't done a great deal of talking while they were in jail. Hansford didn't seem to be as sure of what Vance had to say as he was as to what his brother had to say. In any event, after I talked to Vance, his testimony was entirely cumulative to what Bill Eller was going to say. My second reason was that Vance had yet to come to trial himself and I didn't see how I could, with any propriety have him come under oath and testify to the kind of things I wanted him to testify to before his trial.

Q. Was this question as to Vance's testifying discussed with Hansford Eller? Did you discuss this with Hansford Eller?

page 50 } A. It certainly was. On the day before the trial down there in the cell block we talked about it before I talked to Vance. As I recall it, Hansford and I talked a little bit there outside the cell block, still down in the lockup, after I talked to his brother and Vance.

Ralph M. Whitticar, III

Q. Did Hansford Eller ever complain to you about the manner in which you represented him?

A. No, sir, I don't recall that he did. Not directly. He seemed he— We talked over every step of the proceedings pretty thoroughly. I did my best to inform him of all sides of each question we had to consider, and I don't recall his ever saying anything that he was unhappy about what I was doing at the time. The first occasion that I had that there was something amiss was when I received a letter from him after he had gone to the penitentiary after his sentencing in February.

Q. You received a letter then?

A. Yes. I think I received a letter along about the 1st, 2nd or 3rd of March. Something like this.

Q. Did this letter relate to an appeal?

A. Yes, it did. On February 28th he was up here as a witness in another case. I came up expressly to see him. And we weren't able to really work it out to get together at any time. He told me at that time that someone had fixed up, he was filing papers. He called it an appeal. I
page 51 } believe I knew verbally on that day that he was attacking the prior proceedings in some fashion. I didn't know for sure until I got a letter from him early in March.

Q. All right, sir.

A. We didn't get a chance to have very much of a conversation on the 28th of February. For a very brief period of time we stood out there behind the rail, which was more abbreviated than perhaps either of us would like for it to have been.

Q. Did he mention filing this Writ of *Habeas Corpus*?

A. He wasn't real sure what the papers were. Someone had fixed them up for him. I said will you see that I get a copy? He said he would. This is what he sent me then with his letter.

Q. Was it styled *Habeas Corpus* Petition, or do you recall, or would your file show?

A. These are the papers that I sent, I delivered to James Ashby, who was appointed to represent him just for a short period subsequent to mine. I don't have copies of them and I don't recall. I believe that it was kind of a hybrid type of pleading, I think, while the essence of it really was *habeas corpus*.

Ralph M. Whitticar, III

Q. During the time that he was found guilty and the time that he was sentenced, in other words, from the
page 52 } latter part of December to the early part of February, were there any discussions then about an appeal?

A. No. I got word that he was in the Hanover jail, I think. I went down there. I had to go down there, anyway, on something else. It turned out it was in the Manassas jail. At one time I heard he was in the Fredericksburg jail. He sent word to me through another prisoner, who sent word through his attorney. I got a couple of notes during that period that he wanted to see me. I wrote him a letter about the middle of February saying I got word that he wanted to see me. I knew he would be here on the 28th, I would be here, too, and I would see him at that time. That is when he informed me he had already fixed up some sort of papers and was going to file them or they had just been filed, and I asked him to please send me copies of them when he got back to Richmond. We never had any discussions, as such, about an appeal between the date of his sentencing and mid-February and February 28th, because I didn't see him between those dates.

Q. There were no discussions between the date of the trial and the sentencing.

A. No, sir.

Q. In other words, as I understand, he was tried on one date, then the presentence report was submitted, and then he was sentenced.

page 53 } A. That's right.

Q. At a later date.

A. If there was any discussion, it was just a very brief verbal one as he was leaving the courtroom, or after the trial, when I said, well, it seems to me like you have been convicted legally and whether I agree with it or not I don't see any grounds of appeal of error. It would have been just a very brief remark, sort of reviewing what had happened and what his position was at that point. It wasn't any lengthy discussion.

Q. I gather from your testimony there was never any specific request on his behalf that you appeal the case. Is that correct?

A. The first I knew he had any definite intention of doing that—no, he did not ask me—was when he told me on the

28th he had papers prepared and he was going to file them, and I asked for copies.

Q. He never asked you to do anything about it, is that right?

A. Not until that day. I had gotten some mention he wanted to talk to me, as I said. I wrote to him on February the 3rd telling him when his sentencing was going to be, to tell him to have his wife or any other relatives that he wanted to be present to testify at the sentencing there at that time. And then again on February 21st I page 54 } wrote him, told him I had received word through Attorney Harry Franklin that he wanted me to get in touch with him. I said since the transcript of your trial is not yet back from the court reporter, I will wait and come to Stafford on February 28th to talk with you. Please make notes regarding any points you wish to discuss with me. I signed it and mailed it to him on February 21st.

Mr. Pollard: Please answer Mr. Woodbridge.

CROSS EXAMINATION

By Mr. Woodbridge:

Q. Mr. Whitticar, with respect to Mr. Eller's waiver of his right to testify; you say he signed a statement waiving his right to testify?

A. As I recall, I wrote up on a yellow pad and talked with him about it, told him what it was, and I believe, I don't recall what the date is. I don't have a copy of it in my file.

Q. I want to ascertain the date from the Judge. December 15, 1966.

A. That was the trial date. That was the date of the trial. I didn't ask him to finally make up his mind until the day of the trial after he heard what the evidence was page 55 } against him. I believe he signed it after the end of the prosecution's case at counsel table. At the end of the prosecution's case.

Q. Were you aware of who was representing Romeo Vance at this time, or during this period prior to Eller's trial?

A. Yes, sir. From the very beginning Mr. T. Stokeley Coleman represented Vance, and Joe Savage represented Eller's younger brother.

Q. Did you ever consult Mr. Coleman regarding the pro-

priety of Vance testifying at Eller's trial prior to Vance's trial?

A. Not directly. Most of my conversation with Mr. Coleman and Mr. Savage was limited to mutual discussions prior to the first of the three trials on December 14th as to what our clients wanted to do. We would pass messages back and forth as one would receive them that the other two wanted to see their lawyers, or what they were going to do in terms of a jury trial or no jury trial, pleas of any type, and such as that. I never did discuss it directly with Mr. Coleman whether or not I should call Vance as a witness.

Q. He never specifically *forbad* you to question Vance or to seek his cooperation on Mr. Eller's trial.

A. No, he did not.

page 56 } Q. Were you aware at some point that Vance intended to plead guilty at his trial through these communications you were having with the other attorneys involved?

A. I can't really say that I was until— Because, as I said, my impression from talking with Hansford was that he and his brother were talking things over and kind of conferring; but that there wasn't a whole lot of discussion going on while here in the Stafford jail between he and Romeo Vance. It was my impression that Romeo Vance had changed his mind at some point. I felt that it was probably only human nature and that he should be allowed to change his mind right up to the time he was tried, which, of course, was after our trial.

Q. Did you ever seek to elicit from Romeo Vance himself a complete statement of his version of the events that took place?

A. The most complete conversation I had with him was on the afternoon of the 14th, after the young Eller boy's trial, down in the cell block. And the young Eller boy and Vance came over to the edge of the bars and Hansford and I were standing outside the bars, still in the lockup, and at that time I went over the whole version of the entire incident as it had been related to me. And, as I understood it from the Eller boy's trial that day, and explained to the young Eller boy, Hansford's brother, what position he would

page 57 } be putting himself in if he came up here to testify before he had been sentenced, and asked if he was willing. He said he was. And I went over with

him what he would be able to testify about, and Vance was there at the same time, and I, in some fairly cursory verbal fashion elicited from him the same thing. I asked if he could testify to anything different or add to it; trying to get the stories straight. But that's really the extent of any conversations I had with Vance. And I came away with the distinct feeling that any testimony he might be able to give us the next day would merely be cumulative. I did not feel that it would be proper to summons him because of his still pending trial. And Hansford never asked me to summons him. So I didn't. We just decided to go with the brother.

Q. Did Vance indicate to you at that time that his testimony would serve to exonerate Eller from any implication in the crime?

A. To the same extent that the younger Eller boy's would; yes.

Q. Did the younger Eller boy's testimony exonerate Eller from participation in the crime?

A. If you believed it; yes. I believed it.

Q. Did you ever ask Romeo Vance directly if he was willing to testify at Eller's trial?

A. I really don't remember the exact words. As I say, the only time we talked was that afternoon of the page 58 } 14th. And I probably, if I asked him, it was implicit in asking him do you agree with this? Can you add anything to it? Questions of that nature. I don't think I ever said will you come up and testify to him. I don't recall whether I did or not. It is likely I maybe didn't.

Q. Of course it is true, isn't it, that Mr. Eller's brother, Hansford Eller's brother has a speech impediment?

A. Yes.

Q. Did that make it difficult to understand him?

The Court: Mr. Woodbridge I heard him distinctly. I am not deaf.

Q. Were you satisfied with Hansford Eller's innocence?

The Court: Now, if the Attorney General is not going to object, the Court is going to object.

Mr. Pollard: I think I probably should have objected, Your Honor.

Mr. Woodbridge: I note the exception.

Ralph M. Whitticar, III

The Court: You seem to have taken the approach if counsel takes one position and the Judge takes another, then it is the conflict between counsel and the Judge to be decided. I tried the case.

Mr. Woodbridge: Yes, sir, Your Honor. I'm just—

page 59 } Q. Did Mr. Vance ever volunteer to testify for Hansford Eller?

A. Not that I recall.

Q. Now, you resigned as counsel for Mr. Eller subsequent to his conviction.

A. I wrote a letter to the Court in early March asking that I be relieved, because I found no grounds for an appeal and felt that any proceeding to bring a Writ of *Habeas Corpus* on would have to involve an attack on his previous representation; therefore, it would not be proper for me to continue.

Q. There had been some indication made to you by Hansford Eller that he wished to appeal the decision of the Court?

A. This was on the, I say about the 9th of March, as I recall, Mr. Woodbridge. During the first nine or ten days of March, from the 28th day of February until March 9th I had received these papers from Eller that he mailed me when he got back to Richmond. It was obvious that he was anticipating further proceedings which appeared, at that point even, to involve calling in the question of some phases of my representation. And that is why I asked to be relieved.

Q. Is it your opinion, from the discussions you had with Eller, that he could make the distinction between
page 60 } an appeal and a Writ of *Habeas Corpus,* the filing of a Writ of *Habeas Corpus?*

Mr. Pollard: I would have to object to that.

The Court: Objection sustained.

Mr. Woodbridge: I note the exception.

Q. Do you think Mr. Vance would have made a better witness than Hansford Eller's brother at the trial?

Mr. Pollard: I object to that.

The Court: Objection sustained.

Mr. Woodbridge: That is all.

Ralph M. Whitticar, III

REDIRECT EXAMINATION

By Mr. Pollard:

Q. Could I maybe ask just one more question. I want to be clear on something, Mr. Whitticar. Your withdrawal from the case was based on what you felt might be a conflict of interest, is that correct?

A. A potential one; yes, sir.

Q. You felt he was filing a *Habeas Corpus.*

A. I felt that the papers he filed were in the nature or would eventually be thrust into the nature of a *Habeas Corpus* proceeding, which would necessarily have to involve an attack on my earlier representation, if it were to be successful; therefore, there was no way I could con-
page 61 } tinue to represent him in such a proceeding.

Mr. Pollard: All right, sir. Thank you. No further questions.

Mr. Woodbridge: That is all.

Witness stood aside.

Mr. Pollard: I have no further evidence, Your Honor. It is my understanding that counsel has no objection to the criminal record being made a part of this proceeding.

The Court: Very well. It will be so ordered.

Mr. Pollard: The respondent rests.

Mr. Woodbridge: Your Honor, I cite to the Court the case of *Yates* v. *Peyton.* This same question, at least part of this particular allegation of Mr. Eller is that he was denied effective counsel, that Mr. Whitticar did not call or summons or interview a material witness, that being Romeo Vance; the Court in that case denied the writ on the grounds that the attorney had conferred with the material wit-
page 62 } ness and was of the opinion that it was in the best interest of the petitioner not to elicit the testimony of the material witness. There was no showing at the *habeas corpus* hearing of what the uncalled witness would have testified to at the time of the trial.

Here, Your Honor, in this case, we do have Romeo Vance's testimony before the Court what he would have testified to; that testimony, if believed, would completely exonerate Hansford Eller from any involvement in the crime; the only in-

volvement being as a principal after the fact, or after the commission of the crime, and that he received stolen money and aided the—at least attempted to aid the escape, however ineffectively. But, the actual involvement in the crime itself is specifically denied by Romeo Vance. If the Court had had that testimony before it—

The Court: It would have been the same result.

Mr. Woodbridge: Is the Court then in position now today, having made that judgment, having heard Romeo Vance's testimony, to say that it would have been the same result?

page 63 } The Court: Mr. Woodbridge, if ever a man had every advantage that a court of law could give him, this man got it. He was advised carefully by his counsel and by the Court of every right that he had, of every pitfall that might befall him, and the Court has heard the case. Now I am not going to retry the case.

Mr. Woodbridge: I am not asking you to, Your Honor.

The Court: Just what is your contention?

Mr. Woodbridge: I am trying to serve Mr. Eller. I was appointed to represent Mr. Eller in this petition, and I am making every attempt to serve him.

The Court: I understand that.

Mr. Woodbridge: To present his case as effectively as possible.

The Court: Go ahead.

Mr. Woodbridge: Now, Your Honor, as to the right to testify again: Mr. Eller did waive in writing at the time of the trial his right to testify in his own behalf. We certainly will have to concede Mr. Whitticar's representation of Mr. Eller was effective and adequate in most respects, but again I think if Mr. Eller had manifested to Mr. Whitticar a desire

page 64 } to testify in his own behalf, then Mr. Whitticar rather than discouraging him should have encouraged him and called him as a witness.

Mr. Eller had to rely on Mr. Whitticar's advice and opinion, and, of course, I am aware of the fact that the Supreme Court of Appeals and the Federal Courts have held repeatedly trial tactics alone are errors in retrospect and are not grounds for the granting of a writ of *habeas corpus,* but it is material and vital and is one of the fundamental constitutional privileges.

The Court: Let me ask you this while we are at this stage. Are you complaining now because Mr. Eller took the position that he didn't want to testify and he signed a statement to that effect, and he was later convicted? Now suppose the

Court grants this writ and sets this whole thing aside and retries Mr. Eller, and the next time Mr. Eller came in he did testify on his own behalf and he was again convicted. Don't you think he would then probably come back on a *habeas corpus* proceeding and say, well, I shouldn't have testified, if my counsel had advised me not to testify I wouldn't have done it?

Mr. Woodbridge: I don't know about that. That is right speculative. I can't say.

page 65 } The Court: It is no more speculative than what you are talking about.

Mr. Woodbridge: Well, sir, now the third point is the question of appeal. We are aware of the fact that the Court did write to Mr. Eller on the 24th of March, 1967, requesting him specifically to make a decision as to whether he wished to pursue his right of appeal, or to continue in the *habeas corpus* proceeding.

Apparently that letter was not answered directly. There was nothing in the court file to indicate that. Mr. Eller said he corresponded to either the Clerk or Mr. Ashby. I think, Your Honor, it is clear from the record and the correspondence and the testimony the court has before it now that Eller did unequivocally assert to at least two people that he wanted to appeal the decision of the Court. Mr. Whitticar did, and probably properly so, resigned as counsel. Then the next attorney appointed by the Court also resigned because of a conflict of interest, or he was related to one of the witnesses. So for a substantial length of time there was a great deal of confusion as to who was representing Mr. Eller, who was going to advise Mr. Eller, who was going to assist in this appeal that he already had stated he wished to make.

page 66 } The Court: No, there wasn't, Mr. Woodbridge. You read the letter I wrote Mr. Eller.

Mr. Woodbridge: Yes, sir.

The Court: Well, that letter was written in ample time for the appeal, and I did that purposely. This letter was written on March 24th.

Mr. Woodbridge: Mr. Eller not being educated and schooled in the law says himself he was not able to distinguish between the writ of *habeas corpus* and the appeal proceeding. Mr. Whitticar said that it was apparent to him that there was some confusion in his direct testimony, there was some confusion in Mr. Eller's mind about what he was doing, and he had no attorney to tell him what he

was doing or what he should do, and both attorneys appointed by the court had resigned.

The Court: I beg your pardon. On the 24th of March, the date that I wrote Mr. Eller the letter, Mr. Ashby had not been relieved. And I stated to him: Mr. Ashby has now requested to be relieved as your counsel. And the Order relieving Mr. Ashby was dated April 24, 1967.

Mr. Woodbridge: Yes, sir. But there is nothing in the record to indicate that Mr. Ashby ever advised
page 67 } Mr. Eller. We could have produced to the Court a letter from—

The Court: It wasn't necessary for Mr. Ashby to advise Mr. Eller because Mr. Eller, apparently somebody, if he wrote the petition directed to the Court he certainly knew what a *habeas corpus ad subjiciendum* was. There are not many lawyers who know what it is.

Mr. Woodbridge: I think it is apparently manifest, Your Honor, that Mr. Eller doesn't know what it is, and this was copied from—

The Court: He signed his name to it. He said he wrote it with some help from somebody.

Mr. Woodbridge: Probably a great deal of help.

The Court: He could certainly understand what I told him. He didn't need a lawyer to construe this: Will you please advise me—not Mr. Ashby, not the clerk—will you please advise me immediately whether you desire to appeal the Order of Conviction, or whether you expect to rely on the petition for *habeas corpus.* Wasn't that clear enough?

Mr. Woodbridge: Perhaps, Your Honor, to one who is schooled and learned and can comprehend these things.

The Court: I don't want to go further into
page 68 } that.

Mr. Woodbridge: Your Honor, those are essentially the three grounds of contention made by Mr. Eller. One, that he was denied the right to testify in his own behalf, and this was not properly waived by him; that a material witness was not called. To that extent Mr. Whitticar was ineffective in his representation. And, three, during the period within which an appeal could be taken he was effectively denied counsel and did not have the opportunity to make an intelligent decision.

The Court: All right.

Mr. Woodbridge: We ask, therefore, Your Honor, that the writ be granted and that the case be remanded for a new trial.

Mr. Pollard: May it please the Court, I will be very brief. I think the evidence is overwhelming as far as the respondent's rebuttal to the petitioner's allegations of the denial of his right to testify and the right to call a witness. This is very well answered by Mr. Whitticar. I might also point out that the criminal record which is a part of this proceeding contains the testimony of the brother of Hansford Eller, which is essentially what Mr. Vance testified to today. As I see it, and as Mr. Whitticar pointed
page 69 } out, the testimony would be cumulative. Also, Mr. Whitticar is in the position of taking a chance if he puts on a witness such as Mr. Vance in that he is not exactly certain what a witness like that might say. He hadn't been tried. He was pretty sure of Mr. Eller's brother. This is purely a trial tactic as I see it and certainly the petitioner has not shown any harm made, and Mr. Whitticar categorically denies that Hansford Eller ever requested Vance as a witness.

The question as to whether or not he wanted to testify is covered by the record as well as Mr. Whitticar's testimony. I think the main question here today is the one concerning an appeal, and there was some confusion, but the confusion seems to have been in the petitioner's mind and is still there because he still doesn't know what he wanted to do. When asked today about an appeal he is not certain yet what an appeal is. Apparently this is information he has picked up in the jail or in the penitentiary. He filed some papers out of the penitentiary in the nature of a writ of *habeas corpus* and had the Court treated that as a request for an appeal, probably it would have gotten another peti-
page 70 } tion from him saying why are you considering my *habeas corpus* petition as an appeal?

The petitioner had every opportunity to advise the Court, the clerk, Mr. Whitticar, or Mr. Ashby that he definitely wanted an appeal, and at no point in the evidence today or in the record has he shown that he desired one or that there was an affirmative desire for an appeal, as the Court of Appeals has held to be necessary. The case on that, as the Court is probably aware, if *Peyton* v. *Webb,* 207 Va. 417, 149 SE 2d 889. There also is a recent Federal case, *Alred* v. *Peyton,* 4th Circuit case, 385 Fed 2d 360, which deals with a question similar to that today, and in that case the petitioner sent a rather vague letter to his counsel stating that he thought maybe something should be done, and could he talk with the judge or something of that nature.

And the 4th Circuit said that was too vague to indicate any desire for an appeal.

Accordingly, the respondent's position is that the petitioner has failed to bear the burden of proof, and we ask that the petition be dismissed.

Thank you, Your Honor.

Mr. Woodbridge: That is all, Your Honor. We have nothing further.

The Court: Now, these proceedings usually are, to say the least, very unfortunate insofar as the legal pro-
page 71 } fession is concerned. We have long passed that point when a lawyer, either by employment or by appointment, undertakes to represent a person who is accused of a criminal offense is ever free from the later abuse, criticism, charges of incompetency and so on by the person for whom he has used his talents, and, I might say almost without pay, because the pay they get is nominal, to protect the person's rights who then turns with no gratitude and no feeling that anyone has used their efforts to help him but undertakes to abuse and to tear down and to degrade the lawyer who represented him. I say that is unfortunate, but we have come to that pass and we are long past it.

Now, there is no question in the Court's mind that Mr. Whitticar represented Mr. Eller to the best of his ability. It is not a question whether Mr. Eller thinks he should have done this, that or the other. It is not a question of whether anyone thinks it should have been done differently, because it is for the lawyer to determine the strategy and the tactics of the criminal trial; not the litigant; not the accused. One of our great difficulties today is that the accused who knows nothing of criminal law or
page 72 } criminal procedure undertakes and often does dictate and dominate the tactics used in the criminal trial. Then when he is convicted it is the lawyer who is going to suffer for it.

Now in this particular case, as I have said, Mr. Whitticar I think from this evidence here today, and from this record, represented this man to the best of his ability. Certainly there was nothing to deter this man from taking the witness stand if he wished to, there was nothing to deter him from calling witnesses at any time, if he wanted to. Not a word apparently was said about this at any time until after his conviction. Afterward there was some correspondence which shows in the file an effort was made to determine whether

this man actually wanted to appeal this case or not, and that went on until finally I got this petition in which he said he had filed a writ of *habeas corpus* in the Supreme Court of Appeals of Virginia, and then in an effort to determine whether he wanted to appeal I wrote him and asked him to please advise me, and he admits here today that he never did.

Taking this in its entirety, it is the opinion of the Court that no rights of Hansford Eller were violated during the trial of this case, and that he was competently page 73 } and ably represented by counsel, and that he was not denied the right of appeal from the conviction that he sustained.

Therefore, the writ will be denied and the petition dismissed. The petitioner will be remanded to the Superintendent of the State Penitentiary to continue the serving of his sentence for the conviction of armed robbery.

Sheriff, you may take charge of the prisoners, Mr. Eller and Mr. Vance; convey them to the Superintendent of the State Penitentiary where they will be contained.

Mr. Pollard, you will *repare* the order?

Mr. Pollard: Yes, sir, Your Honor.

The Court: Please make up an original and two copies.

Mr. Woodbridge, I will appoint you two, you and Mr. Williams, to appeal this case.

Mr. Woodbridge: Thank you, Your Honor.

Court Adjourned at 4:00 o'clock p. m.

page 74 } CERTIFICATE OF COURT REPORTER

I, Howard Keith Crane, hereby certify that I, first being duly sworn, was the court reporter in the Circuit Court of the County of Stafford, Virginia, on February 26, 1968, at the time of the hearing herein.

I further certify that the foregoing transcript is a true and accurate record of the testimony and other incidents of the hearing herein.

Given under my hand this 6th day of March, 1968.

Howard Keith Crane—Court Reporter

page 75 } CERTIFICATE OF COUNSEL

Final judgment in the foregoing matter having been rendered on the 13th day of March, 1968, the attorney for the

petitioner and attorney for the respondent hereby affix their signatures to the foregoing transcript of testimony and other incidents of trial to the end that the same may become part of the record on appeal.

Given under our hands this 4th day of May, 1968.

Benjamin H. Woodbridge, Jr.
Counsel for the petitioner

Overton P. Pollard
Assistant Attorney General
Counsel for the respondent

page 76 } CERTIFICATE OF TRIAL JUDGE

Date tendered May 7, 1968
Date signed May 7, 1968

S. Bernard Coleman, Judge

CERTIFICATE OF CLERK

Date received May 8, 1968

S. L. Alexander, Clerk

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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