215 Va. 143

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SUPREME COURT OF VIRGINIA
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IN THE

# Supreme Court of Virginia

AT RICHMOND

730733

WILLIAM BROWN

V.

COMMONWEALTH OF VIRGINIA

APPENDIX

CHARLES F. URQUHART, III, for plaintiff in error

ROBERT E. SHEPHERD, JR., Assistant Attorney General (Andrew P. Miller, Attorney General) for defendant in error

## APPENDIX

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COMMONWEALTH OF VIRGINIA

COUNTY OF SOUTHAMPTON, to-wit

IN THE CIRCUIT COURT OF SAID COUNTY

April 16, 1973

INDICTMENT

The Grand Jurors of the Commonwealth of Virginia in and for the body of the County of Southampton, and now attending the Circuit Court for the said County, upon their oaths present: that on or about the 23rd day of February, 1973, in the County of Southampton, William Brown, while an inmate at Southampton Correctional Farm, did unlawfully, feloniously and maliciously make, procure, secrete, and have in his possession a weapon, to-wit: a chain, not authorized by the superintendent, which was capable of inflicting death or bodily injury

Va. Code Section 53-291(5)

against the peace and dignity of the Commonwealth of Virginia.

This indictment found at the April 16 Term, 1973, of the Circuit Court of Southampton County, on the evidence of H. W. Phillips and G. M. Johnson, witnesses sworn and sent to the Jury by the Court.

A True Bill.

MATERIAL EXCERPTS FROM TRANSCRIPT

(Tr. 2, L. 5 to Tr. 3, L. 2)

(Richard C. Grizzard, Attorney for the Commonwealth
William Brown, Defendant
Benjamin A. Williams, Jr., Clerk of the Court
The Honorable James C. Godwin, Judge
Charles F. Urquhart, III, Counsel for Defendant, present)

THE DEFENDANT, WILLIAM BROWN, WAS ARRAIGNED ON AN INDICTMENT CHARGING UNAUTHORIZED POSSESSION OF A WEAPON, AND ENTERED A PLEA OF NOT GUILTY.

MR. WILLIAMS, CLERK: Do you wish to be tried by the Court or by a jury?

DEFENDANT BROWN: The Court.

THE COURT: Now, Brown, do you understand that you have a right to a jury trial in this case if you want one?

DEFENDANT BROWN: Yes, sir.

THE COURT: Have you had an opportunity to talk to your lawyer about your case?

DEFENDANT BROWN: Yes, sir.

THE COURT: Have you told him everything you want to tell him?

DEFENDANT BROWN: Yes, sir.

THE COURT: Are there any witnesses that you want here today?

DEFENDANT BROWN: No, sir

THE COURT: Are you ready for trial today?

DEFENDANT BROWN: Yes, sir.

THE COURT: All right, be seated

MR. GRIZZARD: The Commonwealth concurs in the waiver of trial by jury.

THE COURT: The Court concurs.

COMMONWEALTH

vs

WILLIAM BROWN

# 39-1973

May 1, 1973

ORDER OF CONVICTION

This day came again the Attorney for the Commonwealth, and William Brown, age 20, born December 21, 1952, who stands indicted for a felony, to-wit: On or about the 23rd day of February, 1973, in the County of Southampton, while an inmate at Southampton Correctional Farm, did unlawfully, feloniously and maliciously make, procure, secrete, and have in his possession a weapon, to-wit: A chain, not authorized by the Superintendent, which was capable of inflicting death or bodily injury, was led to the bar in the custody of the jailer of this Court, and came also Charles F. Urquhart, III, his attorney heretofore appointed.

Whereupon the accused was arraigned and after private consultation with and being advised by Charles F. Urquhart, III, his counsel, pleaded not guilty to the indictment, which plea was tendered by the accused in person. And thereupon, after having been first advised by his attorney and by the Court of his right to trial by jury, the accused knowingly and voluntarily waived trial by a jury and with the concurrence of the Attorney for the Commonwealth and of the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a

jury, as provided by law, and having heard the evidence, the defendant by his attorney moved the Court to strike the same, which motion the Court overruled, and to which ruling of the Court the defendant by his attorney excepted, and having heard all of the evidence, and argument of counsel, doth find the accused guilty of unauthorized possession of a weapon, as charged in the indictment.

And it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of eighteen months, and that the Commonwealth of Virginia do recover against the defendant its costs in the amount of $311.50 by it about its prosecution in this behalf expended.

And it is further ordered that as soon as possible after the entry of this Order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant for which services he is allowed an attorneys fee of $200.00.

Counsel for the defendant advised the Court that he had fully advised the defendant of his right regarding an appeal, and the defendant in person so acknowledged.

The prisoner was delivered to a guard of the Southampton Correctional Farm to be returned to that institution.

MOTION

William Brown, by counsel, respectfully requests leave of the Court to file the following motion:

William Brown, by counsel, respectfully moves and requests the Court to set aside the guilty verdict in his conviction in the said Court on May 1, 1973, on a charge of possession of an unauthorized instrument, in violation of Section 53-291, Code of Virginia (1950), as Amended, for the reason that the said Court did not have proper jurisdiction to try the alleged offense, but proper jurisdiction, in accordance with section 53-295, Code of Virginia (1950), as Amended, should have been in the Circuit Court of the City of Richmond, Virginia.

WILLIAM BROWN

By Counsel: /s/ Charles F. Urquhart, III

C. F. Urquhart, III
Counsel for Defendant
Courtland, Virginia

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

TO: CLERK OF THE CIRCUIT COURT OF SOUTHAMPTON COUNTY, VIRGINIA:

The Plaintiff in Error, William Brown, gives Notice of Appeal from the judgment of the Court rendered herein on May 1, 1973, and assigns the following error as required by Rule 5:6:

The Court erred in denying motion by Plaintiff in Error that the verdict of the said Court be set aside for lack of jurisdiction of the said Court to try the offense charged; which said denial was contrary to the law and the evidence.

WILLIAM BROWN

By Counsel: /s/ Charles F. Urquhart, III

I, Charles F. Urquhart, III, Attorney at Law, do hereby certify that a copy of the foregoing Notice of Appeal and Assignment of Error has been delivered to Richard C. Grizzard, Esq. Commonwealth's Attorney for Southampton County, Boykins, Virginia, Counsel of record for the Commonwealth of Virginia, this 30th day of May, 1973.

/s/ Charles F. Urquhart, III

C. F. Urquhart, III
Counsel for Plaintiff in Error
Courtland, Virginia