216 Va. 666
SUPREME COURT OF VIRGINIA
RECEIVED
NOV 28 1975
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 750457

KEITH ANTHONY TURNER — APPELLANT

V.

THE COMMONWEALTH OF VIRGINIA — APPELLEE

APPENDIX

WILLIAM H. HABOUSH
4615 WEST BROAD STREET #207
RICHMOND, VIRGINIA 23230
COUNSEL FOR APPELLANT

TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS	i
JUVENILE AND DOMESTIC RELATIONS COURT TRANSFER HEARING RECORD	1
SUPPLEMENTAL EVIDENCE	2
INDICTMENT FOR ROBBERY (CONVICTION)	6
INDICTMENT FOR ROBBERY (SENTENCING)	8
MOTION TO VACATE SENTENCE	11
INDICTMENT FOR ROBBERY (DENIAL OF MOTION TO VACATE SENTENCE)	13
NOTICE OF APPEAL AND ASSIGNMENT OF ERROR	14
PAGE #3 OF THE RECORD	17
TESTIMONY OF APPELLANT-PAGE #4 OF THE RECORD	18
TESTIMONY OF DETECTIVE GAUDET-PAGE # 31 OF THE RECORD	19
AGREEMENT AND STIPULATION REGARDING APPENDIX	21

Sheet No. 1 of ____ sheets

VIRGINIA: IN THE JUVENILE AND DOMESTIC RELATIONS COURT
OF RICHMOND

Judge Adamson

Probation Officer _____

In re: Keith Anthony Turner Race B Age 17 Sex M Document No. 3381/74

(10-7-74)

DETENTION HEARING

(x) Child present ~~& parent or custodian present~~. (father present)

(x) Notice fo the charges were served on the child.

(x) Notice of the charges ~~were~~/are to be/served on parent or custodian

(x) Court to appoint attorney to represent child.

( ) After Constitutional safeguards, child waved attorney.

(x) Bond with surety fixed at $ 5,000 .

(x) ~~Detention~~ or Jail meantime in pursuant to 16.1-194 of Code of Virginia.

( ) ~~Child released to parent or custodian~~.

Hearing date 10-24-74 .

Subsitute petition

Notice of transfer hearing

Summon witnesses on warrant

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF
RICHMOND, DIVISION I

COMMONWEALTH OF VIRGINIA

V.

KEITH A. TURNER

Supplemental narrative evidence of the above heard on the 21st day of January, 1975, before the Honorable James B. Wilkinson, Judge.

APPEARANCES:

John B. Mann, Esquire
Attorney for the Commonwealth

William H. Haboush, Esquire
Attorney for the Defendant

SUPPLEMENTAL EVIDENCE

The defendant argued in Court on January 21, 1975, a motion to vacate the conviction rendered by the Court of January 8, 1975, by the Honorable James B. Wilkinson, Judge. The defendant claimed that his conviction was void under the 1950 Virginia Code, Section 16.1-172; that the Juvenile and Domestic Relations Court of the City of Richmond which certified the defendant to the Circuit Court did not notify the defendant's parents to be present in the Court for the transfer hearing.

The Circuit Court overruled this motion on the grounds that the Juvenile and Domestic Relations Court of the City of Richmond did certify that the parents of the defendant were present in Court during the transfer hearing. The Circuit Court did establish that the parents of the defendant were present in the Juvenile and Domestic Relations Court. However, there was no evidence presented to show that the Juvenile and Domestic Relations Court did actually notify the parents of the defendant to be present in Court.

The defendant argued that although the

parents were present at the transfer hearing, the Court did not notify them; that this notification is a statutory jurisdictional requirement; and that the failure to abide by the statute is fatal to the conviction in the Circuit Court.

Entered: / /1975

_____
Judge

I ask for this to be part of the record.

_____
William H. Haboush
Attorney for the Defendant

I have seen this.

_____
John B. Mann
Attorney for the Commonwealth

CERTIFICATION

I certify that on this 6th day of March, 1975, a copy of the foregoing was hand delivered to John B. Mann, Esquire, at his office at 10th and Broad Streets, Richmond, Virginia, Attorney for the Commonwealth.

WILLIAM H. HABOUSH

_____

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF
RICHMOND, DIVISION I
THE 20th DAY OF NOVEMBER 1974

COMMONWEALTH

V. Indictment for Robbery (F-3978)

KEITH ANTHONY TURNER

The said defendant was this day led to the bar in the custody of the Sergeant of this City and was represented by Attorney William H. Haboush, Court appointed counsel, and the Commonwealth was represented by John B.Mann.

And the defendant being only seventeen years of age, the report required by the statute was duly filed with this Court by the Juvenile and Domestic Relations District Court and the parents of the defendant were this day present.

And being arraigned the defendant pleaded not guilty to robbery as charged in the indictment, after consultation with counsel. And with the consent of the accused, given in person, after consultation with cousel, and the concurrence of the Court and the

Attorney for the Commonwealth, the Court proceeded to hear and determine the case without a jury. And the witnesses having been sworn and the Court having heard the evidence for the Commonwealth, the said defendant by counsel moved the Court to strike the evidence of the Commonwealth as being insufficient for the finding of a judgement of guilty, which motion the Court denied. And having heard all of the evidence and arguments of counsel the Court finds the defendant guilty as charged in the indictment and on his motion this case is continued for a pre-sentence investigation and report, and hearing on said report is set for January 8, 1975, at 9:00 a.m.

And thereupon the said defendant is remanded, pending said report.

Nov. 20 1974

Enter: _____
James B. Wilkinson, Judge

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF
RICHMOND, DIVISION I
THE 8TH DAY OF JANUARY, 1975

COMMONWEALTH

V. Indictment for Robbery (F-3978)

KEITH ANTHONY TURNER

The said defendant was this day led to the bar in the custody of the Sergeant of this City and was represented by Attorney William H. Haboush, Court appointed counsel, the Commonwealth was represented by John B. Mann, the Probation Officer was present, as well as the parents of the defendant.

And the defendant having been on November 20, 1974 found guilty of Robbery as charged in the indictment, and this case referred to the Probation Department for a pre-sentence investigation and report, and said report having been filed in open Court and the defendant advised as to the contents thereof and given the privilege of cross-examining the reporting officer thereon, and evidence and arguments of counsel heard, and the defendant being seventeen years of age and the Court

having maturely considered the report required by statute, doth now ascertain his term of confinement in the Penitentiary at Fifteen Years.

Whereupon it being demanded of the said defendant if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgement against him according to law, and nothing being offered or alleged in delay thereof, it is the judgement of this Court that the said Keith Anthony Turner be confined in the State Penitentiary for a term of Fifteen Years, this being the preiod by the Court ascertained. And the Court doth recommend that said term be served at Southampton Farm. And on his motion, execution of Five Years of the said penitentiary sentence is suspended during his good behavior for a period of Twenty Years. And he is placed on supervised probation upon his release from the State Penitentiary.

And it is ordered that the Sergeant of this City do, when required so to do, deliver the said defendant from the jail of this City to the Superintendent of the Penitentiary, in said Penitentiary to

be confined and treated in the manner prescribed by law; and said term is to be credited by the time spent in jail awaiting trial.

And thereupon the said Keith Anthony Turner is remanded to jail.

Jan 8 1975 Enter: _____
James B. Wilkinson, Judge

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF
RICHMOND, DIVISION I
JANUARY 17, 1975

COMMONWEALTH OF VIRGINIA PLAINTIFF

V.

KEITH ANTHONY TURNER DEFENDANT

MOTION

PLEASE TAKE NOTICE THAT THE DEFENDANT Keith Anthony Turner will on January 21, 1975, at 9:30 or as soon thereafter as counsel may be heard, move the Circuit Court to vacate the sentence imposed on Defendant by the Honorable J.B. Wilkinson, Judge; that this conviction is void under statute #16.1-172.

KEITH ANTHONY TURNER

By: _____
Counsel

William H. Haboush, p.d.
4615 West Broad Street #207
Richmond, Virginia 23230

CERTIFICATE

I hereby certify that a copy of the foregoing notice was hand delivered to John Mann, Assistant to the Commonwealth Attorney, at his office on 10th and Broad, Richmond, Virginia, on this 17th day of January, 1975.

WILLIAM H. HABOUSH

_____

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF
RICHMOND, DIVISION I
THE 21st DAY OF JANUARY, 1975

COMMONWEALTH

V. Indictment for Robbery (F-3978)

KEITH ANTHONY TURNER

The said defendant was this day led to the bar in the custody of the Sergeant of this City and he was represented by Attorney William H. Haboush, Court appointed counsel, and the Commonwealth was represented by John B. Mann.

And the said defendant moved the Court to vacate its judgement entered herein on January 8, 1975. And arguements having been presented on said motion, the Court overruled same.

The defendant then moved the Court to reduce the sentence entered herein on January 8, 1975, and the Court doth now suspend two years of the ten year sentence leaving eight years to be served.

And thereupon the said defendant is remanded to jail.

Jan. 21, 1975 Enter: _____
James B. Wilkinson, Judge

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF
RICHMOND, DIVISION I

COMMONWEALTH OF VIRGINIA PLAINTIFF

V.

KEITH ANTHONY TURNER DEFENDANT

NOTICE OF APPEAL AND
ASSIGNMENT OF ERROR

The defendant, Keith Anthony Turner, gives notice of appeal on the final judgement of the Circuit Court of the City of Richmond, Division I, on January 8, 1975, before the Honorable J. B. Wilkinson, Judge, and assigns the following errors as required by rule of Court #5:6 :

1

The Court erred in overruling the defendant's motion to strike the Commonwealth's evidence as insufficient to convict.

2

The Court erred in overruling the defendant's motion to dismiss the charges against the defendant at the closing of the defendant's evidence.

3

The Court erred in overruling the motion to vacate the conviction of the defendant based on Rule #16. 1-172 of the Code of Virginia, 1950.

4

The Court erred in imposing on a juvenile a 15 year sentence with 7 years suspended as such sentence is inhumane and is contrary to the public policy.

KEITH ANTHONY TURNER

By: _____
Counsel

William H. Haboush, p.d.
4615 West Broad Street #207
Richmond, Virginia 23230

CERTIFICATE

I hereby certify that a true copy of the foregoing notice was hand delivered to Mr. John B. Mann, Assistant Commonwealth Attorney, on January 28, 1975, at his office at 10th and Broad, Richmond, Virginia.

WILLIAM H. HABOUSH

_____

Hearing on November 20, 1974, before the Honorable James B. Wilkinson, Judge.

PRESENT: John B. Mann, Esq., Attorney for the Commonwealth

William H. Haboush, Esq., Attorney for the defendant

Keith A. Turner, the defendant, in person and by counsel

THE CLERK: This is the Commonwealth v. Keith Anthony Turner, the defendant was arraigned and plead not guilty.

THE COURT: Is his father present in Court now?

A VOICE: Yes.

THE COURT: All right, sir, what is his name?

A VOICE: Mr. Turner.

THE COURT: What is your name, sir? Ava Lee Turner?

A VOICE: Acra Lee Turner.

A VOICE: Acra.

THE COURT: ACRA.

A VOICE: (spelling): A C R A.

THE COURT: All right, thank you, sir.

BY THE COURT (of the defendant):

Q All right, sir, how old are you?

A Seventeen.

Q Can you read and write?

A Yes, sir.

Q Do you understand the nature of the charge against you?

A Yes, sir.

Q Have you discussed it with your attorney?

A Yes, sir.

Q And you fully understand you have a Constitutional right to have a jury try your case?

A Yes, sir.

A Until today.

Q All right, did you have occasion to- when did you arrest the defendant?

A On the -- 10/5/74 about 6:45 in the evening.

Q Where?

A At his address at 1332 Coalter Street.

Q All right, did you read him his Constitutional rights at that point -- at that time?

A Yes, sir, I did.

Q Were his parents present?

A Yes, sir, they were.

Q All right, what rights did you read him?

MR. HABOUSH: We'll stipulate those rights.

THE COURT: All right, do you stipulate that he understood them?

Q Did he understand them?

A Yes, sir, he said he did.

Q Did he make any statement to you?

A Yes, sir, I asked him what he was doing, what -- what he did on 10/3/74; asked him if he went to school, he stated no, he didn't go to school; asked him:*

AGREEMENT AND STIPULATION REGARDING APPENDIX

Counsel for the Commonwealth of Virginia and for Keith Anthony Turner agree that the appendix shall consist of the following:

1. Juvenile and Domestic Relations Court Transfer Hearing Record
2. Supplemental Evidence
3. Indictment for Robbery (Conviction)
4. Indictment for Robbery (Sentencing)
5. Motion to Vacate Sentence
6. Indictment for Robbery (Denial of Motion to Vacate Sentence)
7. Notice of Appeal and Assignment of Error
8. Page #3 of the Record
9. Testimony of Appellant page #4 of the record
10. Testimony of Detective Gaudet page #31 of the record
11. Agreement and Stipulation Regarding Appendix

WILLIAM H. HABOUSH
4615 W. BROAD STREET #207
RICHMOND, VIRGINIA 23230
COUNSEL FOR APPELLANT