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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

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IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 801541

MARCUS ALBERT PAYNE,

Appellant,

v.

WARDEN OF THE POWHATAN CORRECTIONAL CENTER,

Appellee.

APPENDIX

Edward D. Barnes
Guy A. Sibilla
NIKAS, ENGLISBY & BARNES
10101 Iron Bridge Road
Chesterfield, VA 23832

Counsel for Appellant

APPELLATE PRINTING SERVICES • HERITAGE BUILDING • RICHMOND, VIRGINIA • (804) 643-7789

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COMMONWEALTH OF VIRGINIA

VS 631 C-12,010

MARCUS ALBERT PAYNE

THE 8th day of May, 1978 came the Commonwealth of Virginia, by its Attorney, the Probation Officer for the Circuit Court of Arlington County, Virginia, the Defendant in custody of the Sheriff and his Retained Attorney, Thomas M. McKittrick.

WHEREUPON the Court being of the opinion that the verdict of the jury is right and proper, doth hereby find the Defendant Guilty of "Rape" as charged in the indictment herein.

THEREUPON the Attorney for the Defendant was asked if he had received and read a copy of the report and further if he had explained the report to the Defendant, to all of which the Attorney for the Defendant replied in the affirmative.

WHEREUPON the Attorney for the Defendant was asked if he desired to have the Probation Officer or any other witnesses sworn to testify regarding the matter before the Court, to which the Attorney for the Defendant replied in the negative.

THEREUPON the Court ordered that the report of the Probation Officer be filed as a part of the record in this case after certain discrepancies were noted therein, as are more specifically set forth in the stenographic record of this case.

AND IT BEING DEMANDED of the accused if he desired to make a statement or to advance any reason why judgment should not be pronounced against him according to law, both he and his counsel made statements to the Court.

IT IS ACCORDINGLY the Judgment of this Court, pursuant to the verdict of the jury, that the said Marcus Albert Payne be and he hereby is sentenced to confinement in the Penitentiary of this Commonwealth for the term of ten (10) years, the period by the jury ascertained as aforesaid, and that the Commonwealth of Virginia do recover against the said Marcus Albert Payne its costs by it about its prosecution in this behalf expended.

WHEREUPON the Court advised the Defendant of his right to appeal to the Supreme Court of Virginia, and further advised the Defendant that counsel would be appointed to represent him if he were without sufficient funds to retain counsel.

THEREUPON the Defendant represented to the Court that he was without funds with which to retain counsel to prosecute this appeal, and requesting the services of same, the Court Appointed Thomas M. McKittrick, Esquire, a discreet and competent Attorney to represent him for the appeal of this case.

Recorded in Common Law Order
Criminal Book No. 178 Page No. 631
On July 6 1978

WHEREUPON the Defendant informed the Court of his intention to petition the Supreme Court of Virginia for a Writ of Error and Supersedeas and therefore moved the Court to suspend the execution of the aforesaid sentence for a period of sixty (60) days to enable the Defendant to prepare and file said petition, which said motion the Court granted and accordingly ordered that the execution of the above pronounced sentence be and the same hereby is suspended for a period of sixty (60) days.

IT IS ADJUDGED and ORDERED pursuant to Title 19.2-165 of the 1950 Code of Virginia, as amended, that the Court Reporter, Deo V. Wilson, prepare three (3) copies of a transcript of the record of the trial of this case, the costs of which are to be paid by the Commonwealth of Virginia, out of the appropriation of criminal charges and that a copy of this order be forwarded to the aforesaid Court Reporter, and without objection, upon the timely filing of same, the transcript shall be a part of the record pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia.

THEREUPON the Defendant moved the Court to determine the amount of bail bond required in this case pending appeal, which said motion the Court denied.

IT IS FURTHER ORDERED by the Court 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 Penitentiary of this Commonwealth; therein to be kept, confined and treated in the manner provided by law.

THE COURT ORDERS that the Defendant be allowed credit for the time spent in jail awaiting trial, namely June 15th, 1977 through September 23rd, 1977 and from November 7th, 1977.

THE COURT CERTIFIES that at all times during the trial of this case the accused was personally present.

THE Birth date of the Defendant is reported to be January 9th, 1946.

WHEREUPON the Defendant moved the Court to suspend or run this sentence concurrently with sentence previously imposed in the Circuit Court of Arlington County, Virginia, on May 8th, 1978 in a case styled Commonwealth of Virginia vs. Marcus Albert Payne, C-12,012, which said motion the Court denied.

AND the Defendant is hereby remanded to jail.

Entered this 6th day of July, 1978.

William G. Lindsey
Judge

V I R G I N I A:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

May 3, 1977

The Grand Jury charges that:

On or about the 19th day of January, 1977, in the County of Arlington, MARCUS ALBERT PAYNE, also known as Marcel Lazare, did rape one Cindy Floyd.

Section 18.2-61, Code of Va., 1950, as amended.

Witnesses sworn and sent to the Grand Jury by the Court to give evidence:

Detective J. Mitchell, Arlington County Police Dept.

TESTE: _____
Clerk

COMMONWEALTH OF VIRGINIA

VS 633 C-12,011

MARCUS ALBERT PAYNE

THE 8th day of May, 1978 came the Commonwealth of Virginia, by its Attorney, the Probation Officer for the Circuit Court of Arlington County, Virginia, the Defendant in custody of the Sheriff and his Retained Attorney, Thomas M. McKittrick.

WHEREUPON the Court being of the opinion that the verdict of the jury is right and proper, doth hereby find the Defendant Guilty of "Sodomy" as charged in the indictment herein.

THEREUPON the Attorney for the Defendant was asked if he had received and read a copy of the report and further if he had explained the report to the Defendant, to all of which the Attorney for the Defendant replied in the affirmative.

WHEREUPON the Attorney for the Defendant was asked if he desired to have the Probation Officer or any other witnesses sworn to testify regarding the matter before the Court, to which the Attorney for the Defendant replied in the negative.

THEREUPON the Court ordered that the report of the Probation Officer be filed as a part of the record in this case after certain discrepancies were noted therein, as are more specifically set forth in the stenographic record of this case.

AND IT BEING DEMANDED of the accused if he desired to make a statement or to advance any reason why judgment should not be pronounced against him according to law, both he and his counsel made statements to the Court.

IT IS ACCORDINGLY the Judgment of this Court, pursuant to the verdict of the jury, that the said Marcus Albert Payne be and he hereby is sentenced to confinement in the Penitentiary of this Commonwealth for the term of four (4) years, the period by the jury ascertained as aforesaid, and that the Commonwealth of Virginia do recover against the said Marcus Albert Payne its costs by it about its prosecution in this behalf expended.

WHEREUPON the Court advised the Defendant of his right to appeal to the Supreme Court of Virginia, and further advised the Defendant that counsel would be appointed to represent him if he were without sufficient funds to retain counsel.

THEREUPON the Defendant represented to the Court that he was without funds with which to retain counsel to prosecute this appeal, and requesting the services of same, the Court Appointed Thomas M. McKittrick, Esquire, a discreet and competent Attorney to represent him for the appeal of this case.

Recorded in Common Law Order

Criminal Book No. 178 Page No. 633

On July 6 1978

WHEREUPON the Defendant informed the Court of his intention to petition the Supreme Court of Virginia for a Writ of Error and Supersedeas and therefore moved the Court to suspend the execution of the aforesaid sentence for a period of sixty (60) days to enable the Defendant to prepare and file said petition, which said motion the Court granted and accordingly ordered that the execution of the above pronounced sentence be and the same hereby is suspended for a period of sixty (60) days.

IT IS ADJUDGED and ORDERED pursuant to Title 19.2-165 of the 1950 Code of Virginia, as amended, that the Court Reporter, Deo V. Wilson, prepare three (3) copies of a transcript of the record of the trial of this case, the costs of which are to be paid by the Commonwealth of Virginia, out of the appropriation of criminal charges and that a copy of this order be forwarded to the aforesaid Court Reporter, and without objection, upon the timely filing of same, the transcript shall be a part of the record pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia.

THEREUPON the Defendant moved the Court to determine the amount of bail bond required in this case pending appeal, which said motion the Court denied.

IT IS FURTHER ORDERED by the Court 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 Penitentiary of this Commonwealth; therein to be kept, confined and treated in the manner provided by law.

THE COURT ORDERS that the Defendant be allowed credit for the time spent in jail awaiting trial, namely June 15th, 1977 through September 23rd, 1977 and from November 7th, 1977.

THE COURT CERTIFIES that at all times during the trial of this case the accused was personally present.

THE Birth date of the Defendant is reported to be January 9th, 1946.

WHEREUPON the Defendant moved the Court to suspend or run this sentence concurrently with sentence previously imposed in the Circuit Court of Arlington County, Virginia, on May 8th, 1978 in a case styled Commonwealth of Virginia vs. Marcus Albert Payne, C-12,012, which said motion the Court denied.

AND the Defendant is hereby remanded to jail.

Entered this 6th day of July, 1978.

William R. Rinaldi
Judge

V I R G I N I A:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

May 3, 1977

The Grand Jury charges that:

On or about the 19th day of January, 1977, in the County of Arlington, MARCUS ALBERT PAYNE, also known as Marcel Lazare, did by force carnally know Cindy Floyd, a female, by the mouth.

Section 18.2-361, Code of Va., 1950, as amended.

Witnesses sworn and sent to the Grand
Jury by the Court to give evidence:

Detective J. Mitchell, Arlington County Police Dept.

TESTE: David A. Bell
Clerk

COMMONWEALTH OF VIRGINIA

VS 635 C-12,012

MARCUS ALBERT PAYNE

THE 8th day of May, 1978 came the Commonwealth of Virginia, by its Attorney, the Probation Officer for the Circuit Court of Arlington County, Virginia, the Defendant in custody of the Sheriff and his Retained Attorney, Thomas M. McKittrick.

WHEREUPON the Court being of the opinion that the verdict of the jury is right and proper, doth hereby find the Defendant Guilty of "Abduction of a female under the age of sixteen for the purposes of Prostitution" as charged in the indictment herein.

THEREUPON the Attorney for the Defendant was asked if he had received and read a copy of the report and further if he had explained the report to the Defendant, to all of which the Attorney for the Defendant replied in the affirmative.

WHEREUPON the Attorney for the Defendant was asked if he desired to have the Probation Officer or any other witnesses sworn to testify regarding the matter before the Court, to which the Attorney for the Defendant replied in the negative.

THEREUPON the Court ordered that the report of the Probation Officer be filed as a part of the record in this case after certain discrepancies were noted therein, as are more specifically set forth in the stenographic record of this case.

AND IT BEING DEMANDED of the accused if he desired to make a statement or to advance any reason why judgment should not be pronounced against him according to law, both he and his counsel made statements to the Court.

IT IS ACCORDINGLY the Judgment of this Court, pursuant to the verdict of the jury, that the said Marcus Albert Payne be and he hereby is sentenced to confinement in the Penitentiary of this Commonwealth for the term of twenty-five (25) years, the period by the jury ascertained as aforesaid, and that the Commonwealth of Virginia do recover against the said Marcus Albert Payne its costs by it about its prosecution in this behalf expended.

WHEREUPON the Court advised the Defendant of his right to appeal to the Supreme Court of Virginia, and further advised the Defendant that counsel would be appointed to represent him if he were without sufficient funds to retain counsel.

THEREUPON the Defendant represented to the Court that he was without funds with which to retain counsel to prosecute this appeal, and requesting the services of same, the Court Appointed Thomas M. McKittrick, Esquire, a discreet and competent Attorney to represent him for the appeal of this case.

Recorded in Common Law Order

Criminal Book No. 178 Page No. 635

On July 6 1978

WHEREUPON the Defendant informed the Court of his intention to petition the Supreme Court of Virginia for a Writ of Error and Supersedeas and therefore moved the Court to suspend the execution of the aforesaid sentence for a period of sixty (60) days to enable the Defendant to prepare and file said petition, which said motion the Court granted and accordingly ordered that the execution of the above pronounced sentence be and the same hereby is suspended for a period of sixty (60) days.

IT IS ADJUDGED and ORDERED pursuant to Title 19.2-165 of the 1950 Code of Virginia, as amended, that the Court Reporter, Deo V. Wilson, prepare three (3) copies of a transcript of the record of the trial of this case, the costs of which are to be paid by the Commonwealth of Virginia, out of the appropriation of criminal charges and that a copy of this order be forwarded to the aforesaid Court Reporter, and, without objection, upon the timely filing of same, the transcript shall be a part of the record pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia.

THEREUPON the Defendant moved the Court to determine the amount of bail bond required in this case pending appeal, which said motion the Court denied.

IT IS FURTHER ORDERED by the Court 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 Penitentiary of this Commonwealth; therein to be kept, confined and treated in the manner provided by law.

THE COURT ORDERS that the Defendant be allowed credit for the time spent in jail awaiting trial, namely June 15th, 1977 through September 23rd, 1977 and from November 7th, 1977.

THE COURT CERTIFIES that at all times during the trial of this case the accused was personally present.

THE Birth date of the Defendant is reported to be January 9th, 1946.

AND the Defendant is hereby remanded to jail.

Entered this 6th day of July, 1978.

William R. Wilson
Judge

V I R G I N I A:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

May 3, 1977

The Grand Jury charges that:

On or about the 19th day of January, 1977, in the County of Arlington, MARCUS ALBERT PAYNE, also known as Marcel Lazare, did, without legal justification or excuse, detain the person of another, to-wit: Cindy Floyd, a female under sixteen years of age, for the purpose of prostitution.

Section 18.2-48, Code of Va., 1950, as amended.

Witnesses sworn and sent to the Grand Jury by the Court to give evidence:

Detective J. Mitchell, Arlington County Police Dept.

TESTE: David A. Bell
Clerk

V I R G I N I A :

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

MARCUS ALBERT PAYNE, Petitioner, versus GENE JOHNSON, Superintendent of Powhatan Correctional Center, Respondent.	CIRCUIT COURT NO. 21740

PETITION FOR WRIT OF HABEAS CORPUS

Comes the petitioner, Marcus Albert Payne, pro se, and moves this Honorable Court pursuant to Title 28 U.S.C. § 2254, and Section 8.01-654 of the Code of Virginia to issue a writ of habeas corpus ad subjiciendum. In support of his petition, your petitioner shows and alleges:

I. CRIMINAL PROCEEDINGS

1. Petitioner is presently confined at Powhatan Correctional Center, State Farm, Virginia, serving consecutive sentences of twenty-five (25) years for abduction in violation of Section 18.2-48 of the Code of Virginia; ten (10) years for rape in violation of section 18.2-61 of the Code of Virginia; and four (4) years for sodomy in violation of Section 18.2-361 of the Code of Virginia. (Indictment Nos. C-12010, C-12011 and C-12012, respectively). Petitioner pleaded not guilty to each of the aforesaid charges and was tried by a jury, wherein, the petitioner was represented by Thomas M. McKittrick, Attorney, 511 4th Avenue North, Great Falls, Montana 59401. On the 7th day of November, 1977, the jury found the petitioner guilty as

charged in the aforementioned indictments and the Circuit Court of Arlington County entered judgments against the petitioner accordingly. Petitioner appealed his conviction to the Supreme Court of Virginia the 31st day of October, 1978, and the appeal was considered in its entirity and shortly thereafter it was granted on the 13th day of April, 1979, with respect to one error contending that the Commonwealth withheld exculpatory evidence. (See Exhibit I, attached hereto). On the 21st of November, 1979, the Supreme Court of Virginia affirmed the judgment of the Circuit Court of Arlington County with respect to the aforesaid error. (See Exhibit II, attached hereto).

II. STATEMENT OF FACTS

2. The petitioner, Marcus Albert Payne, a thirty-year (30) old black male at the time in question, was accused of having abducted for the purpose of prostitution, forcibly raped, and forcibly sodomized one Cindy Floyd, a white thirteen-year (13) old female, on or about the 19th day of January, 1977. The transcript of petitioner's criminal trial indicates that on or about the 17th day of January, 1977, Cindy Floyd and a companion, Angel Fincham, also avered to be a thirteen-year (13) old white female, ran away from their Virginia residence to the District of Columbia. Both females located themselves in the 14th Street N.W., area of the District of Columbia, below Thomas Circle. After being introduced to many men and having sexual intercourse with some of those men, Cindy Floyd claimed that the petitioner and another male approached her at an Eddie Leonard's fast-food shop and asked if she wanted to go to Las Vegas. After talking with the men, Cindy Floyd testified that she left the Eddie Leonard's fast-food shop with both men in a greyish-blue Torino.

Cindy Floyd went on to testify that the men took her to the South Gate Motel, and at that point she stated that she was raped and sodomized by the two men. There was testimony that on the 20th day of January, 1977, Cindy Floyd returned to 14th Street N.W., in Washington, D.C., and made contact with one Tony Dozier, who purportedly gave her a ride back to Virginia to an apartment in Arna Valley. Floyd claimed that she slept with Dozier and later Dozier supposedly had identification credentials made for Cindy Floyd in the name of Terri Wilson, which Floyd carried on her person. Shortly thereafter, Cindy Floyd was apprehended by two District of Columbia police officers and taken into custody, whereupon, she was interrogated by said officers.

3. On the 10th day of May, 1977, the petitioner was arrested for allegedly running a red light somewhere in the District of Columbia. Thereafter, police officers from Arlington, Virginia, came to the District of Columbia and served warrants on the petitioner charging that he abducted, raped and sodomized Cindy Floyd. Petitioner's trial was held on the 2nd, 3rd, 4th and 7th days of November, 1977, in the Circuit Court of Arlington County which resulted in the convictions herein complained of.

III. AVERMENT

4. Petitioner alleges that the Circuit Court of Arlington County failed to entertain a preliminary hearing in the Juvenile Domestic Relations District Court regarding the indictments herein complained of and, therefore, the Circuit Court of Arlington County did not retain jurisdiction to try the petitioner for the offenses which resulted in the instant convictions. It is undisputed that the alleged victim was a juvenile in the case at bar. Furthermore, it is undisputed that the petitioner was

directly indicted by the Grand Jury of Arlington County on the charges of abduction, rape and sodomy, indictment numbers C-12010, C-12011, and C-12012, respectively. Petitioner contends that the Juvenile and Domestic Relations District Court has exclusive original jurisdiction to conduct preliminary hearings in cases of adult defendants charged with felonies committed against juvenile victims. Thus, as a jurisdictional proposition, the instant cases involving the petitioner should have had their commencement in Juvenile and Domestic Relations District Court. The failure to afford such a hearing deprived the petitioner of due process and equal protection of the law, as guaranteed by virtue of the Fourteenth Amendment to the Constitution of the United States, and Article I, Section 11 of the Constitution of Virginia.

5. Petitioner has not heretofore applied for a writ of habeas corpus in this Court.

WHEREFORE, petitioner prays this Court to issue a writ of habeas corpus ad subjiciendum commanding the respondent to produce the body of petitioner before this Court, at a time and place to be specified by this Court, so that this Court may further inquire into the lawfulness of respondent's custody of petitioner; to discharge petitioner from respondent's custody; and to grant petitioner such other and further relief to which petitioner may be entitled in this proceeding.

Respectfully submitted,

Marcus A Payne

Marcus Albert Payne, pro se
No. 116052
Powhatan Correctional Center
State Farm, Virginia 23160

Dated: 5-19-80

STATE OF VIRGINIA
COUNTY OF POWHATAN

I, Marcus Albert Payne, petitioner, being duly sworn under oath, have read and subscribed to the above set forth petition, and the information therein is true and correct.

Marcus A. Payne
Marcus Albert Payne, pro se

Subscribed and sworn to before me, a Notary Public, on this 19th day of May, 1980.

Robert A. Clendenen, Jr.
Notary Public

My commission expires: 12-7-81

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

MARCUS ALBERT PAYNE

Petitioner,

v. At Law No. 21740

GENE JOHNSON, Superintendent
of the Powhatan Correctional Center,

Respondent.

MOTION TO DISMISS

Now comes the respondent, by counsel, and moves the Court to deny and dismiss the petition for a writ of habeas corpus. In support of said motion, respondent says as follows:

1. Petitioner is being detained pursuant to final judgments of the Circuit Court of Arlington County of July 6, 1978, wherein he was convicted of rape, sodomy, and abduction of a female under sixteen years of age for purposes of prostitution. He was sentenced to a total of thirty-nine years in the penitentiary.

2. Petitioner is attacking the aforesaid judgments and he alleges that his convictions and sentences are null and void because prosecution did not originate in the Juvenile and Domestic Relations Court of Arlington County, which he says is required for jurisdiction of the Circuit Court. He cites the recent Virginia Supreme Court decision in Jones v. Commonwealth, ____ Va. ____, 261 S.E.2d 538 (January 11, 1980), a copy of which is attached hereto as Exhibit I.

3. Petitioner appealed the aforesaid judgments to the

Supreme Court of Virginia by way of direct appeal, and the judgments below were affirmed by published opinion rendered on November 21, 1979. (See Exhibit II, copy of opinion). The instant issue was not raised on direct appeal or at any other time, but it is being raised for the first time in the instant habeas corpus petition.

4. The respondent recognizes that when prosecution is initiated by execution of an arrest warrant, exclusive original jurisdiction is vested in the Juvenile and Domestic Relations Court. Jones v. Commonwealth, ____ Va. ____, 261 S.E.2d 538 (1980). The petitioner's case, however, did not originate in this fashion. Instead, he was directly indicted by the grand jury and there was no preliminary hearing required. A preliminary hearing in a criminal case is mandated only when the petitioner has been arrested on the charge and that charge has not been dismissed prior to indictment by the grand jury. Moore v. Commonwealth, 218 Va. 388, 237 S.E.2d 187 (1977); Webb v. Commonwealth, 204 Va. 24, 129 S.E.2d 22 (1963). See Waye v. Commonwealth, 219 Va. 683, 688-689, 251 S.E.2d 202 (1979); Land v. Commonwealth, 211 Va. 223, 176 S.E.2d 586 (1970). Although a hearing in the juvenile court would be required before certification of a case to the grand jury after arrest of the offender (see Peyton v. French, 207 Va. 73, 80, 147 S.E.2d 739, 743 (1966)), the respondent submits that a direct indictment by a grand jury invokes the jurisdiction of the circuit court and no preliminary proceedings are required. See § 19.2-239 of the Code of Virginia (1950), as amended. A close reading of Jones v. Commonwealth, supra, reveals that the Supreme Court

stated that Virginia statutory law vests in juvenile and domestic relations district courts exclusive original jurisdiction "to conduct preliminary hearings in cases of adult defendants charged with felonious offenses, except murder and manslaughter, committed against juvenile victims." (Emphasis added). Additionally, in addressing the factual situation in Jones, the Supreme Court stated that the Juvenile and Domestic Relations District Court had exclusive original jurisdiction "to conduct a preliminary hearing in the type of case involved here." The Jones decision did not address the situation of a direct indictment which simply requires no preliminary hearing at all.

5. Respondent denies each and every allegation not expressly admitted herein.

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

GENE JOHNSON, Superintendent,
Powhatan Correctional Center

By: Jerry P. Slonaker
Counsel

Jerry P. Slonaker
Assistant Attorney General
900 Fidelity Building
830 East Main Street
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 1980, a copy of the foregoing Motion to Dismiss was mailed to Marcus Albert Payne, #116052, Powhatan Correctional Center, State Farm, Virginia 23160.

Jerry P. Slonaker
Counsel

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

MARCUS ALBERT PAYNE

Petitioner,

v. At Law No. 21740

GENE JOHNSON, Superintendent
of the Powhatan Correctional Center,

Respondent.

ORDER

Upon mature consideration of the petition of Marcus Albert Payne for a writ of habeas corpus and the Motion of the respondent and the authorities cited therein, and after consideration of the record of the criminal trial in this Court of Commonwealth of Virginia v. Marcus Albert Payne (C-12010), which is hereby made a part of the record in this matter, the Court doth find for the reasons stated by the respondent in his Motion to Dismiss that the petitioner is not entitled to the relief sought.

For the foregoing reasons, the Court is of the opinion that the petition for a writ of habeas corpus should be denied and dismissed; it is, therefore

ADJUDGED, ORDERED and DECREED that the petition for a writ of habeas corpus be, and is hereby, denied and dismissed, to which action of this Court petitioner's exceptions are noted.

Recorded in Common Law Order
Civil Book No. 177 Page No. 349
, 1980

The Clerk is directed to forward a certified copy of this Order to the petitioner, the respondent, and Jerry P. Slonaker, Assistant Attorney General.

Enter this 9th day of July, 1980.

Judge

I ask for this:

Counsel for Respondent

FILED

AUG 13 1980

DAVID A. BELL, Clerk
Circuit Court, Va.
By M. Taylor, Deputy Clerk

NOTICE OF APPEAL AND

ASSIGNMENTS OF ERROR

To the Clerk of the Circuit Court of Arlington County:

Marcus Albert Payne, pro se, the Petitioner/Appellant in the above-styled case in the Circuit Court of Arlington County, Virginia, hereby gives notice of appeal from the order entered in this case on July 9, 1980, and sets forth the following assignments of error:

1. The Court erred in failing to make service upon the Petitioner/Appellant of a copy of its Order to Show Cause, instructing the Petitioner/Appellant when to respond to the Respondent/Appellee's motion to dismiss.

2. The Court erred in failing to consider Petitioner/Appellant's claim, thereby, denying the petition for a writ of habeas corpus.

Respectfully submitted,

Marcus Albert Payne, pro se
No. 116052
Powhatan Correctional Center
State Farm, Virginia 23160

STATE OF VIRGINIA)
COUNTY OF POWHATAN)

Subscribed and sworn to before me, a Notary Public, this 8th day of August, 1980.

Robert A. Clendenen, Jr.
Notary Public

My commission expires: 12-7-81

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of August, 1980, a copy of the foregoing Notice of Appeal and Assignments of Error was mailed to the following:

Jerry P. Slonaker, Esquire
Assistant Attorney General
900 Fidelity Building
830 East Main Street
Richmond, Virginia 23219

The Honorable Allen L. Lucy, Clerk
Supreme Court of Virginia
Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219

Marcus Payne

Marcus Albert Payne, pro se
Petitioner/Appellant

SUPPLEMENTAL ASSIGNMENTS OF ERROR

1. The failure to provide the Petitioner, charged with a felony, with a preliminary hearing in the Juvenile and Domestic Relations District Court in a case involving a juvenile victim operates as a denial of the Petitioner's due process rights as guaranteed by the Fourteenth Amendment of the United States Constitution and Article I §8 of the Virginia Constitution.

2. Whether this Court may review the jurisdiction of the Circuit Court for the first time on appeal.