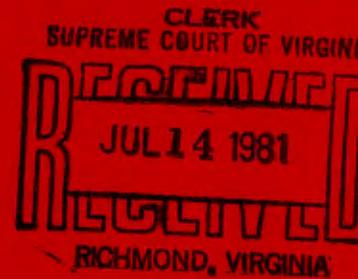


IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND



RECORD NO. 801980

COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF MENTAL HEALTH
AND MENTAL RETARDATION,

Appellant,

v.

JAMES L. JENKINS,

Appellee.

APPENDIX

Marshall Coleman
Attorney General of Virginia

Walter H. Ryland
Chief Deputy Attorney General

Dennis G. Merrill
Assistant Attorney General

Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219
(804) 786-2071

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of service rendered, to be determined by the Department of Mental Health and Mental Retardation.

IV.

Liability for said expenses are imposed in the first instance upon the patient or upon the estate of the patient and second, upon the person or persons legally liable for the support of such patient.

V.

That the respondent, James L. Jenkins, has on deposit at Southwestern State Hospital in his account a sum in excess of \$8,800.00 and it is the understanding that the respondent has an additional \$12,000.00 or \$13,000.00 in an escrow account in Floyd County being held until his release from Southwestern State Hospital due to a realty transaction occurring while he has been committed to Southwestern State Hospital.

VI.

The Department of Mental Health and Mental Retardation is charged with the responsibility of investigating the patient's financial ability and the financial ability of those legally liable for the support and maintenance of such patient.

VII.

That the patient, James L. Jenkins, has incurred certain charges while a patient at Southwestern State Hospital in excess of \$18,123.00.

NOW, THEREFORE, your petitioner prays:

A. That the respondent be required to answer this petition.

B. That in the event a Guardian ad Litem has not heretofore been appointed for the said patient, and further, in the event that one is required, that a Guardian ad Litem be appointed for said respondent.

C. That your petitioner recover a judgment against said respondent in an amount equal to the arrearage of allowable charges.

D. That the patient's estate be depleted down to the Statutory Limit of \$500.00, if necessary, in accordance with Section 37.1-109 of the Code of Virginia, as amended.

E. That your petitioner may have such other relief as the court deems appropriate.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MENTAL HEALTH
AND MENTAL RETARDATION

By Counsel

ISSAC ST. CLAIR FREEMAN
LINCOLN AND FREEMAN
111 North Park Street
Marion, Virginia 24354

VIRGINIA: IN THE CIRCUIT COURT OF SMYTH COUNTY

COMMONWEALTH OF VIRGINIA)
 DEPARTMENT OF MENTAL HEALTH)
 AND MENTAL RETARDATION,)
)
 Petitioner)
)
 vs.) ANSWER OF GUARDIAN AD LITEM
)
)
 JAMES L. JENKINS)
)
)
 Respondent)

The Answer of Richard A. Money, Esq., Guardian ad Litem appointed by the Court to defend the interests of James L. Jenkins, Incompetent, to a Bill of Complaint exhibited against him in the Circuit Court of Smyth County, Virginia.

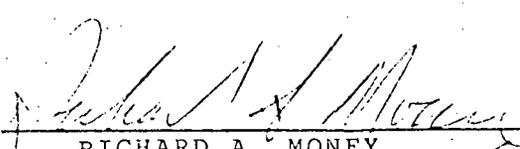
That the said Richard A. Money, Esq., in proper person and as Guardian ad Litem for the said James L. Jenkins, Incompetent, answers and says he knows nothing of the truth or falsity, of the allegations in said Bill of Complaint and calls for strict proof of same.

And now having fully answered, the respondent prays to be hence dismissed with his costs herein expended and further prays protection of the Court in all matters, including any homestead exemption or benefit that is available to your respondent as provided by law.

JAMES L. JENKINS
 By Richard A. Money
 GUARDIAN AD LITEM,
Richard A. Money
 RICHARD A. MONEY
 GUARDIAN AD LITEM FOR
 JAMES L. JENKINS

CERTIFICATE OF SERVICE

I, Richard A. Money, Esq., hereby certify that I have this
25th day of APRIL, 1980, delivered/mailed a true copy
of the foregoing Answer of Guardian ad Litem to Isaac St. Clair
Freeman, 111 North Park Street, Marion, Virginia, Counsel for
Petitioner.


RICHARD A. MONEY

Isaac Freeman

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VIRGINIA: IN THE CIRCUIT COURT OF SMYTH COUNTY

COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF MENTAL HEALTH AND
MENTAL RETARDATION
Plaintiff

v.

JAMES L. JENKINS
Defendant

AT LAW

TRANSCRIPT OF HEARING

APPEARANCES: Isaac St. Clair Freeman, Counsel for Plaintiff
Richard A. Money, Guardian ad Litem for Defendant

REPORTED BY: Ms. Jo Crewey
Court Reporter
P. O. Box 495
Chilhowie, Va. 24319

1 This matter came on to be heard on Monday, September
 2 8th, 1980, before the Honorable J. Aubrey Matthews, Judge of
 3 the Circuit Court of Smyth County.

4 ISAAC FREEMAN: Your Honor, the facts stipulated are as
 5 follows: Mr. Jenkins, James Lewis Jenkins, was first
 6 charged with murder in the City of Radford, Virginia,
 7 even though the Petition alleges the City of Roanoke,
 8 and the notes indicate he was committed by an order of
 9 the District Court in the City of Radford, although we
 10 found Judge DeVoe signed the order, so, perhaps, it was
 11 in the Circuit Court. His commitment file is at
 12 Central State and is not available to us, but we will
 13 make those facts available if you find it necessary.
 14 Okay, he was committed for observation under Section
 15 19.2-169, Code of Virginia, 1950, as amended, on
 16 February 15th, 1977. On May 12th, of 1977, the 45-day
 17 period of that court order committment expired; he had
 18 been determined by the staff to be incompetent for
 19 trial and on May 12th, of 1977, he was committed to the
 20 hospital - at Southwestern State Hospital - under Code
 21 Section 31.1-67.1 through 67.3, which is involuntary
 22 committment. He remained under that committment from
 23 May 12th, 1977, through July 13th, 1978, at which time
 24 he was determined to be capable of standing trial and
 25 was returned to jail. He remained in jail until the
 Spring of 1979, when he was returned to Southwestern
 State. He came back on a court order and when that
 court order expired on May 23rd, 1979, he was committed

PENNS. CO., BAYONNE, N.J. 07002 - FORM 404

1 again under the involuntary commitment of 37.1-.....
2 excuse me, 67.1-....through...excuse me. Let me repeat
3 that. 37.1-67.1 through 67.3. He remained and still
4 remains under that commitment, although he's been
5 transferred from Southwestern State to Central State.

6 THE COURT: You indicated on 7-13.

7 ISAAC FREEMAN: Yes sir. Of '73.

8 THE COURT: On 5-23....

9 ISAAC FREEMAN:yes sir...

10 THE COURT: ...or sometime prior thereto. You didn't
11 give me the date.

12 ISAAC FREEMAN: I don't know the date, Judge. He came in
13 under a court order.

14 THE COURT: What type court order?

15 ISAAC FREEMAN: My understanding is back for observation to
16 see whether or not he was capable of standing trial.

17 THE COURT: Again?

18 ISAAC FREEMAN: Yes sir. In fact, he had slipped back into
19 a psychosis when he was in jail, and I don't have the
20 date. As far as the hospital is concerned, excuse me,
21 the department is concerned, no attempt is being made
22 to collect on those periods of time which were when he
23 was under a court order commitment for observation,
24 and that would be the period from February 15th, of
25 '77, to May 11th, of 1977; although he was in the
hospital, no attempt is being made to collect for that
period, nor during the period of 1979.

THE COURT: Well, now, what's the difference, can you tell

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me in the situation from February of '77 until May of '77.

ISAAC FREEMAN: Okay, sir. During that approximate 45-day period, he's under a...he was committed under a Code Section which is to determine the ability of the charged individual to stand trial, and that's by a specific Code Section, which I have put into the record, 19.2-169. Okay, at the expiration of that time, if the hospital staff and the independent court that determines capacity, if those two recommit him under 37.1-67.1 Section, then that individual is treated just as an capable man not charged with a crime. Just like, I, for instance, suffered a mental illness and my family committed me to the State Hospital under 37, I would be responsible to pay. The reason I would be in the hospital would be for medical attention just as Mr. Jenkins remained in the hospital after May 12th for medical reasons....not for criminal reasons. He was receiving medical treatment, not being incarcerated for a crime. Had he been sane, he would have been returned to the jail to stand trial.

THE COURT: Alright, let me ask this question: From February of '77, until May 12th, '77, was he at the Forensic Treatment Unit?

A. Yes sir.

THE COURT: So, he was at the same place and receiving the same services from the hospital that he received when he was there for observation.

PENNS. CO., BAYONNE, N.J. 07002 FORM 404

1 A. The same services as far as food and shelter; care.
2 Your Honor, there's a distinction, in my opinion, in
3 that the first 45 days, he was there for observation to
4 determine whether he was capable of standing trial,
5 and during that 45 day period, obviously, treatment would
6 be started, and I didn't write the law, but at the
7 expiration of the 45 days, then he went under a voluntary
8 commitment. He would have continued to receive the
9 medical treatment, to answer your question, that
10 obviously started during the 45 day period.

11 THE COURT: He was, during his entire stay at the
12 Southwestern State Hospital in Marion, Virginia, and
13 we're not concerned about Central State....

14 A.Okay, I realize that.

15 THE COURT: He was in the Criminal Building, the Finley-
16 Gayle Building that houses only those persons convicted
17 of a crime, or those persons charged with a crime?

18 A. Yes sir, that's correct.

19 THE COURT: Alright.

20 A. However, my point is that if he had not committed the
21 crime, but suffered from the same psychosis, he would
22 have ultimately been committed to a state hospital in
23 Virginia, because of.....

24 THE COURT:The only thing is he wouldn't have been
25 in the Finley-Gayle Building.

26 A. No sir, he would not have been in the Finley-Gayle
27 Building, but the charges made at Finley-Gayle are no
28 different from the charges made.....

1 THE COURT:I understand, but the facilities are
2 different because at this place, he's in.....

3 A.it's a penitentiary building, but not in the
4 penal system. It's a hospital.

5 THE COURT: I understand.

6 A. But it has bars on the windows.

7 THE COURT: Yes, and he is, at this time or....well,
8 for the record, not at this time, but as of March 31st,
9 1980, you allege...when you allege a balance due of
10 \$19,921.00....at that time, a charge of murder was
11 pending against Mr. Jenkins and he was incarcerated at
12 the Finley-Gayle Building at Southwestern State Hospital?

13 A. Yes sir.

14 THE COURT: Alright.

15 A. Those are the facts, to the best of my ability.

16 THE COURT: Alright. As far as you are concerned, Mr.
17 Money, as Guardian ad Litem for Mr. Jenkins, are those
18 the essential facts in this case?

19 R. A. MONEY: Yes sir, I might add a few comments with
20 regard to the facts.

21 THE COURT: I don't want your comments in regard to the
22 facts. I want to get the factual part on the record.
23 So we agree that as stated by the Attorney for the
24 Hospital and the questions asked by the Judge, that
25 those are the facts in this case.

26 R. A. MONEY: Yes sir, but one fact is missing.

27 THE COURT: What is the other fact?

28 R. A. MONEY: It's a fact that under the commitment that

1 Mr. Jenkins has at this time, once the hospital deems
2 a person to be (quote) no longer mentally ill (unquote),
3 that the hospital cannot release him; that the Judge
4 would have to release him.

5 THE COURT: The hospital may send him back to Radford to
6 stand trial.

7 R. A. MONEY: Yes sir.

8 THE COURT: That's not releasing him, but that's sending
9 him back to stand trial.

10 R. A. MONEY: To show the difference between a civil and
11 a criminal matter.

12 THE COURT: That's more a fact of law.

13 ISAAC FREEMAN: It is.

14 THE COURT: I think we will all agree that under no
15 condition, as it now stands, can the hospital release
16 this patient.

17 ISAAC FREEMAN: Yes sir. They can't release him....if they
18 release him from the hospital, they wouldn't put him
19 on main street...they'd put him in the custody of....

20 THE COURT: the Sheriff of the City of Radford.

21 ISAAC FREEMAN: That is correct.

22 THE COURT: The only way they can release him.

23 ISAAC FREEMAN: But if they determine he is sane, he will not
24 be at the hospital....

25 THE COURT: He may or may not be, depending upon whether
the Sheriff of the City of Radford comes and gets him...

ISAAC FREEMAN: ...well, that's correct. Generally, I think
they have a five day period in which they shall pick

1 them up.

2 THE COURT: Alright. Alright, now, any statements on
3 the law you gentlemen care to give me, I will hear you.
4 You may go first and last, Mr. Freeman, you have the
5 burden.

6 ISAAC FREEMAN: Your Honor, I believe I've made enough
7 comments on the law when I was stipulating the facts.

8 THE COURT: Alright.

9 ISAAC FREEMAN: And I think you understand my position that
10 there is a distinction between the two orders.

11 THE COURT: Commitment for observation....

12 ISAAC FREEMAN: yes sir....

13 THE COURT: There might be a little difference in the
14 orders, but, really, the situation and the conditions
15 haven't changed.

16 ISAAC FREEMAN: Well, the attitude of the hospital in that
17 they are....well, you know.....strike all of this....

18 THE COURT: yes, I know this.

19 ISAAC FREEMAN: My point is this, Judge, that if that man
20 was as sick as he apparently was, or is, had he
21 committed a crime or not committed a crime, he would
22 have been put in state care at a state hospital for
23 the insane, and the only difference is that he was at
24 Finley-Gayle Building as opposed to being on the civil
25 side of the hospital and that's the difference. He
 was insane and that's the reason he remained at the
 hospital.

 THE COURT: Alright, let's go one step further, Mr. Freeman.

1 This will be on the record. Let's assume that on
2 July 13th, 1978, he was released to the City of
3 Radford to stand trial, and he had been tried by the
4 Court or a jury, and found not guilty of murder by
5 virtue of insanity and sent back to the hospital.
6 Under those conditions, would the hospital still charge
7 for his stay while there?

8 ISAAC FREEMAN: It is my understanding that they will not
9 charge the individual. It is a state charge.

10 THE COURT: Have you had that question?

11 ISAAC FREEMAN: We've discussed that question before we came
12 into Court.

13 THE COURT: Alright. Now, Mr. Money, the Court will hear
14 you, and I'll interrupt you if there is a point I want
15 cleared up.

16 R. A. MONEY: Yes sir. Well, the point you just mentioned,
17 was discussed. I think an important consideration in
18 this case is determining whether or not Mr. Jenkins is
19 being a patient or whether or not he is a prisoner.
20 If he is a prisoner, he should be not liable for his
21 expenses there. These expenses should be paid through
22 the Department of Corrections under 53.184.2, and the
23 other Sections within that period dealing with prisoners.
24 I think it is important that we need know this man was
25 charged with murder. It is not in the facts whether or
not he was indicted. We would assume that he is because
he has gone this far and was in jail. Really, he's in
jail. He's not in a situation where he's there as a

1 patient. We discussed earlier that he was detained
2 in the criminal section of the hospital. Also, the
3 type of activities he can engage in after release by
4 the hospital...that is, he would be returned to the
5 jail to be tried. The Petition changing this from an
6 observation to an involuntary commitment under the
7 civil Code was done by the hospital, not by the jail,
8 not by the Court....at least not by the Circuit Court
9 that sent him down here. It was done by a Special Justice
10 of a Court here in Smyth County. Whether or not they
11 had authority to change this commitment...the District
12 Court changing the Order of the Circuit Court, also,
13 I think, would be relevant to whether or not this man
14 is really a prisoner or a patient. Those points are
15 the ones I consider relevant in deeming this man to be
16 a prisoner because he does not have any rights beyond
17 ...any right of freedom beyond what the Circuit Court
18 of the City of Radford will give him. We can see that
19 they released him from Southwestern State Hospital and
20 he went back to jail for almost a year, and then they
21 brought him back. All during that time, he was a
22 prisoner at the jail in the City of Radford. He was
23 returned from Jail on July 13th of '78, and he stayed
24 in jail until he was returned to the hospital on
25 April 13th, 1979, for observation. During this whole
course of conduct, he has been treated as a prisoner,
yet Dr. Merker, through his own admission, tried to
convert it to a civil commitment. If it were a civil

1 commitment, he would not be returned to jail following
2 release. I don't believe 37.1-105 applies to this
3 situation. This describes any person committed to the
4 state hospital shall be deemed a patient for the
5 purposes of that civil order, but in this case, he's
6 not a patient, he is a prisoner, being detained; being
7 ordered to stand trial upon release...this is just
8 another mode of detention, that being a state hospital
9 facility for criminally insane. That's all I have, sir.

10 ISAAC FREEMAN: Your Honor, I make two responses to the
11 statement of Mr. Money. First of all, the administration
12 and staff of the state hospital have to work within the
13 framework of the law, and they are authorized through
14 the code to recommend and to attempt to keep patients
15 at the hospital if they are of the opinion that the
16 patient should be at a state hospital, and when Dr.
17 Merker filed the Petition under 31.1-67.1, he was per-
18 forming his duty as a staff member of the State Hospital,
19 and that was his only authority to act, and he was
20 exercising that authority. There was nothing, I don't
21 believe, personal involved in his method and I think he
22 was operating under the framework of the code, and
23 I don't think it's our duty today to re-write the code
24 as I think Mr. Money suggested...the Legislature wrote
25 the code and we're to try to interpret it...at least,
 the best way we can, and I do not think Mr. Jenkins was
 a prisoner. He was a patient. It was incumbent, under
 the police powers of the Commonwealth, to protect this

1 patient and to treat him as a mental patient even
2 though he's in a circumstance with other criminals.
3 It is a designated criminally insane area. Thank you
4 for your patience.

5 THE COURT: Alright. I take it both sides, so far as
6 they know, tell the Court that this particular point
7 has not been passed on by our Supreme Court.

8 ISAAC FREEMAN: No sir, this point has never gone before the
9 Court. Each Circuit that's tried a case like this in
10 the last twelve months has granted a judgment for the
11 department. I found two cases, one in Fairfax County
12 and one in Henry County, that I quoted to you about
13 two or three months ago.

14 THE COURT: Well, it seems to me that this is a point
15 that should be cleared up. I'm of the opinion that
16 when a person is charged with the crime and committed
17 to the state hospital for observation with a warrant
18 pending against him, and the hospital observes him for
19 45 days prior to arriving at a conclusion that he is
20 incompetent to stand trial, then he is an inmate of
21 either the jail or the hospital, and as such, I can
22 see no difference in the observation period, for which
23 you do not charge, and by a technical change in commitment,
24 say that you can charge. In my opinion, this man has
25 been an inmate of our correctional facilities since
he was arrested and thereafter committed to the South-
Western State Hospital in February of 1979, and as a
result, I'm of the opinion that he is not responsible

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to the Commonwealth of Virginia, in the amount of \$19,921.00, or I believe your Petition shows \$18,000.

ISAAC FREEMAN: Yes sir. We amended that, Your Honor.

The nineteen thousand figure is correct.

THE COURT: So, I'm going to deny your motion or petition for judgment and find for the defendant. Mr. Money, as Guardian ad Litem, you will prepare an Order showing the department's objection to the Court's ruling. For my benefit and the benefit of Smyth County, I hope this matter goes up. I'm not directing that the hospital take it up, but I would be interested in the decision.

ISAAC FREEMAN: Well, I think we will, Your Honor.

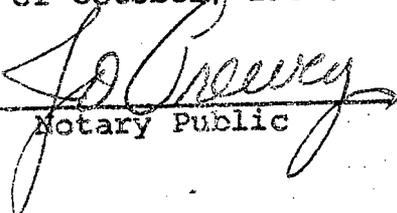
END OF PROCEEDINGS

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STATE OF VIRGINIA, AT LARGE:

I, Jo Crewey, Court Reporter and Notary Public in and for the State of Virginia, at large, do hereby certify that the foregoing proceedings were held before the Honorable J. Aubrey Matthews, Judge of the Circuit Court of Smyth County, on the 8th day of September, 1980; that all of the proceedings were recorded electronically and have been reduced to writing by me and that to the best of my knowledge and belief, the transcript accurately reflects all the proceedings had.

Given under my hand this 2nd day of October, 1980.


Notary Public

(My commission expires 8-16-81).

VIRGINIA: IN THE CIRCUIT COURT OF SMYTH COUNTY, ON Monday,
THE 8 DAY OF Sept, IN THE YEAR OF OUR
LORD, NINETEEN HUNDRED AND eighty.
PRESENT: THE HONORABLE J. AUBREY MATTHEWS, JUDGE

VIRGINIA: IN THE CIRCUIT COURT OF SMYTH COUNTY

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MENTAL HEALTH
AND MENTAL RETARDATION

Petitioner

vs.

JUDGMENT

JAMES L. JENKINS
c/o Southwestern State Hospital
Marion, Virginia 24354

Respondent

This action came on for trial this September 8, 1980, on the petition of the Department of Mental Health and Mental Retardation of the Commonwealth of Virginia for judgment against James L. Jenkins pursuant to 37.1-105 et. seq. of the Code of Virginia, as amended.

The Court heard the evidence stipulated by counsel and the arguments of counsel relating thereto. Upon consideration whereof, it is ORDERED that the petitioner, the Department of Mental Health and Mental Retardation shall have and recover nothing from the defendant, James L. Jenkins.

It is further ORDERED that the petitioner, the Department of Mental Health and Mental Retardation shall pay to Richard A. Money, *Guardian ad Litem* counsel for said James L. Jenkins, the sum of \$200⁰⁰.

for and as a reasonable attorney fee.

Nothing further remaining to be done, this action is ORDERED dismissed with prejudice to the petitioner and stricken from the docket of this Court.

ENTER THIS _____ DAY OF SEPTEMBER, 1980

JUDGE

I ASK FOR THIS:

Richard A. Money

Richard A. Money
LOWE & MONEY, P.C.
Attorneys at Law
117 North Park Street
Marion, Virginia 24354

Counsel for Respondent

SEEN AND OBJECTED TO:

Isaac St. Clair Freeman

Isaac St. Clair Freeman
LINCOLN & FREEMAN
Attorneys at Law
111 North Park Street
Marion, Virginia 24354

Counsel for Petitioner

A COPY, TESTE:
JIMMY L. WARREN, CLERK OF THE
CIRCUIT COURT OF SMYTH COUNTY
BY: *[Signature]*
DEPUTY CLERK

CERTIFICATE OF SERVICE

In accordance with Rules 5:42 and 5:49 of the Rules of the Supreme Court of Virginia, I do hereby certify that I have on this 14th day of July, 1981, filed twenty copies of the Appellant's Appendix with the Clerk of the Supreme Court of Virginia, and have mailed three copies of the Appellant's Appendix, postage prepaid, to Richard A. Money, Esquire, 117 North Park Street, Marion, Virginia 24354, Counsel for Appellee.

Dennis L. Merrill