VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 11th day of June, 2018.

Shea Pascal Dease, Appellant,

against Record No. 171112
Circuit Court No. CR03R1-217-01

Commonwealth of Virginia, Appellee.

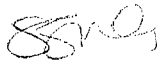
From the Circuit Court of York County and City of Poquoson

Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: 

Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF YORK COUNTY
AND THE CITY OF POQUOSON

SHEA PASCAL DEASE, No. 1016431,
A.K.A. Steven Shea Paskel Dease,

Petitioner,

v. **Case No. CR03R1-217-01**

COMMONWEALTH OF VIRGINIA,

Respondent.

FINAL ORDER

Upon mature consideration of Marshall Cook's "Shea Pascal Dease's "Motion to Vacate Void Judgment," (Motion) the motion of the Attorney General and the authorities cited therein and exhibit attached thereto, a review of the record in this matter and the records in Cook's criminal case (Case Nos. CR00000217-00 and CR03R10217-01), which are hereby made a part of the record in this matter, this Court finds:

Shea Pascal Dease's "Motion to Vacate Void Judgment" (Motion) challenges the validity of this Court's November 17, 2000 judgment order, sentencing him to 20 years in prison, suspended, for embezzlement. The indictment had charged that Dease had embezzled "On or about February 15, 2000 through March 11, 2000, in York County, Virginia,...United States currency entrusted to him by virtue of his employment for his employer." Dease had pleaded guilty to the embezzlement indictment on July 27, 2000. Case No. CR00000217-00. On February 18, 2003, Dease was brought before this Court on a show cause order. On March 18, 2003, this Court revoked Dease's 20 year suspended sentence for embezzlement, and an order

imposing that 20 year sentence was entered on March 20, 2003. Case No. CR03R10217-01. Dease did not appeal either the judgment of conviction or revocation order.

On April 25, 2017, Dease executed the present Motion and claims:

1) Because Dease's indictment did not contain a "certain date," as required by Virginia Code § 19.2-220, Dease "was never served process in the manner prescribed by statute and, therefore, the court never acquired jurisdiction over his person to enter any judgment. Lack of jurisdiction over the person destroys 'all jurisdiction.'" (Motion at 3).
2) Dease's Eighth Amendment rights were violated because 'the mode of procedure was not lawful, because by spreading the 'alleged' crime of embezzlement over a length of time, rather than charge [Dease] with the four misdemeanor offenses of 'petty larceny' on 'certain dates,' the court exceeded the 48 months that [Dease] could have received for the four separate incidents of petty larceny, and instead sentenced him to twenty years." (Motion at 3).

Dease not only waived his claims by not raising them in a timely manner, his claims have no merit.

Dease's Motion rests upon several factual and legal misstatements. First, Code § 19.2-220 is not the only statute enacted by the General Assembly that addresses indictments. Dease fails to mention Code § 19.2-223, which expressly provides that several distinct acts of embezzlement may be combined to charge a single count of embezzlement provided the distinct acts were committed within six months of each other. The statute provides, in pertinent part, as follows:

> In a prosecution against a person accused of embezzling ... ***it shall be lawful in the same indictment or accusation to charge and thereon to proceed against the accused for any number of distinct acts of such embezzlements or fraudulent conversions which may have been committed by him within six months from the first to the last of the acts charged in the indictment....***

Va. Code Ann. § 19.2-223 (emphasis added); see Bragg v. Commonwealth, 42 Va. App. 607, 615, 593 S.E.2d 558, 562 (2004) (Code § 19.2-223 "allows the Commonwealth to join distinct charges into one indictment, which can cover a six-month period") (citing and discussing

Mechling v. Slayton, 361 F. Supp. 770, 772 (E. D. Va. 1973)). In short, Dease's allegation that the indictment improperly spread four distinct acts over a length of time instead of charging him with four misdemeanors is incorrect. Charging Dease with a single count of embezzlement was expressly authorized.

Further, the General Assembly has provided that "[n]o indictment or other accusation shall be quashed or deemed invalid ... (6) For omitting to state, or stating imperfectly, the time at which the offense was committed when time is not the essence of the offense." Va. Code Ann. § 19.2-226. Dease does not dispute the accuracy of the beginning and end times of the dates in the indictment (February 15, 2000 through March 11, 2000), and the beginning and the end time are clearly within six months of each other as required by § 19.2-223. To the extent he may have had some objection to the form of his indictment, any such objection would not have been a basis to quash or invalidate the indictment.[1]

Dease also fails to note Code § 19.2-227, which provides that objections to an indictment are waived if not made before verdict. See, e.g., Wolfe v. Commonwealth, 265 Va. 193, 224, 576 S.E.2d 471, 489 (2003) (alleged defect is waived if defendant does not challenge indictment before verdict) (citations omitted); see also Cunningham v. Hayes, 204 Va. 851, 855, 134 S.E.2d 271, 274 (1964) (a defendant waives his right to demand 'the cause and nature of his accusation"

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[1] The Virginia Supreme Court noted the constitutional requirement that a defendant must be given adequate notice of the charge against him is waived by the defendant if he fails to object on said grounds to the indictment before he pleads. The opportunity to object

> That satisfies such constitutional requirement. If he does not exercise this right when he should, in conformity with the reasonable and orderly procedure provided by the statute, namely, "before he pleads" – meaning before he pleads - putting himself upon his trial on the merits – he must be taken to have waived such right and, under the procedure put in force by the statute under consideration, it is too late for him afterwards to claim such right by motion in arrest of judgment.

Puckett v. Commonwealth, 134 Va. 574, 585, 113 S.E. 853, 856 (1922).

and although he is under no obligation to demand his right he will be held to have waived it unless he asserts it).

Next, the record refutes Dease's claims that his convictions are void due to an alleged lack of jurisdiction. First, the Court had personal jurisdiction over Dease by virtue of his guilty plea to the indictment. His appearance and plea in this Court subjected him to the jurisdiction of this Court. Gilpin v. Joyce, 257 Va. 579, 581, 515 S.E.2d 124, 125 (1999) (general appearance "is a waiver of process, equivalent to personal service of process, and confers jurisdiction of the person on the court.") (quoting Nixon v. Rowland, 192 Va. 47, 50, 63 S.E.2d 757, 759 (1951)); accord Lyren v. Ohr, 271 Va. 155, 160, 623 S.E.2d 883, 885 (2006) (a general appearance "waived any defects in service of process and conferred personal jurisdiction of his person upon the circuit court."(citing Nixon, 192 Va. at 50, 63 S.E.2d at 759); see United States v. Marks, 530 F.3d 799, 810 (9th Cir. 2008) (court had subject matter jurisdiction because the indictment charged an offense against the laws of the United States, and court had personal jurisdiction over the defendant because he was brought before it on a federal indictment charging a violation of federal law); see also Peyton v. King, 210 Va. 194, 196, 169 S.E.2d 569, 571 (1969) (plea of guilty is "a self-supplied conviction authorizing imposition of the punishment fixed by law" and "is a waiver of all defenses other than those jurisdictional."). Second, this Court had both subject matter jurisdiction by virtue of its designation as a circuit court and the authority to exercise that jurisdiction as a result of the return of the indictment. See Porter v. Commonwealth, 276 Va. 203, 230, 661 S.E.2d 415, 428 (2008) (discussing circuit courts subject matter jurisdiction over charges under Code § 17.1-513, the authority to conduct that trial; and the territorial jurisdiction authorizing the court to adjudicate among the parties at a particular place, which is where the indictment is returned by virtue of Code § 19.2-239). Since the Court had subject matter

jurisdiction by statute, the authority to exercise that subject matter jurisdiction by virtue of the return of the indictment, and jurisdiction of Dease's person by virtue of his general appearance before the Court and his plea of guilty, Dease has failed to show that his conviction is void; thus and his Motion is barred by Rule 1:1.

The Supreme Court has recently reaffirmed the long-standing rule in Virginia that collateral attacks on criminal judgments (such as a motion to vacate filed more than twenty-one days after a judgment has become final) are limited to a judgment that is void ab initio, and do not "serve as an all-purpose pleading for collateral review of criminal convictions" to consider issues a defendant failed to preserve at trial. See Jones v. Commonwealth, 293 Va. 29, 53, 795 S.E.2d 705, 719 (2017). Rule 1:1 bars a collateral challenge unless the judgment challenged is void, not merely voidable. See Super Fresh Food Mkts. of Va. v. Ruffin, 263 Va. 555, 563, 561 S.E.2d 734, 739 (2002) ("Once a final judgment has been entered and the twenty-one day time period of Rule 1:1 has expired, the trial court is thereafter without jurisdiction in the case.").

A determination regarding Dease's claims can be made without the need for an evidentiary hearing, see Shaikh v. Johnson, 276 Va. 537, 549, 666 S.E.2d 325, 331 (2008), and no argument is necessary.

It is, therefore, **ADJUDGED** and **ORDERED** that the Motion is **DENIED** and **DISMISSED** pursuant to Rule 1:1 because more than twenty-one days have passed the entry of final judgment. Pursuant to Rule 1:13, the Court dispenses with the endorsement of the Petitioner, and this matter is stricken from the docket of this Court.

The Clerk is directed to forward a certified copy of this Final Order dismissing the Motion as untimely under Rule 1:1 to Petitioner, and counsel for the Commonwealth, Michael T. Judge, Senior Assistant Attorney General.

Entered this 10th day of July, 2017.

Judge

I ask for this:

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