PRESENT: All the Justices

COMMONWEALTH OF VIRGINIA

v. Record No. 180940

AUDREL JACK WATSON, JR.

OPINION BY
JUSTICE WILLIAM C. MIMS
May 30, 2019

FROM THE CIRCUIT COURT OF ROCKINGHAM COUNTY
Thomas J. Wilson, IV, Judge

In this appeal, we consider whether the imposition of a sentence below the statutory minimum renders the judgment void ab initio or merely voidable.

I. BACKGROUND AND MATERIAL PROCEEDINGS BELOW

In 2007, Audrel Jack Watson, Jr. was convicted on *Alford* pleas to several offenses, including four counts of using a firearm in the commission of a felony, in violation of Code § 18.2-53.1. The circuit court sentenced him to a term of three years' imprisonment for each count, to be served consecutively.

Ten years later, Watson filed a motion to vacate three of the four sentences imposed upon him as void ab initio. He noted that the statute imposed a mandatory minimum term of five years' imprisonment for any second or subsequent offense. Consequently, he asserted, three of his three-year sentences are void ab initio for being shorter than the statutorily-prescribed five-year minimum.

The Commonwealth moved to dismiss Watson's motion, arguing among other things that under *Smith v. Commonwealth*, 195 Va. 297, 300 (1953) and *Royster v. Smith*, 195 Va. 228, 234 (1953), sentences below the statutory minimum are not void ab initio but only voidable. Consequently, it asserted that pursuant to Rule 1:1 Watson's sentences had become final years before he filed his motion to vacate. Watson responded that under *Rawls v. Commonwealth*, 278

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Va. 213 (2009), any sentence imposed outside a statutorily-prescribed range is void ab initio. The circuit court issued a letter opinion in which it agreed with Watson, relying on *Rawls* and *Grafmuller v. Commonwealth*, 290 Va. 525 (2015). It thereafter entered an order granting Watson's motion to vacate his sentences and reopening the relevant criminal cases for further proceedings.

We awarded the Commonwealth this appeal.

II. ANALYSIS

We review lower courts' interpretations of our precedents de novo. *Hicks v. Mellis*, 275 Va. 213, 218 (2008).

The Commonwealth asserts that the circuit court erred by ruling that Watson's sentences are void ab initio and therefore could be vacated upon his motion a decade later. Rule 1:1 limits the circuit court's jurisdiction to 21 days after entry of judgment. Although Rule 1:1 applies only to voidable judgments, not to void ones, the Commonwealth argues that this Court held in both *Smith*, 195 Va. at 300, and *Royster*, 195 Va. at 234, that a sentence below the statutory minimum is only voidable, and the circuit court mistakenly ruled that those holdings had been overruled. The Commonwealth argues that in *Rawls* this Court was limited by the assignments of error, which presented the question only of whether a sentence *above* the statutory *maximum* was void ab initio. The Commonwealth contends that the language in *Rawls* suggesting that any sentence outside the statutory range, rather than only the excessive, over-the-range sentence at issue in that case, was dictum.

Watson responds that in *Rawls*, the Court expressly stated that it was adopting a new rule, precisely for the purpose of creating uniformity:

> Today we adopt the following rule that is designed to ensure that all criminal defendants whose punishments have been fixed in violation of the statutorily

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> prescribed ranges are treated uniformly without speculation. We hold that a sentence imposed in violation of a prescribed statutory range of punishment is void ab initio because the character of the judgment was not such as the [c]ourt had the power to render.

278 Va. at 221 (italics and internal quotation marks omitted). He argues that *Smith* and *Royster* cannot survive that holding, so they were implicitly overruled. He contends that the *Rawls* language was not dictum because the Court unequivocally stated that it was creating a new rule that all extra-range sentences were void, whether too long or too short, so Rule 1:1 does not apply.

The Commonwealth replies by reiterating that *Smith* and *Royster* are the law of Virginia until overruled, and *Rawls* did not overrule them. Under stare decisis, a circuit court lacks power to rule that this Court has overruled its earlier precedent by implication.

Watson is correct that our intention when we decided *Rawls* was to promote uniformity. However, the disparity we sought to eliminate was not between above-range and below-range sentences, but in how circuit courts were correcting jury sentences later discovered to be unlawful.

Rawls was sentenced by a jury that had been erroneously instructed about the sentencing range for the offense for which he was convicted, second-degree murder. The sentencing range at the time of his offense was 5-to-20 years' incarceration. Before his trial, the General Assembly raised the maximum sentence to 40 years. 278 Va. at 215. The circuit court incorrectly instructed the jury on the newer range, and it imposed a sentence of 25 years' imprisonment. Rawls later filed a motion to vacate that sentence, noting that it exceeded the statutory maximum at the time of his offense. The Commonwealth conceded the fact that the sentence exceeded the statutory range but argued that the court should simply impose the

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superseded 20-year maximum. Rawls argued that a new sentencing hearing was required. The circuit court ruled for the Commonwealth. *Id.* at 216-17.

When Rawls appealed, we surveyed our precedents in which we had considered whether a new sentencing hearing was required after a jury returned an unlawful sentence. We concluded that those precedents "have not been uniform. In many instances, our jurisprudence requires a court to speculate regarding how a jury would have fixed a defendant's punishment had the jury been properly instructed or had the jury properly applied a correct instruction." *Id.* at 218. That is the problem we sought to resolve when we held that "a criminal defendant in that situation is entitled to a new sentencing hearing" so that "all criminal defendants whose punishments have been fixed in violation of the statutorily prescribed ranges are treated *uniformly without any speculation*." *Id.* at 221 (emphasis added). In other words, we wanted to stop trial courts from trying to guess what juries might have done, as they had in some cases but not others, and to instead require that they always conduct a new sentencing hearing with a new jury.

The Court considered a similar issue in *Grafmuller*. In that case, the defendant pled guilty to two counts of child sex offenses and was sentenced by a judge, not a jury. The offenses had five-year statutory maximums but the court sentenced him to 10 years' imprisonment on each. He moved for a new sentencing hearing but the court instead modified his sentences by reducing solely the amount of time it had suspended, leaving him the same duration of active incarceration. 290 Va. at 527-28.

The defendant appealed and we reversed, applying *Rawls*. We ruled that *Rawls* was "purposefully broad." We noted that our "holding was not limited to cases in which *the jury* imposed a sentence in excess of the statutory maximum." *Id.* at 530. "The requirement [for a new sentencing hearing] was announced to ensure that all criminal defendants whose

punishments have been fixed in violation of the statutorily prescribed ranges are treated uniformly." *Id.* (internal quotation marks omitted) (emphasis omitted). We therefore held that the distinction between sentencing error by a jury or by a judge was one without a difference in that context. *Id.* at 530-31.

Consequently, the issue that Watson raises in this case was not raised in either *Rawls* or *Grafmuller*. In each of those cases, the Commonwealth agreed that the respective sentences were void, because they were too long. *Grafmuller*, 290 Va. at 528; *Rawls*, 278 Va. at 216. While the language we used when we decided them was intended to be broad, our decisions were nevertheless restricted to the legal question in dispute. Specifically, when the judge or jury imposing sentence exceeds the discretion conferred by the legislature when it enacted a statutory range, *see Alston v. Commonwealth*, 274 Va. 759, 771-72 (2007) (describing the imposition of a sentence within a statutory range as an act of discretion), may the trial judge simply impose a new sentence without ordering a new hearing? Therefore, we today clarify that our holdings in *Rawls* and *Grafmuller* are limited to such cases, and the answer to the question raised in them is no. In other words, when (1) the General Assembly has prescribed a statutory range of sentences for an offense, and (2) a sentence is challenged at a procedurally permissible time as lying outside that range, then (3) the trial court must conduct a new sentencing hearing to permit the sentencing entity, whether judge or jury, to impose a lawful sentence. Whether the judgment is void or voidable determines the "procedurally permissible time."

In light of this clarification of *Rawls* and *Grafmuller*, it is clear that those cases did not overrule *Smith* and *Royster*,* which dealt squarely with the legal question Watson raises here.

* As we noted in *Clark v. Virginia Dep't of State Police*, 292 Va. 725, 735-36 (2016), the Supreme Court of the United States discourages lower courts from concluding that its "'more recent cases have, by implication, overruled an earlier precedent.'" (Quoting *Agostini v. Felton*,

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While it is undoubtedly error to sentence a defendant to a term of imprisonment *shorter* than that authorized by the General Assembly, such error renders the judgment merely voidable, not void. *Royster*, 195 Va. at 234-35 (internal quotation marks omitted). We were not unaware when we decided *Smith* and *Royster* that a sentence to a term *longer* than authorized by the General Assembly was, by contrast, void. To the contrary, in *Smith*, 195 Va. at 299, we cited and discussed *Crutchfield v. Commonwealth*, 187 Va. 291, 297-98 (1948), a case in which we agreed with a trial court that a sentence in excess of the statutory maximum was a nullity but held that the appropriate remedy was only a new sentence, not a new trial.

The legal justification for treating a sentence to a term of imprisonment shorter than the term prescribed by law as voidable, but one longer than the term so prescribed as void ab initio is rooted deeply in the law. The Magna Carta of King John famously provided that "[n]o free man shall be seized or imprisoned . . . except . . . by the law of the land." Magna Carta, ch. 39, *reprinted in* British Library, Magna Carta: Law, Liberty, Legacy 267 (Claire Breay & Julian Harrison eds. 2015). But we need not dig so deep in this case because it is clear that once a court has imposed the greatest sentence that the legislature has authorized, the court has exhausted all its power to punish and "its further exercise [i]s prohibited." *Ex parte Lange*, 85 U.S. 163, 176 (1873). Thus, any excessive sentence is void "because the power to render any further judgment did not exist." *Id.* The reverse is not true. A sentence for less than what the legislature has allowed is merely legal error, and when a court has power to render a judgment, it has the power

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521 U.S. 203, 237 (1997)). We echo the sentiment and, like that Court, direct that "'if a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, lower courts should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.'" *Id.* (quoting *Agostini*, 521 U.S. at 237 (alteration omitted)).

render an erroneous one. *E.g.*, *White v. State ex rel. Johnson*, 37 So.2d 580, 581 (Fla. 1948); *In re Bourke's Estate*, 156 P.2d 501, 505 (Kan. 1945).

III. CONCLUSION

For the reasons set forth above, we conclude that the circuit court erred by ruling that *Rawls* or *Grafmuller* overruled *Royster* and *Smith* and Watson's erroneous sentences were void ab initio. The court therefore lacked jurisdiction under Rule 1:1 to consider his motion to vacate his sentences. Accordingly, we will vacate its judgment granting that motion and reopening the associated criminal cases.

Vacated.

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standing

PRESENT: All the Justices

AUDREL JACK WATSON, JR.

v. Record No. 180819

COMMONWEALTH OF VIRGINIA

OPINION BY
JUSTICE WILLIAM C. MIMS
May 30, 2019

FROM THE CIRCUIT COURT OF ROCKINGHAM COUNTY
Thomas J. Wilson, IV, Judge

In this appeal, we consider whether a felon has standing to move to vacate the sentences of other felons as void ab initio.

I. BACKGROUND AND MATERIAL PROCEEDINGS BELOW

In 2007, Audrel Jack Watson, Jr. was convicted on *Alford* pleas to several offenses, including four counts of using a firearm in the commission of a felony, in violation of Code § 18.2-53.1. The circuit court sentenced him to a term of three years' imprisonment for each count, to be served consecutively.

Ten years later, Watson filed a motion to vacate as void 30 sentences imposed by the court upon 12 felons for violations of Code § 18.2-53.1, including three of the four sentences imposed upon him.* Twenty-eight of the challenged sentences were for terms of three years' imprisonment, one was for two years' imprisonment, and one was for five years' imprisonment with four years suspended. He asserted that all of the defendants had, like him, been convicted of multiple violations of the statute. He also noted that the statute imposed a mandatory minimum term of five years' imprisonment for any second or subsequent offense. Consequently, he argued, each of the challenged sentences is void ab initio for being shorter than the statutorily-prescribed five-year minimum.

* Watson did not join any of the 11 other felons as parties.

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The Commonwealth moved to dismiss Watson's motion, arguing among other things that he lacked standing to challenge the other felons' sentences. Watson responded that, under our precedents, a judgment that is void ab initio may be challenged "by all persons, anywhere, at any time, or in any manner." *Singh v. Mooney*, 261 Va. 48, 52 (2001) (internal quotation marks omitted). The court issued a letter opinion in which it ruled that a person must establish standing even when challenging a judgment as void ab initio.

Watson filed motions to reconsider arguing that under our decision in *Virginian-Pilot Media Cos., LLC v. Dow Jones & Co., Inc.*, 280 Va. 464, 470 (2010) (plurality opinion), the doctrine of standing is "not relevant to the inquiry whether an order was entered by a court that lacked jurisdiction of the order's subject matter." The Commonwealth responded by arguing among other things that *Virginian-Pilot Media* was distinguishable because circuit courts have subject-matter jurisdiction under Code § 17.1-513 to try felonies and to impose sentence upon conviction. The court issued a second letter opinion adopting the Commonwealth's argument. It thereafter entered an order denying Watson's motion to vacate the 11 other felons' sentences.

We awarded Watson this appeal.

II. ANALYSIS

Questions of standing are questions of law that we review de novo. *Kelley v. Stamos*, 285 Va. 68, 73 (2013).

Watson asserts that the circuit court erred by ruling that he lacked standing to move to vacate the 11 other felons' sentences. He argues that after this Court's decision in *Virginian-Pilot Media*, standing is not relevant in an attack upon a void judgment. This Court has repeatedly said that a judgment may be challenged collaterally by any one, in any place, at any time, and even by a court sua sponte. *E.g.*, *Singh*, 261 Va. at 52.

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STANDING

The Commonwealth argues that the circuit court correctly ruled that Watson lacks standing to challenge the other felons' sentences. Under *Evans v. Smyth-Wythe Airport Comm'n*, 255 Va. 69, 73 (1998), a judgment may be void ab initio if (1) it was procured by fraud, (2) the court lacked subject-matter jurisdiction, (3) the court lacked jurisdiction over the parties, (4) the judgment is of a character that the court lacked power to render, or (5) the court adopted an unlawful procedure. It contends that the ruling in *Virginian-Pilot Media* that standing was irrelevant was limited only to judgments void ab initio for the second *Evans* reason—i.e., because the court lacked subject-matter jurisdiction. Here, circuit courts do have subject-matter jurisdiction to render judgments imposing sentences upon felony convictions.

Watson replies that a void judgment is void regardless of which of the five *Evans* reasons makes it void, and that *Virginian-Pilot Media* applies to them all. He argues that the reason for the ruling in *Virginian-Pilot Media* that standing is irrelevant in a challenge to a void judgment is that such a judgment is a nullity. Further, even if we determine that he lacks standing, we may still set aside a void judgment sua sponte, as noted in *Virginian-Pilot Media.*

A close reading of *Virginian-Pilot Media* reveals that, for both factual and procedural reasons, it does not apply here. In that case, Dow Jones & Co., Inc., the publisher of the *Wall Street Journal*, filed an ex parte petition ostensibly under Code § 8.01-324 asserting that its periodical met the statute's requirements for publishing legal notices in the City of Virginia Beach and seeking the entry of an order granting it authority to do so. After the circuit court entered such an order, the publisher of the *Virginian-Pilot* moved to intervene and to set it aside for lack of subject-matter jurisdiction. The circuit court heard argument and ruled that it had subject-matter jurisdiction to enter the order and denied the motion to intervene. 280 Va. at 466-67.

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We awarded the publisher of the *Virginian-Pilot* an appeal, which resulted in an uncharacteristically fragmented decision. Three members of the Court joined a plurality opinion holding that the circuit court lacked subject-matter jurisdiction to enter the order and, using the language Watson relies on here, that they did not need to reach the issue of whether the circuit court erred by denying the motion to intervene because orders entered by a court without subject-matter jurisdiction are nullities, so the question of standing was irrelevant. *Id.* at 469-70 (plurality opinion).

Two members of the Court strongly dissented because they viewed the standing question to be dispositive. In their view the publisher of the *Virginian-Pilot* did not have it. *Id.* at 470-71 (Lemons, J., dissenting). Two other members of the Court concurred in the result because, while the publisher of the *Virginian-Pilot* lacked standing to intervene, Dow Jones & Co. lacked standing to seek the underlying order in the first place and the circuit court lacked subject-matter jurisdiction to enter it. Consequently, the voidness of the order was manifest, and the failure to vacate it would "make this Court accomplice to a lower court's exercise of jurisdiction contrary to the constraints constitutionally placed on the judicial branch by the legislative." *Id.* at 478-79 (Mims, J., concurring).

This review of *Virginian-Pilot Media* highlights three observations. First, no majority of this Court has ever held that standing is irrelevant when a judgment is challenged as void ab initio, regardless of the *Evans* basis for the alleged voidness.

Second, even the plurality opinion in *Virginian-Pilot Media* limited its application to judgments challenged as void for lack of subject-matter jurisdiction. Subject-matter jurisdiction is unique. It "cannot be waived or conferred on the court by agreement of the parties"; a defect in it "cannot be cured by reissuance of process, passage of time, or pleading amendment"; "a

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court always has jurisdiction to determine whether it has subject-matter jurisdiction"; and "the lack of subject matter jurisdiction can be raised at any time in the proceedings, even for the first time on appeal by the court sua sponte." *Morrison v. Bestler*, 239 Va. 166, 169–70 (1990). In short, subject-matter jurisdiction is the paramount consideration in assessing whether a court has authority to enter judgment, and a judgment will always be void without it. And because the question of subject-matter jurisdiction is a question of law, *Gray v. Binder*, 294 Va. 268, 275 (2017), it requires no factual development or evidentiary record to consider.

Third, although it was not expressly addressed in any of the opinions in *Virginian-Pilot Media*, that appeal was properly before the Court because the publisher of the *Virginian-Pilot* was aggrieved by the circuit court's denial of its motion to intervene. *See Eads v. Clark*, 272 Va. 192, 195-97 (2006) (affirming in an appeal from the denial of a motion to intervene and ruling that the Court therefore could not reach assignments of error challenging the merits); *Mattaponi Indian Tribe v. Virginia Marine Res. Comm'n*, 45 Va. App. 208, 214 n.3 (2005) (noting that a party denied leave to intervene may appeal on that issue, but not on the merits of the case because it was not made a party); *see also City of Cleveland v. Ohio*, 508 F.3d 827, 837 (6th Cir. 2007) (noting that the general rule is that a party unsuccessfully seeking to intervene may appeal only from the order denying intervention); 7C Charles Alan Wright et al., Federal Practice and Procedure § 1923 (3d ed. 2019) (noting that one who seeks to intervene may appeal from denial). "We did not reach out and pluck th[e] case from thin air." *Virginian-Pilot Media*, 280 Va. at 479 (Mims, J., concurring). Thus, as obliquely referenced in both the plurality and concurring opinions, the Court had the authority to vacate the circuit court's order as void sua sponte. *Id.* at 469-70 (plurality opinion); *id.* at 479 (Mims, J., concurring).

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STANDING

In view of these limitations on the scope of the plurality opinion in *Virginian-Pilot Media*, we will not hold today what four members of the Court declined to hold in that case—i.e., that standing is wholly irrelevant when a judgment is challenged as void ab initio because of a lack of subject-matter jurisdiction. And, because we agree with the Commonwealth that circuit courts have subject-matter jurisdiction to try, convict, and impose sentence for all felonies, *Porter v. Commonwealth*, 276 Va. 203, 229 (2008), we will not expand *Virginian-Pilot Media* to hold what *no* member of the Court articulated in that case—i.e., that standing is irrelevant when a judgment is challenged as void for any of the other four *Evans* bases.

Anticipating the possibility that we would decline to extend the plurality opinion in *Virginian-Pilot Media* to this case, Watson also asks, now that we have taken up his appeal from the circuit court's ruling that he lacked standing, that we avail ourselves of the opportunity to declare the other felons' sentences void sua sponte. We will not. The other felons are unquestionably necessary parties to an action to declare their sentences void, which, if successful, would result in the imposition of new sentences. *See Graves v. Commonwealth*, 294 Va. 196, 208 (2017).

"All persons interested in the subject matter of a suit and to be affected by its results are necessary parties." *Michael E. Siska Revocable Tr. v. Milestone Dev., LLC*, 282 Va. 169, 173 (2011) (internal quotation marks and alteration omitted). The Court may note the failure to join a necessary party sua sponte. *Snavely v. Pickle*, 70 Va. 27, 42 (1877). When faced with the absence of a necessary party, courts have discretion to continue with the existing parties. *Marble Techs., Inc. v. Mallon*, 290 Va. 27, 32 (2015) (citing *Milestone Development*, 282 Va. at 176-81). However, in light of the possible due process concerns that may arise if the 11 other felons' sentences are void and they need to be resentenced, *see United States v. Lundien*, 769 F.2d 981,

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987 (4th Cir. 1985) (opining that "due process may also be denied when [even a statutorily invalid] sentence is enhanced after the defendant has served so much of his sentence that his expectations as to its finality have crystallized and it would be fundamentally unfair to defeat them"), we decline to exercise that discretion here. Consequently, we will not even consider in this case whether the other felons' sentences are void.

III. CONCLUSION

For the reasons set forth above, we conclude that the circuit court correctly ruled that Watson lacked standing to challenge the other felons' sentences. We therefore affirm.

Affirmed.

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J.S.A. 54.

Rec'd 5/15/18

COMMONWEALTH OF VIRGINIA

THOMAS J. WILSON, IV, JUDGE
BRUCE D. ALBERTSON, JUDGE
CLARK A. RITCHIE, JUDGE
ROCKINGHAM COUNTY CIRCUIT COURT
80 COURT SQUARE
HARRISONBURG, VA 22802
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CIRCUIT COURTS OF
CLARKE, FREDERICK, PAGE,
ROCKINGHAM, SHENANDOAH
AND WARREN COUNTIES
AND CITY OF WINCHESTER

TWENTY-SIXTH JUDICIAL CIRCUIT

May 11, 2018

Audrel Watson Jr. #1201662
1821 Estaline Valley Road
Craigsville, Virginia 24430

Michael T. Judge, Esquire
Office of the Attorney General
202 N. Ninth Street
Richmond, Virginia 23219

Re: *Audrel Watson Jr. v. Commonwealth (CL17-3815)*

Dear Mr. Watson and Mr. Judge

This matter is before the Court on (1) a Motion for Reconsideration on the issue of standing, filed by the Petitioner, Audrel Watson, (2) Mr. Watson's motion to withdraw his guilty plea, and (3) the Commonwealth's Motion for Reconsideration on the issue of voidability. The Court directed that all filings in response to these motions be made on or before April 10, and any reply be made by April 17, 2018.

The Court accordingly has received and reviewed Mr. Watson's Brief in Opposition to the Commonwealth's Motion for Reconsideration, the Commonwealth's Reply, Mr. Watson's Response to Reply, as well as a number of other letters and filings made by Mr. Watson.

Mr. Watson has also filed a document entitled an "Addendum of Evidence" on May 2, 2018 and a Clarification of Motion on May 4, 2018. Because these filings fell outside the time limits established by the Court, the Court will not address them. However, even if these documents were timely filed, they are insufficient to warrant a result different than that reached by the Court on the issues before it.

1. Motion for Reconsideration on the Issue of Standing

Mr. Watson argues that at each sentencing where this Court sentenced a defendant below the statutory minimum, the Court lacked subject matter jurisdiction, and therefore the sentences can be attacked by anyone, regardless of the traditional notions of standing. The Commonwealth argues that the Court did have subject matter jurisdiction, even if the order was void for other reasons, and thus Watson's lack of standing undercuts his motion. The Court finds that the

position of the Commonwealth, explained in their briefings of this issue, has merit and prevails. The motion to reconsider will be denied.

2. Watson's Motions to Withdraw His Guilty Plea

Mr. Watson also seeks to withdraw his guilty plea to each of his charges, not just the charges for which he received a sentence below the statutory minimum. This request will be denied because Mr. Watson cannot withdraw his guilty plea in this, a civil case.

3. The Commonwealth's Motion for Reconsideration

In the Attorney General's Motion for Reconsideration filed on behalf of the Commonwealth, six arguments are raised seeking the Court to conclude that the 1953 decisions of *Smith v. Commonwealth*, 195 Va. 297 (1953) and *Royster v. Smith*, 195 Va. 228 (1953) control, despite the Supreme Court's recent decisions in *Rawls v. Commonwealth*, 278 Va. 213 (2009) and *Grafmuller v. Commonwealth*, 290 Va. 525 (2015).

a. Stare Decisis

The Commonwealth first urges the Court to recognize the importance of stare decisis and to make decisions only concerning the state of the law as it is currently, not what the Court believes the appellate courts will do in the future. The Court, of course, agrees with this assessment. It is also true that only the Virginia Supreme Court can overrule its decisions. The issue, here, is not whether to follow stare decisis, but which precedents are controlling and need to be followed.

If *Rawls* and *Grafmuller* imposed a new rule, directly overruling *Royster, Smith*, and any other case not in conformity with the rule announced in *Rawls*, then these recent cases are binding on the Court. The authority of the Court of Appeals in interpreting this new rule (such as *Greer*, which directly held that *Rawls* applies to sentences that are below the statutory minimum) is also binding on this Court.

b. How Narrowly to Read *Rawls* and *Grafmuller*

Next, the Commonwealth argues that *Rawls* and *Grafmuller* should be read very narrowly. The Commonwealth notes that although the language of the rule in these cases dealt with sentences outside the statutory range, the assignments of error and the particular facts addressed in *Rawls* and *Grafmuller* were dealing with situations where the sentences were above, not below, the statutory limits.

Rawls and *Grafmuller* did deal with situations where sentences were higher than the statutes allowed. However, there is no indication that these cases should be narrowly confined to their facts. As noted in the original opinion letter, the language employed by *Rawls* and *Grafmuller* is uncommonly broad and indicative of the Supreme Court's intention to create a new rule to guide future decisions, even beyond the particular facts of those cases. The Court did not list by name each of the cases it was overruling, but it did note displeasure with its previous decisions which displayed a lack of "uniformity" in "determining whether a defendant, who received an improper sentence, was entitled to a new sentencing hearing." *Rawls v. Commonwealth*, 278 Va. 213, 220 (2009).

The Court then announced:

> Today we adopt the following rule that is designed to ensure that all criminal defendants whose punishments have been fixed in violation of the statutorily prescribed ranges are treated uniformly without any speculation. We hold that a sentence imposed in violation of a prescribed statutory range of punishment is void ab initio because "the character of the judgment was not such as the [C]ourt had the power to render."

Id. at 221.

In *Grafmuller v. Commonwealth*, 290 Va. 525, 529 (2015), the Court had opportunity to consider a similar argument by the Commonwealth to view *Rawls* narrowly. The Commonwealth argued that the rule in *Rawls* should be confined to sentences from jury trials, since the particular facts of *Rawls* and part of the reasoning dealt with preventing court speculation regarding how a jury would sentence the defendant.

The Court noted that "[d]espite the clarity of our holding in *Rawls*, we are now invited to create an exception." *Id.* at 530. The Court rejected that invitation:

> Our holding in *Rawls* was purposefully broad. We intended to end both the lack of uniformity in our jurisprudence and the speculation about what sentence would have been imposed had the sentencer not been mistaken about the maximum punishment provided by law. *Id.* at 221. Although the cases we discussed in *Rawls* each involved a jury sentence, our holding was not limited to cases in which the jury imposed a sentence in excess of the statutory maximum. The requirement was announced "to ensure that *all* criminal defendants whose punishments have been fixed in violation of the statutorily prescribed ranges are treated uniformly." *Id.* (emphasis added). We decline the invitation presented by this case to create an exception to this doctrine for defendants who were

> sentenced by a judge rather than a jury. Such an exception would re-introduce to this area of the law both a lack of uniformity and a need for speculation as to what the sentence would have been if the sentencer had not misapprehended the statutory maximum.

Id. at 530–31.

Applying the logic of *Grafmuller*, the rule in *Rawls* should be interpreted and followed as written, not strictly confined to its facts. The Supreme Court chose to rule that sentences are void when "*in violation* of a prescribed statutory range of punishment" rather than only when "*in excess*," the Court must follow this binding precedent.

c. Inference from the General Assembly's Amendment of § 19.2-398.

Next, the Commonwealth makes the argument that because the General Assembly created a statutory mechanism in Section 19.2-398(C) for the Commonwealth to challenge sentences below the statutory minimum, that the General Assembly must have considered these decisions not to be void ab initio. If they were already void ab initio, it would be unnecessary to have such a provision. And, as the Commonwealth argues, it is presumed that the General Assembly knows the law and that a "substantive change in law [is] intended by an amendment to an existing statute." Commonwealth's Reply 3 n.2 (quoting *Commonwealth v. Bruhn*, 264 Va. 597, 602 (2002)).

This argument is persuasive for the proposition that at the time the amendment was added, it was intended to make a change in the law. Thus, the amendment may imply that sentences below the statutory range were not void ab initio when it was passed. However, this amendment was passed in 2002. *See* 2002 Va. ALS 611. This statute says nothing about the General Assembly's opinion of the law on this subject post *Rawls*, which was decided in 2009. Thus, this argument also fails to show that the Court should reconsider its reliance on *Rawls, Grafmuller*, and *Greer.*

d. The Commonwealth Asserts the Propositions in *Greer* Are Dicta

The Commonwealth argues that *Greer* cannot be relied upon because its ruling, that a sentence imposed below the statutory minimum was void ab initio, was unnecessary to reach the conclusion.

In *Greer*, the Court of Appeals ruled that "the jury's sentence of two years was unlawful and the trial court's imposition of that sentence was void ab initio." *Commonwealth v. Greer*, 63 Va. App. 561, 579 (2014).

The Commonwealth argues that since the Commonwealth had the right to appeal by statute in Section 19.2-398(C), the Court of Appeals did not need to decide whether the sentence was void, only whether the sentence was in error.

However, it appears that the Court of Appeals decided it was necessary to determine how to characterize the imposed sentence in order to decide what to instruct on remand. In that case the Commonwealth had argued that in the interests of judicial economy, the court should simply order that the five year sentence be imposed without impaneling a new jury. Looking to *Rawls*, the Court of Appeals decided that the rule in *Rawls* applied, therefore, the sentence in violation of the statute was void ab initio and the proper remedy was to remand with instructions to impanel a new jury to impose the five year required sentence.

Assuming that the Commonwealth is correct in arguing that the Court of Appeals *could* have ruled differently to correct the same error, it is very clear what the Court of Appeals *did* hold, and that is what is binding upon the circuit court.

> The defendant correctly argues that the facts in *J.K. Rawls* are distinguishable from those in his case. Rawls' sentence was above, rather than below, the statutorily prescribed range, and the sentencing error in *J.K. Rawls* resulted from faulty jury instructions rather than the jury's disregard of proper instructions. *Id.* at 215-16. Despite these differences, however, the "common law rule of jurisprudence" set out by the Supreme Court was not limited to the facts of that case. *Id.* at 221. Its holding expressly applies to a jury's disregard of "correct instructions." *Id.* It also expressly applies to "*all* criminal defendants whose punishments have been fixed in violation of the statutorily prescribed ranges." *Id.* (emphasis added). *It therefore implicitly, and logically, includes both those whose sentences are above the statutory range and those whose sentences are below it.*

Id. at 576–77 (emphasis added).

e. The Commonwealth Asserts *Smith* and *Royster* are still Controlling

The Commonwealth continues by asserting that the 1953 cases should be considered the controlling authority on this issue. This argument is the counterpart of its arguments that *Rawls*, *Grafmuller*, and *Greer* should be viewed narrowly and applied only to their facts.

The Commonwealth argues "if the Supreme Court of Virginia had wanted to overrule or otherwise limit *Smith v. Commonwealth* or *Royster v. Smith*, it had the opportunity to do so in

recent opinions" citing *Jones v. Commonwealth* and *Rawls* itself, both of which reference *Royster*. Commonwealth's Mot. for Recons. 4 n.1.

The problem with this view is that *Rawls* announced a new rule on this subject (reinforced by *Grafmuller*) and overruled previous cases in contradiction to that new rule. Further, a review of the cases citing to the 1953 cases shows a consistent understanding among the appellate courts that *Rawls* supersedes *Royster* and *Smith.*

Smith has never been cited by the Court of Appeals or Virginia Supreme Court since the *Rawls* opinion. *Royster* has been cited five times since *Rawls*, but always in the context of noting *Rawls* as the leading authority and never in a way to suggest that *Royster*'s holding on voidability survives the rule in *Rawls*. *See Jones v. Commonwealth*, 293 Va. 29, 49 (2017); *Roy v. Commonwealth*, No. 1827-13-4, 2015 Va. App. LEXIS 15, at *10 (Jan. 20, 2015); *McClease v. Commonwealth*, No. 2209-13-1, 2014 Va. App. LEXIS 358, at *10 (Ct. App. Oct. 28, 2014); *Bradley v. Commonwealth*, No. 1194-12-2, 2013 Va. App. LEXIS 168, at *4 (June 4, 2013); *Daugherty v. Commonwealth*, No. 0297-11-3, 2011 Va. App. LEXIS 326, at *5 (Nov. 1, 2011).

f. A Final Order, Signed by Judge Albertson, Following *Smith* and *Royster.*

Finally, the Commonwealth relies upon an order, asked for by Michael T. Judge and signed by Judge Albertson in March of 2017. That matter concerned a petition by Andrey Pinkevich, that his 215 year sentence be declared void ab initio because the court failed to sentence him to a sufficient period of post-release supervision according to Code § 19.2-295.2(A). Pinkevich also sought to have some of his sentences run concurrently.

Pinkevich argued that his case was analogous to *Rawls*. The court rejected this argument and granted the Attorney General's Motion to Dismiss and denied Pinkevich's Motion to Vacate. Judge Albertson signed the Final Order containing language similar to the Final Order proposed in this case, such as a holding that "[a] sentence imposed ***below*** the statutory minimum permitted by law, however, is voidable, not void" citing *Smith* and *Royster*. However, this case before the Court deals with actual mandatory active sentences, not merely post-release supervision. Moreover, this Court considers itself bound by the Virginia Supreme Court and Court of Appeals authority that a sentence falling outside the statutory range is void.

Conclusion

The Court will continue to follow what it believes is the relevant Supreme Court authority on this issue. Accordingly, the Court will deny each party's motions for reconsideration, will deny Mr. Watson's motion to withdraw his guilty plea, and will maintain its

original ruling. An order to this effect is attached hereto. All objections previously made are preserved.

Very truly yours,

Thomas J. Wilson, IV, Judge

TJW/dmh
CC: Court file
CC: Marsha L. Garst, Esquire, Commonwealth's Attorney – VIA Courthouse box
CC: Robert S. Hahn, Esquire – VIA Courthouse box

APPENDIX B(1), 7 of 7 PAGES

~~39~~ 61.

Rec'd 5/15/18

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

AUDREL JACK WATSON, JR.,
Petitioner,

v. Case No. CL17-3815

COMMONWEALTH OF VIRGINIA,
Respondent

FINAL ORDER

This Court previously issued a letter opinion in this case dated March 12, 2018, addressing the issues raised. Thereafter each party filed a motion for reconsideration of the rulings averse to their positions, and Mr. Watson filed a motion to withdraw his guilty pleas in a criminal case which led to the present litigation. This Court issued a letter opinion dated May 11, 2018, addressing the motions for reconsideration and the motion to withdraw guilty pleas.

It is ADJUDGED AND ORDERED that the letter opinions of March 12, 2018 and May 11, 2018, are made a part of this Order and incorporated verbatim by reference thereto.

It is accordingly ADJUDGED AND ORDERED as follows:

1. Watson's Motion to vacate the judgments against eleven other inmates, to wit: Anthony Dustin McMillian; Jeremy Michael Huddle; Tammy Lynn Traber; Charles Fletcher; Andrey Pinkevich; Christopher Raye Brown; Jonathan Peter Grattan, III; Michael Wayne Crawford; Terry Allen Riggleman; Luis Flores; and Drakar Lee Rawlings, is hereby DENIED.

2. The Court will GRANT Watson's Motion to vacate the sentences imposed against him in case numbers CR07035489-00, CR07035490, and CR07035491, and will hereafter reopen the criminal case to effect such vacation and for further proceedings.

3. Watson's motion to withdraw his guilty pleas is DENIED.

This is a final Order. All objections previously made by either party as reflected in the record are preserved. Endorsement hereof is waived. The Clerk shall mail an attested copy hereof to counsel of record, and to the pro se litigant.

Entered this 11th day of May 2018.

5/11/18

Judge Thomas J. Wilson, IV

APPENDIX B(2)
1052 PAGE
62.

I CERTIFY THAT THE DOCUMENT TO WHICH THIS AUTHENTICATION IS AFFIXED IS A TRUE COPY OF A RECORD IN THE ROCKINGHAM COUNTY CIRCUIT COURT CLERK'S OFFICE AND THAT I AM THE CUSTODIAN OF THAT RECORD.

5/11/18 Heather Reardon
DATE CLERK/DEPUTY CLERK

SUPREME COURT OF VIRGINIA
PATRICIA L. HARRINGTON, CLERK
SUPREME COURT BUILDING
100 NORTH 9TH STREET, 5TH FLOOR
RICHMOND, VIRGINIA 23219
(804) 786-2251 V / TDD
FAX: (804) 786-6249

DOUGLAS B. ROBELEN
CHIEF DEPUTY CLERK

Rec'd 12/27

December 20, 2018

Audrel Jack Watson, Jr., Inmate # 1201662
Augusta Correctional Center
1821 Estaline Valley Road
Craigsville, VA 24430

Re: *Audrel Jack Watson, Jr. v. Commonwealth of Virginia*
Commonwealth of Virginia v. Audrel Jack Watson, Jr.
Record Nos. 180819 and 180940

Dear Mr. Watson:

The Court has considered your petition for appeal and has determined that one of the assignments of error should be granted. I have located counsel willing to represent you in the matter on a pro bono basis, which means that you will not have to pay the attorneys and the attorneys will be able to put together the documents that make up the appendix, file the briefs, and present oral argument on your behalf before the full Court. The attorneys who have agreed to represent you are L. Steven Emmert, Sykes, Bourdon, Ahern & Levy, P.C., Pembroke Office Park, 5th Fl., 281 Independence Boulevard, Virginia Beach, VA 23462-2989 and Juli Porto, Blankingship & Keith, P.C. Suite 300, 4020 University Drive, Fairfax, VA 22030.

Sincerely yours,

Patricia L. Harrington
Clerk

PLH/th

63.

OCT 15 2019

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 10th day of October, 2019.

Commonwealth of Virginia, Appellant,

against Record No. 180940
Circuit Court No. CL17-3815

Audrel Jack Watson, Jr., Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellee to set aside the judgment rendered herein on May 30, 2019 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By: 

Deputy Clerk

APPENDIX C(1)

64

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 10th day of October, 2019.

Audrel Jack Watson, Jr., Appellant,

against Record No. 180819
Circuit Court No. CL17-3815

Commonwealth of Virginia, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on May 30, 2019 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By: 

Deputy Clerk

APPENDIX C(2)

65.

VIRGINIA CASE LAW SUPPORTING INVALIDITY OF SENTENCES OUTSIDE LEGISLATED MANDATORY RANGES

"COURTS ARE NEVERTHELESS BOUND BY THE PLAIN MEANING OF UNAMBIGUOUS STATUTORY LANGUAGE AND MAY NOT ASSIGN A CONSTRUCTION THAT AMOUNTS TO HOLDING THAT THE GENERAL ASSEMBLY DID NOT MEAN WHAT IT ACTUALLY HAS STATED." GUNN V. COM., 272 VA. 580 (2006).

"ONCE A COURT HAS ENTERED A JUDGMENT OF CONVICTION OF A CRIME, THE QUESTION OF PENALTY TO BE IMPOSED IS ENTIRELY WITHIN THE PROVINCE OF THE LEGISLATURE, AND THE COURT HAS NO INHERENT AUTHORITY TO DEPART FROM THE RANGE OF PUNISHMENT LEGISLATIVELY PRESCRIBED." STARRS V. COM., 287 VA. 1 (2014)

"THE LEGISLATIVE DEVELOPMENT OF THE MANDATORY MINIMUM SENTENCE, HOWEVER PRODUCED A FLOOR BELOW WHICH NO JUDGE OR JURY COULD GO. A TRIAL COURTS AUTHORITY TO DEPART DOWNWARD BELOW A MANDATORY MINIMUM IS NON-EXISTENT, BECAUSE

INVALIDITY of SENTENCES (CONT.)

THE LEGISLATURE PURPOSE WAS TO DIVEST TRIAL JUDGES AND JURIES OF ALL DISCRETION TO SENTENCE BELOW THE THRESHOLD MINIMUM." Lilly V. COM. 50 VA. APP. 173 (2007)

"CAN WE INFER WITH ANY CONFIDENCE THAT HAD A JURY BEEN PROPERLY INSTRUCTED THAT THE MAXIMUM PUNISHMENT IT COULD IMPOSE UPON RAWLS FOR THE SECOND DEGREE MURDER CONVICTION WAS 20 YEARS IMPRISONMENT, THE JURY WOULD HAVE FIXED HIS PUNISHMENT AT 13 YEARS IMPRISONMENT, WHICH IS APPROXIMATELY FIVE-EIGHTHS OF 20 YEARS? ABSOLUTELY NOT, SUCH INFERENCE WOULD REQUIRE THAT THIS COURT ENGAGE IN SHEER SPECULATION." RAWLS V. COM, 278 VA 2013 (2009).

"TO RESTATE THE OBVIOUS: THE CONSTITUTION OF VIRGINIA AUTHORIZED THE GENERAL ASSEMBLY TO CONFER POWERS UPON THE CIRCUIT COURTS. THE GENERAL ASSEMBLY PRESCRIBED THE APPLICABLE PUNISHMENTS FOR CRIMINAL OFFENSES." KELLY V. STAMOS, 285 VA. 68 (2013)

"CHIEF MARSHALL WROTE THAT THE POWER OF PUNISH-

MENT IS VESTED IN THE LEGISLATIVE, NOT IN THE JUDICIAL DEPARTMENT. IT IS THE LEGISLATURE, NOT THE COURT, WHICH IS TO DEFINE A CRIME, AND ORDAIN IT'S PUNISHMENT." U.S. V. WILTBERGER, 18 U.S. 76 (1820), AS QUOTED IN HERNANDEZ V. COM., 55 App. 190 (VA. 2009).

"... THERE IS ANOTHER CONSIDERATION - THE IMPERATIVE of JUDICIAL INTEGRITY. 364 U.S. AT 222. THE CRIMINAL GOES FREE, IF HE MUST, BUT IT IS THE LAW THAT SETS HIM FREE." MAPP V. OHIO, 81, S.CT. 1684 (1961).

SEE ALSO: TAYLOR V. COM., 58 VA. APP 435, (VA APP 2011); MOREAU V. FULLER, 276 VA. 127, 137, 66, S.E 2d. 841, 846-847, (2008); TAYLOR V. WORRELL ENTERS, 242 VA 219, 223, 409, S.E 2d. 136, 139 (1999), "RELYING ON A SEPERATION of POWERS DOCTRINE THAT WAS SUCCINTLY ARTICULATED by THE U.S. SUPREME COURT."

U.S. V. HAIRSTON

522 F.3d 336 (C.A. 4th (VA) 2008)

"THERE WAS NO REAL DISPUTE THAT A FRCP 11 ERROR OCCURRED WHEN COURT DID NOT INFORM DEFENDANT BEFORE ACCEPTING HIS GUILTY PLEAS THAT HE FACED A MANDATORY 15 YEAR MINIMUM SENTENCE..., THE COURT TOLD DEFENDANT THAT THE SENTENCE WOULD BE BETWEEN ZERO TO 10 YEARS; THE COURT DID NOT MENTION THE POSSIBILITY OF A 15 YEAR MINIMUM..., THE DEFENDANT WOULD NOT HAVE PLEADED HAD HE KNOWN THAT HE FACED A MANDATORY 15 YEAR SENTENCE."

"DEFENDANT'S GUILTY PLEAS AND CONVICTIONS AS TO ALL COUNTS WERE VACATED AND THE CASE REMANDED FOR FURTHER PROCEEDINGS."

"IN DECLARING IF A FRCP 11 ERROR OCCURRED, COURTS CONSIDER WHAT INFO WAS PROVIDED TO DEFENDANT WHEN HE PLED GUILTY AND HOW THE ADDITIONAL INFO WOULD HAVE AFFECTED THE DECISION TO PLEAD GUILTY."

"IF A COURT DETERMINES THAT A NON-HARMLESS ERROR OCCURRED, THE TYPICAL REMEDY IS TO VACATE ALL THE CONVICTIONS AND GUILTY PLEAS AND REMAND TO GIVE DEFEN-

DANT THE OPPORTUNITY TO "PLEA ANEW". ALSO, THORNE, 153 F.3d AT 134; ACCORD GOING, 51 F.3d AT 405; U.S. V. TUNNING, 69 F.3d 107, 115 (6TH CIR 1995); U.S. V. ALLEN, 804 F.2d 244, 248 (3RD CIR. 1986); U.S. V. STILL, 102 F.3d 118, 123 (5TH CIR 1996)."

"ALTHOUGH THE ERROR INVOLVED ONLY SOME OF THE COUNTS TO WHICH "HOUSTON" PLEADED GUILTY, WE CONCLUDE THAT THE PROPER REMEDY IS TO VACATE "HOUSTON'S" GUILTY PLEAS AND CONVICTIONS, AS TO ALL CHARGES, AND PERMIT HIM TO "PLEA ANEW".

"FRCP REQUIRE A COURT, BEFORE ACCEPTING A GUILTY PLEA, TO PERSONALLY INFORM THE DEFENDANT OF, AND ENSURE THAT HE UNDERSTANDS THE NATURE OF THE CHARGES AGAINST HIM AND THE CONSEQUENCES OF HIS GUILTY PLEA," "U.S. V. DAMON, 191 F.3d. 561, 564 (4TH CIR. 1999), SEE FRCP 11(b) AND FRCP 11(b)(1)(L)."

"... IT IS APPARENT THAT A RULE 11 ERROR OCCURRED IN THIS CASE. THE COURT TOLD "HOUSTON" THAT THE SENTENCE WOULD BE BETWEEN ZERO AND 10 YEARS, NOT MENTIONING THE FACT OF THE POSSIBILITY OF A MUCH HIGHER MINIMUM SENTENCE."

APPENDIX "E" (2 of 3 PAGES)

"RULE 11 DOES NOT REQUIRE COURTS TO INFORM DEFENDANTS OF THE APPLICABLE GUIDELINES SENTENCING RANGES, ... BUT IT DOES REQUIRE COURTS TO INFORM DEFENDANTS OF ALL "POTENTIALLY" APPLICABLE STATUTORY MINIMUM AND MAXIMUM SENTENCES, AND TO "CLEARLY" ADVISE A DEFENDANT OF THE STATUTORY "MANDATORY" MAXIMUM AND "MINIMUM" SENTENCE, AND WHILE THE COURT AT THE TIME OF THE PROCEEDINGS COULD NOT HAVE BEEN CERTAIN [ABOUT THE MANDATORY SENTENCE], RULE 11 NONETHELESS, REQUIRED THE COURT TO "ANTICIPATE" THE POSSIBILITY AND EXPLAIN TO "HOUSTON".

"VACATING THE GUILTY PLEAS AS TO THE 922(G) CHARGES ONLY WOULD CORRECT THE RULE 11 ERROR, BUT IT WOULD NOT FULLY CURE THE "PREJUDICIAL EFFECT" OF THE ERROR. C.F. DOMINGUEZ BENITEZ, 542 U.S. AT 81 (EXPLAINING THAT, EXCEPT FOR CERTAIN STRUCTURAL ERRORS, RELIEF FOR ERROR IS TIED IN SOME WAY TO "PREJUDICIAL EFFECTS"). UNDER THE CIRCUMSTANCES OF THIS CASE, WE DECLINE TO APPLY A REMEDY THAT LEAVES SO MUCH UNREMEDIED. INSTEAD WE CONCLUDE THAT THE "PROPER" COURSE IS TO VACATE "HOUSTON'S" GUILTY PLEAS AND CONVICTIONS AS TO ALL COUNTS, SO THAT "HOUSTON" WILL HAVE THE OPPORTUNITY TO MAKE A FULLY INFORMED EVALUATION OF THE DIRECT ATTENDANT RISKS OF ACCEPTING CRIMINAL RESPONSIBILITY." SEE U.S. V. McDONALD.

APPENDIX "E" (3 of 3 PAGES)

I. VIRGINIA S.CT. RULE 3A:8, MANDATED by, AND EQUIVALENT TO U.S. S. COURT RULE 11

1. "THE COURT THUS IN EFFECT FASTENS UPON THE STATES, AS A MATTER of FEDERAL CONSTITUTIONAL LAW, THE RIGID PROPHYLATIC REQUIREMENTS of "FEDERAL RULES of CRIMINAL PROCEDURES 11 [FRCP]." "... THE PROPHYLATIC PROCEDURES of CRIMINAL RULE 11 ARE SUBSTANTIALLY APPLICABLE TO THE STATES, AS A MATTER of FEDERAL CONSTITUTIONAL "DUE PROCESS." BOYKIN V. ALA.

2. "VIRGINIA S. CT. RULE 3A:11, IN RESPONSE TO THE REQUIREMENTS of THE "DUE PROCESS CLAUSE" of THE U.S. CONSTITUTION, AND THE U.S. FRCP RULE 11, WAS MODIFIED TO RULE 3A:8, TO ADHERE TO FRCP RULE 11. RULE 3A:8 is SUBSTANTIALLY EQUIVALENT TO FRCP 11." HOLLER V. COM. (VA. 1980); GARDNER V. WARDEN of VA. STATE PENITIONARY (VA. 1981)

3. "VIRGINIA'S RULE 3A:11 BECAME VA.'S RULE 3A:8 (b). RULE 3A:11(8) is SUBSTANTIALLY EQUIVALENT TO FRCP 11." AS QUOTED IN WEST'S ANNOTATED CODE of VIRGINIA.

APPENDIX "F", (1 of 11)

II. VIRGINIA'S RULE 3A:8

"A CIRCUIT COURT SHALL NOT ACCEPT A GUILTY PLEA OR NOLO CONTENDERE TO A FELONY CHARGE WITHOUT FIRST DETERMINING THAT THE PLEA IS MADE VOLUNTARILY WITH AN UNDERSTANDING of THE NATURE OF THE CHARGES AND THE CONSEQUENCES of THE PLEA.", RULE 3A:8

A. VIRGINIA'S CONSTITUTION

1. "RULE 3A:8 IS CONSISTENT WITH THE VIRGINIA CONSTITUTION'S ARTICLE I, SECTION 8, ESTABLISHING THAT THE PLEA IS MADE VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY, AND PLACES NO LIMITATIONS . . . ," OTHER THAN THE CONSTITUTIONAL REQUIREMENTS . . . , GRAHAM V. COM.

2. "UNDER VA. CONST., STATUTES, AND RULES of THE SUPREME COURT, TRIAL COURT MAY REJECT GUILTY PLEA TO WHOLE INDICTMENT TENDERED WITHOUT PLEA AGREEMENTS ONLY WHEN IT DETERMINES THAT PLEA IS CONSTITUTIONALLY INVALID; SUCH DETERMINATION EXTENDS ONLY TO INSURING THAT GUILTY PLEA IS MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY." "SEE APPENDIX "F", (2 of 11)

VA. CONST., ARTICLE ONE § 8; CODE 1950 § 19.2-254; S.CT. RULES 3A:8, 3A:8(b)", AS QUOTED IN GRAHAM V. COM. (VA. APP. 1990).

3. "TRIAL COURT MAY REJECT WHEN IT DETERMINES THAT A PLEA IS CONSTITUTIONALLY INVALID; SUCH DETERMINATION EXTENDS ONLY TO INSURING THAT GUILTY PLEA IS MADE VOLUNTARILY, INTELLIGENTLY, AND KNOWINGLY." GRAHAM V. COM., REFERRING TO CONST., ARTICLE I § 8; CODE 1950 § 19.2-254; S.CT. RULES 3A:8, 3A:8(b)" "ALSO, A GUILTY PLEA IS A WAIVER of CONST. RIGHTS; ... SUCH A WAIVER IS CONST. SUFFICIENT ONLY WHEN IT IS VOLUNTARY AND INTELLIGENT; THE WAIVER IS TO BE ACCEPTED ONLY AFTER THE TRIAL JUDGE HAS MADE A DETERMINATION THAT IT IS VOLUNTARY AND INTELLIGENT, ... MUST BE VOLUNTARY, BUT MUST BE KNOWING, INTELLIGENT ACTS DONE WITH "SUFFICIENT AWARENESS" of THE RELEVANT CIRCUMSTANCES AND LIKELY CONSEQUENCES.", GARDNER V. WARDEN of VA.

4. "... THE JUDGE MUST DETERMINE IF THE ACCUSED IS AWARE OF HIS CONST. RIGHTS, THE NATURE OF THE CHARGES AGAINST HIM AND WHETHER THE PLEA IS INTELLIGENT AND VOLUNTARILY MADE, ALL of WHICH MUST APPEAR ON THE RECORD." SEE VA. RULE 3A:8, FORM 6 AND 7", AS QUOTED IN SISK V. COM. (VA. APP.).

APPENDIX "F", (3 of 11)

5. "THE TRIAL COURT DENIED MR. DUBOIS' 'DUE PROCESS" OF LAW BY IMPOSING AN ILLEGAL SENTENCE NOT AUTHORIZED BY VA. LAW, IN VIOLATION OF MR. DUBOIS' CONSTITUTIONAL RIGHTS. DUBOIS V. GREENE (C.A.4 (VA) 1998

B. VIRGINIA'S CODE

1. "MOTION TO WITHDRAW PLEA OF GUILTY PURSUANT TO VA. CODE, SECTION 19.2-296, "SUCH A PLEA IS VOLUNTARILY MADE WHEN THE DEFENDANT IS FULLY AWARE OF THE DIRECT CONSEQUENCES OF THE PLEA AND WAS NOT INDUCED TO PLEA AS SUCH; ... IF THE ACCUSED DOES NOT UNDERSTAND THE NATURE OF THE CONST. PROTECTIONS HE IS WAIVING OR BECAUSE THE DEFENDANT HAS SUCH AN INCOMPLETE UNDERSTANDING OF THE CHARGE THAT HIS PLEA CANNOT STAND AS AN INTELIGENT ADMISSION OF GUILT, THEN THE GUILTY PLEA MUST BE RENDERED INVOLUNTARY." COM. V. MOMEN.

2. "MR. DUBOIS' GUILTY PLEAS WERE NOT VOLUNTARY, KNOWING AND INTELIGENT, IN VIOLATION OF MR. DUBOIS' RIGHTS UNDER THE 5TH, 6TH, 8TH, AND 14TH AMENDMENTS TO THE U.S. CONST. AND SECTIONS 1, 8, 9, AND 11, OF THE ARTICLE ONE OF THE VA. CONSTITUTION."
DUBOIS V. GREENE

APPENDIX "F" (4 of 11)

III. VA.'S CASE LAW ON VA.'S RULE 3A:8

1. "NO STATUTE PERMITS THE TRIAL (JUDGE) TO ENTER A GUILTY PLEA FOR (AN ACCUSED) WITHOUT THE (ACCUSED'S) VOLUNTARY CONSENT AND FULL UNDERSTANDING OF THE RAMIFICATIONS OF HIS PLEAS." WILLIAMS V. COM.; MASON V. COM..

2. "THE CONST. REQUIRES THE CIRCUMSTANCES OF DEFENDANT'S GUILTY PLEA TO REFLECT THAT THE DEFENDANT WAS INFORMED OF ALL THE DIRECT CONSEQUENCES OF HIS PLEA." JEFFERSON V. COM. (VA. App.); BECK V. ANGELONE.

3. "THE ONLY ISSUES COGNIZABLE ON APPEAL FOLLOWING ENTRY OF... A NOLO CONTENDERE PLEA ARE THOSE BASED UPON CONSTITUTIONAL, JURISDICTIONAL, OR OTHER GROUNDS GOING TO THE LEGALITY OF THE PROCEEDINGS." HUGHES V. STATE, (FLA. App. 1990), QUOTING CLAUSON V. COM., (VA. App. 1999), QUOTING FRCP 11(b)(1)(N).

4. "THE DECISION MERELY RECITED AN EXISTING STANDARD PREVIOUSLY ANNOUNCED IN BOYKIN, I.E., A VALID GUILTY PLEA REQUIRES AN AFFIRMATIVE SHOWING THAT PLEA WAS INTELIGENT, VOLUNTARY, AND APPLIED THAT STANDARD TO A GUILTY PLEA..." CARROLL V. COM. (VA. App. 2009)

APPENDIX "F", (5 of 11)

5. "... GUILTY PLEA MUST BE ROOTED IN FACT BEFORE THEY MAY BE ACCEPTED." PERRY V. COM. (VA. APP. 2000); CORTESE V. BLACK, CITING N.C. V. ALFORD.

6. "AS SUCH, THE RULE (3A:8) SIMPLY REQUIRES THAT PRIOR TO ACCEPTING A DEFENDANT'S PLEA, THE TRIAL COURT MUST DETERMINE IF THE DEFENDANT IS AWARE OF HIS CONSTITUTIONAL RIGHTS, THE NATURE OF THE CHARGES AGAINST HIM, AND WHETHER THE PLEA IS INTELLIGENTLY AND VOLUNTARILY MADE, ALL WHICH MUST APPEAR ON THE RECORD", SISK V. COM., 3 VA. APP.; ZIGTA V. COM., (38 VA. APP.), BOYKIN V. ALABAMA.; RULE 3A:8, FORMS 6+7; AS QUOTED IN WEST'S ANNOTATED CODE OF VA.

7. "... PLEA OF GUILTY IS INTELLIGENTLY, VOLUNTARILY, AND KNOWINGLY MADE IN THE ABSENCE OF SUCH A SHOWING, THE TRIAL COURT IS IN FACT "REQUIRED TO REJECT THE PLEA." JAMES V. COM.; BOYKIN V. ALA., AS QUOTED IN WEST'S ANNOTATED CODE OF VA.

IV U.S.'S CASE LAW ON VA. RULE 3A:8 AND FRCP 11

* SEE SECTION I, NO.'S 1, 2, + 3.

A. VOLUNTARY, INTELLIGENT, KNOWING

1. "... ENTITLED TO HAVE A JUDGMENT OF AFFIRMANCE

VACATED AND THE CASE REMANDED FOR A STATE HEARING ON VOLUNTARINESS." JACKSON V. DENNO, 378 US 368, 393-394, 84 S.CT. 1774, 1789, 1790, 12 L.Ed. 2d (1964) AS QUOTED IN BOYKIN V. ALA.

2. "IN McCARTHY V. US, 394 U.S. 459, 89 S.CT. 1166, 22 L.Ed. 418 (1969), WE HELD THAT A FAILURE TO COMPLY WITH RULE 11 REQUIRED THAT A DEFENDANT WHO HAD PLEADED GUILTY BE ALLOWED TO "PLEA ANEW." BRADY V. U.S.

3. "MOREOVER, BECAUSE A GUILTY PLEA IS AN ADMISSION OF ALL THE ELEMENTS OF A FORMAL CRIMINAL CHARGE, IT CAN NOT BE TRULY VOLUNTARY UNLESS THE DEFENDANT POSSESSES AN UNDERSTANDING OF THE LAW IN RELATION TO THE FACTS." McCARTHY V. US, 394, 459, 89 S.CT. 1166, 22 L.Ed. 418; AS QUOTED IN BOYKIN V. ALA.

B. PREJUDICE; CAUSE AND ACTUAL

WATSON did BRING TO THE CIRCUIT COURT'S ATTENTION VIA his "MOTION TO VACATE, INTER ALIA, WEEKS AFTER DISCOVERING his SENTENCES WERE IN FACT "ILLEGAL" AND THEREFORE "VOID AB INITIO"!

AS FULLY EVIDENCED IN NUMEROUS MOTIONS AND BRIEFS, WATSON WOULD NOT HAVE PLEADED THE WAY HE did, had HE KNOWN of THE SLIGHTEST CHANCE of ANY INCREASE IN his SENTENCING, MUCH LESS A 66

(Sixty-Six) PERCENT INCREASE

1. "THE DEFENDANT MUST SHOW THAT THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S ERROR (ILLEGAL SENTENCE, INTER ALIA), HE WOULD NOT HAVE PLEADED GUILTY AND WOULD HAVE INSISTED ON GOING TO TRIAL", HILL V. LOCKHART, 474 U.S. 52, 59, (1985), AS QUOTED IN STOUT V. NETHERLAND.

2. "... HE LABORED UNDER A MISTAKE AND MISAPPREHENSION OF A MATERIAL FACT OR FACTS, WHICH INDUCED A PLEA THAT OTHERWISE WOULD NOT HAVE BEEN MADE", FARRIS V. COM.

C. DUE PROCESS VIOLATED

1. "IF THE CONVICTIONS ARE TO BE INSULATED FROM ATTACK, THE "TRIAL COURT" IS BEST ADVISED TO CONDUCT AN ON THE RECORD EXAMINATION OF THE DEFENDANT WHICH SHOULD INCLUDE, INTER ALIA, AN ATTEMPT TO SATISFY ITSELF THAT THE DEFENDANT UNDERSTANDS THE NATURE OF THE CHARGES, HIS RIGHT TO A JURY TRIAL, THE ACTS SUFFICIENT TO CONSTITUTE THE OFFENSES FOR WHICH HE IS CHARGED AND THE PERMISSABLE RANGE OF SENTENCE", WEST V. RUNDLE, AS QUOTED IN BOYKIN V. ALA.

2. "FOR THIS WAIVER (CONST. RIGHTS) TO BE VALID UNDER THE "DUE PROCESS CLAUSE", IT MUST BE AN INTENTIONAL RELINQUISHMENT OR ABANDONMENT OF A KNOWN RIGHT OR PRIVILEDGE." JOHNSON V. ZERBST, 304 U.S. 458, 464, 58 S.CT 1019, 82 L.Ed 1461 (1938), as QUOTED IN BOYKIN V. ALA.

3. "SENTENCING JUDGE MUST DEVELOP, ON THE RECORD, THE FACTUAL BASIS FOR GUILTY PLEA, AS FOR EXAMPLE, BY HAVING ACCUSED DESCRIBE CONDUCT THAT GAVE RISE TO THE CHARGE", SANTOBELLO V. NEW YORK, QUOTING FRCP 11, 18 U.S.C.A.

4. "ONLY WHEN DEFENDANT WAS NOT FULLY APPRISED OF IT'S CONSEQUENCES CAN HIS PLEA BE CHALLENGED UNDER "DUE PROCESS CLAUSE", U.S.C.A. AMENDS. 5, 14, AS QUOTED IN MABRY V. JOHNSON.

5. "MR. DUBOIS' GUILTY PLEAS WERE NOT VOLUNTARY, KNOWING, AND INTELIGENT, IN VIOLATION OF MR. DUBOIS' RIGHTS UNDER THE 5TH, 6TH, 8TH, AND 14TH AMENDMENTS TO THE U.S. CONST., AND SECTIONS 1, 8, 9, + 11 of ARTICLE ONE OF THE VIRGINIA CONST." DUBOIS V. GREENE.

6. "CONSEQUENTLY, if A DEFENDANT'S GUILTY PLEA IS NOT EQUALLY VOLUNTARY + KNOWING, IT HAS BEEN OBTAINED IN VIOLATION OF "DUE PROCESS"," BOYKIN V. ALA.

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7. "... thus only when it develops that the defendant was not fairly apprised of it's consequences, can his plea be challanged under the Due Process clause." Mabey v. Johnson.

D. Violations of "Due Process" via violations of VA. Rule 3A:8 and FRCP Rule 11 "Voids" all sentencing and allows defendant to "plea anew"

* First see: Granes v. Com. and Hines v. Com., 59 VA. App. 567, 721 S.E 2d. 792 (2012), "... This court agrees with Hines v. Com. that the mandatory minimum sentence constitutes both the mandatory minimum and the mandatory maximum."

VA. 1. "The Rawls decision created a new rule that; is designed to ensure that all criminal defendants whose punishments have been fixed in violation of the statutorially prescribed ranges are treated uniformly, without any speculation. We hold that a sentence imposed in violation of a prescribed statutory range of punishment is "void ab initio". Com. v Rawls.

2. "Rule 11 (h) of the FRCP... errors committed by district court during "plea colloquy"... because

WE CONCLUDE RULE 11(c)(3) + (c)(4) VIOLATIONS AFFECTED WURTH'S SUBSTANTIAL rights, THE JUDGMENT of DISTRICT COURT is VACATED AND REMANDED TO GIVE WURTH CHANCE TO ENTER A NEW PLEA.", U.S. V. WURTH, 56 F. 3d 63 (C.A. 4 (VA.) 1995, "ALSO, WE CAN NOT CONCLUDE, HOWEVER THAT WURTH UNDERSTOOD THE CONSEQUENCES of his PLEA... this failure STRIKES DIRECTLY AT THE HEART of WHAT 11 WAS DESIGNED TO PREVENT - THE UNKNOWING AND UNINTELLIGENT WAIVER of CONSTITUTIONAL rights".

3. "... OBTAINED IN VIOLATION of "DUE PROCESS" AND IS THEREFORE "VOID"...". BOYKIN V. ALA.

4. "If A DEFENDANT'S guilty PLEA IS NOT EQUALLY VOLUNTARY AND KNOWING, IT HAS BEEN OBTAINED IN VIOLATION of "DUE PROCESS" AND IS THEREFORE "VOID", BOYKIN V. ALA.

"VOLUNTARINESS of PLEA of GUILTY CAN BE DETERMINED ONLY by CONSIDERING ALL of THE RELEVANT CIRCUMSTANCES SURROUNDING IT.", FRCP 11

ABUNDANT EVIDENCE SHOWS WATSON did NOT KNOW ALL THE CONSEQUENCES TO his PLEAS, THEREFORE THE PLEAS WERE NOT VOLUNTARY, KNOWING + INTELLIGENT, VIOLATING his rights UNDER THE 5TH, 6TH, 8TH, + 14TH AMEND. TO THE US CONST. AND SECTIONS 1, 8, 9, + 11, of ARTICLE ONE of THE VIRGINIA CONSTITUTION.

APPENDIX "F", (11 of 11)

TABLE of AUTHORITIES IN SUPPORT of "VOID"

[PURSUANT TO VA. S. CT. RULE 3A:8 AND US S. CT. RULE 11]

VIRGINIA S. CT. RULE 3A:8

[PAGE #'S REFER TO WATSON'S "MOTION TO STRIKE..." DATED 4/11/18]

	CASES	PAGE(S)
1.	CLAUSON V. COM. 511 S.E. 2d 499, 29, VA. App. 282, (VA. App. 1999).	36
2.	COM. V. MOMEN 2006 WL 2578633 (VA. Cir. Ct. 2006).	34, 42, 144
3.	COM. V. RAWLS 278, VA. 213 (2009).	22
4.	GARDNER V. WARDEN... (VA. 1981)	23, 44, 45, 48, 144
5.	GRAHAM V. COM. VA. App. 1990, 397 S.E. 2d 270, 11 VA. App. 133.	21, 43, 45, 48, 145
6.	HALL V. COM. 30 VA. App. 74 (1999)	19, 23, 29, 30, 41, 48

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7. HOLLER V. COM. 23
220 VA. 961, 968, 265, SE. 2d. 715, 719 (1980); 281 S.E. 2d. 876, 222 VA. 491.

8. JAMES V. COM. 20, 28, 48, 135, 136
446 S.E 2d. 900, 18 VA. App. 746 (1994)

9. JEFFERSON V. COM. 28, 35, 72, 145
(VA. App. 1998).

10. JUSTIS
274 VA. 143, 645, S.E. 2d. 284 36

11. MANNING V. COM. 19, 49, 145
22 VA. App. 252, 254, 468, S.E. 705, 706 (1996)

12. MORENO V. COM. 19, 35, 79
(VA. App. 1999).

13. VIRGINIA CODE 23, 35

14. VIRGINIA CONSTITUTION 20, 43

15. VIRGINIA "CRIMINAL LAW" 23, 24
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84.

16. VIRGINIA S.CT. RULE 3A:8.

U.S. S.CT. RULE 11

[PAGE #'S REFER TO WATSON'S "MOTION TO STRIKE...", DATED 4/11/18]

	CASES	PAGE(S)
17.	AM. JUR "CRIMINAL LAW" SEC. 287, p. 961	34
18.	BOYKIN V. ALABAMA 89 S.CT. 1709, 395, US 238, (US, ALA. 1969)	1, 23, 31, 46, 47, 134, 135
19.	BECK V. ANGELONE 261 F.3d 377 (C.A.4 (VA) 2001)	28
20.	BRADY V. U.S. 90 S.CT. 1463, 397, US 742, (U.S. NM. 1970)	30, 31, 47, 48, 144
21.	CLASS V. U.S. 138 S.CT. 798 (2018)	37
22.	DUNCAN V. LOUISIANA 88 S.CT. 1444, 391, US 145, (US LA. 1968)	20, 127

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23. HUGHES V. STATE — 36
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(FLA. DIST. APP. 1990)

24. MABRY V. JOHNSON — 30, 41, 48, 73, 82, 135
467 US 504-509, 104 S. CT.
2453, 2546-47, 81 LED 437 (1987)

25. McMANN V. RICHARDSON — 28, 146
397 US 759, 771, 90 S. CT. 1441,
1449, 25 L.Ed. 2d. 763 (1970)

26. PARRIS V. COM. — 18, 33, 34, 35, 79, 143
52 SE. 2d. 872, 189, VA. 321 (1949)

27. SANTOBELLO V. NEW YORK — 20, 41, 73
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28. SPECHT V. PATTERSON — 31, 46
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1212, 18 L.Ed. 2d. 326

29. TOLLETT V. HENDERSON — 28, 146
411 US. 258, 93 S. CT. 1602,
36 L.Ed 2d. 235 (1973)

30. U.S. V. DAMON — 26
191 F. 3d. 561, 564 (4TH CIR. 1999)

31. U.S. V. HAIRSTON — 21, 26, 27, 37, 38, 39, 40, 54, 58, 59, 63, 87
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32. U.S. V. WURTH — 35
56 F.3d 63 (C.A. 4, VA. 1995)

33 C.F. VON MOLTKE V. GILLES — 30
332 U.S. 708, 68 S.Ct. 316, 92 L.Ed 309 (1948)

34. WEST V. RUNDLE — 27, 28, 32, 81
428 PA 102, 105-06, 237 A. 2d. 196, 197-198, (1968)

35. U.S. FEDERAL RULES of CRIMINAL PROCEDURE RULE 11.

"DUE PROCESS"

"UNDER VIRGINIA CONSTITUTION, STATUTES, AND RULES OF THE SUPREME COURT, TRIAL COURT MAY REJECT GUILTY TO WHOLE INDICTMENT TENDERED WITHOUT PLEA AGREEMENTS ONLY WHEN IT DETERMINES THAT PLEA CONSTITUTIONALLY INVALID; SUCH DETERMINATION EXTENDS ONLY TO INSURING THAT GUILTY PLEA IS MADE VOLUNTARILY, INTELIGENTLY, AND KNOWINGLY". SEE VA CONSTITUTION, ARTICLE ONE § 8; CODE 1950 § 19.2-254; S.CT. RULES 3A:8(b)" [APPX] GRAHAM V. COM., VA.APP. 1990, 397, S.E.2d 2d 710, 11 VA.APP 133.

"THE TRIAL COURT DENIED MR DUBOIS' "DUE PROCESS of LAW" BY IMPOSING AN ILLEGAL SENTENCE NOT AUTHORIZED BY VIRGINIA LAW, IN VIOLATION of MR. DUBOIS' CONSTITUTIONAL RIGHTS." DUBOIS V. GREENE, (C.A.4 (VA) 1998).

"MR. DUBOIS' GUILTY PLEAS WERE NOT VOLUNTARY, KNOWING AND INTELIGENT, IN VIOLATION of MR. DUBOIS' RIGHTS UNDER THE 5TH, 6TH, 8TH, AND 14TH AMENDMENTS TO THE US CONSTITUTION, AND SECTIONS 1, 8, 9, AND 11, of THE ARTICLE ONE of THE VIRGINIA CONSTITUTION. [APPX.], DUBOIS V. GREENE, (C.A.4 (VA) 1998).

"THE JUDGE MUST DETERMINE IF THE ACCUSED IS AWARE of his CONSTITUTIONAL RIGHTS, THE NATURE of THE CHARGES ..., All of which MUST APPEAR ON THE RECORD. SEE RULE

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VA.'S RULE 3A:8, A MATTER OF FEDERAL "DUE PROCESS"

"THE COURT HAS IN EFFECT FASTENED UPON THE STATES, AS A MATTER OF FEDERAL CONSTITUTIONAL LAW, THE VISICL PROPHYLATIC REQUIREMENTS OF FRCP 11... ARE SUBSTANTIALLY APPLICABLE TO THE STATES AS A MATTER OF FEDERAL CONSTITUTIONAL "DUE PROCESS". BOYKIN V. ALA, 89 S.Ct. 1709, 395, U.S. 238, (U.S. ALA. 1969).

"VA.'S SUPREME COURT RULE 3A:11, IN RESPONSE TO THE REQUIREMENTS OF THE "DUE PROCESS" CLAUSE OF THE U.S. CONSTITUTION, AND FRCP 11 WAS MODIFIED TO RULE 3A:8, TO ADHERE TO FRCP 11. RULE 3A:8 IS SUBSTANTIALLY EQUIVALENT TO FRCP 11.", HOLLER V. COM, 220 VA. 961, 968, 265, S.E. 2d. 715 (1986) 281 S.E 2d. 876, 222, VA. 491.

"VA.'S RULE 3A:8... IS SUBSTANTIALLY EQUIVALENT TO FRCP 11." WEST'S ANNOTATED CODE OF VIRGINIA.

"RULE 3A:8 IS CONSISTENT WITH THE VIRGINIA CONSTITUTION'S ARTICLE I, SECTION 8, ESTABLISHING THAT THE PLEA IS MADE VOLUNTARY, KNOWINGLY, AND INTELLIGENTLY, AND PLACES NO LIMITATIONS..., OTHER THAN THE CONSTITUTIONAL REQUIREMENTS...", GRAHAM V. COM, VA. APP. 1990, 397 S.E 2d, 270, 11 VA. APP. 133.

"THE ONLY ISSUES COGNIZABLE ON APPEAL FOLLOWING ENTRY OF ... A NOLO CONTENDERE PLEA ARE THOSE BASED UPON CONSTITUTIONAL, JURISDICTIONAL, OR OTHER GROUNDS GOING TO THE "LEGALITY" OF THE PROCEEDINGS", HUGES V. STATE, (FLA. 1990), QUOTING CLAUSEN V. COM. (VA. APP 1999), QUOTING FRCP 11.

"THE VIRGINIA COURT OF APPEALS HAS NOTED THAT A TRIAL COURT SHOULD GRANT LEAVE TO WITHDRAW A PLEA OF GUILTY IF IT WAS ENTERED THROUGH A MISUNDERSTANDING AS TO IT'S EFFECTS" COM. V. MOMEN, 2006 WL 2578633 (VA. CIR. CT. 2006).

"... HE LABORED UNDER A MISTAKE AND MISAPPREHENSION OF A MATERIAL FACT OR FACTS, WHICH INDUCED A PLEA THAT OTHERWISE WOULD NOT HAVE BEEN MADE." PARRIS V. COM., 52 S.E. 2d. 872, 189, VA. 321 (1949).

"IF THE CONVICTIONS ARE TO BE INSULATED FROM ATTACK, THE TRIAL COURT IS BEST ADVISED TO CONDUCT AN ON THE RECORD EXAMINATION OF THE DEFENDANT WHICH SHOULD INCLUDE, INTER ALIA, AN ATTEMPT TO SATISFY ITSELF THAT THE DEFENDANT UNDERSTANDS THE NATURE OF THE CHARGE, HIS RIGHT TO A JURY TRIAL, THE ACTS SUFFICIENT TO CONSTITUTE THE OFFENSES FOR WHICH HE IS CHARGED AND THE PERMISSABLE RANGE OF SENTENCE." WEST V. RUNDLE, 428 PA 102, 105-06, 237 A. 2d. 196, 197-198 (1968), AS QUOTED IN BOYKIN V. ALA., 895 CT. 1709, 315, US 238 (US SUP. 1969)

"TRIAL COURT MAY REJECT WHEN IT DETERMINES THAT A PLEA IS CONSTITUTIONALLY INVALID; SUCH DETERMINATION EXTENDS ONLY TO INSURING THAT GUILTY PLEA IS MADE INVOLUNTARILY, INTELLIGENTLY, AND KNOWINGLY." GRAHAM V. COM., VA. APP. 1990, 397 S.E. 2d 270, 11 VA. APP. 133, REFERRING TO: CONSTITUTION, ARTICLE I § 8; CODE 1950, § 19.2-254; SUPREME COURT RULES 3A:8, 3A:8(b)."

ALSO, "A GUILTY PLEA IS A WAIVER OF CONSTITUTIONAL RIGHTS; ... SUCH A WAIVER IS CONSTITUTIONALLY SUFFICIENT ONLY WHEN IT IS VOLUNTARY AND INTELLIGENT; THE WAIVER IS TO BE ACCEPTED ONLY AFTER THE TRIAL JUDGE HAS MADE A DETERMINATION THAT IS VOLUNTARY AND INTELLIGENT."

"NO STATUTE PERMITS THE TRIAL (JUDGE) TO ENTER A GUILTY PLEA FOR (AN ACCUSED) WITHOUT THE (ACCUSED'S) VOLUNTARY CONSENT AND FULL UNDERSTANDING OF THE RAMIFICATIONS OF HIS OR HER PLEA." WILLIAMS V. COM., 529 S.E. 2d 799, 32, VA. APP. 609, 613, 419, S.E. 2d. 856, 859, (1992), QUOTING MASON V. COM.

"IT WAS ERROR, PLAIN ON THE FACE OF THE RECORD, FOR THE TRIAL JUDGE TO ACCEPT PETITIONER'S GUILTY PLEA WITHOUT AN AFFIRMATIVE SHOWING THAT IT WAS INTELLIGENT AND

VOLUNTARY." BOYKIN V. ALA, 89 S.CT. 1709, 395, U.S. 238, (U.S. ALA. 1969).

"VOLUNTARINESS of PLEA of GUILT CAN BE DETERMINED ONLY BY CONSIDERING ALL THE RELEVANT CIRCUMSTANCES SURROUNDING IT.", BRADY V. U.S, 90 S.CT 1463, 397, U.S. 742, (U.S, N.M. 1970), QUOTING FRCP RULE 11.

WHEN A PLEA IS NOT VOLUNTARY

"... A CONFESSION MUST BE FREE AND VOLUNTARY; THAT IS, IT MUST NOT BE EXTRACTED by ANY SORT OF THREATS [WATSON'S ATTORNEY "PROMISED" HE WOULD RECEIVE ONLY 12 YEARS, BUT IF HE WENT TO TRIAL HE WOULD GET 80-90 YEARS - SEE WATSON'S "MOTION TO STRIKE AND WITHDRAW ALL PLEAS"], OR VIOLENCE, NOR OBTAINED by ANY DIRECT OR IMPLIED PROMISES, HOWEVER SLIGHT, NOR THE EXERCISE OF ANY IMPROPER INFLUENCE"
BRADY V. U.S., 90 S.CT 1463, 397, U.S. 742, (U.S, N.M. 1970).

"SUCH A PLEA IS VOLUNTARILY MADE WHEN THE DEFENDANT IS FULLY AWARE OF THE DIRECT CONSEQUENCES OF THE PLEA AND WAS NOT INDUCED TO PLEA AS SUCH; ... IF THE ACCUSED DOES NOT UNDERSTAND THE NATURE OF THE CONSTITUTIONAL PROTECTIONS HE IS WAIVING OR BECAUSE THE DEFENDANT HAS SUCH AN INCOMPLETE UNDERSTANDING OF THE CHARGE THAT HIS PLEA CANNOT STAND

"ONCE A COURT HAS ENTERED A JUDGMENT OF CONVICTION OF A CRIME, THE QUESTION OF THE PENALTY TO BE IMPOSED IS ENTIRELY WITHIN THE PROVINCE OF THE LEGISLATURE, AND THE COURT HAS NO INHERENT AUTHORITY TO DEPART FROM THE RANGE OF PUNISHMENT LEGISLATIVELY PRESCRIBED." STARRS V. COM. 287 VA. 1 (VA 2014).

"A TRIAL COURT'S AUTHORITY TO DEPART DOWNWARD BELOW A MANDATORY MINIMUM IS NON-EXISTENT." MAUBERRY V. COM., 39 VA. APP. 576 (2003).

"BY PRESCRIBING A 'MANDATORY' SENTENCE, THE GENERAL ASSEMBLY HAS DIVESTED TRIAL JUDGES OF ALL DISCRETION RESPECTING PUNISHMENT." COM. ATTORNEY FOR CHESTERFIELD COUNTY, IN RE: 229 VA. 159 (VA 1985).

"THE DISTINCTION BETWEEN AN ACTION OF THE COURT THAT IS "VOID AB INITIO" RATHER THAN "VOIDABLE" IS THAT THE FORMER INVOLVES THE UNDERLYING AUTHORITY OF A COURT TO ACT ON A MATTER, WHEREAS THE LATTER INVOLVES ACTIONS TAKEN BY A COURT WHICH ARE IN ERROR." SINGH V. MOONEY, 261, 48 (2001)

* FOR FURTHER CITATIONS ON ILLEGAL SENTENCES SEE APPX.

PREJUDICE

WATSON HAS PROVIDED EXTENSIVE EVIDENCE TO THE COURTS THAT HE WAS "GROSSLY PREJUDICED".

APPENDIX "H", (6 of 7)

ADDITIONAL "DUE PROCESS" CASE LAW

VIRGINIA

CAIRNS V. COM., 40 VA. App. 271 (2003)

UNITED STATES

MAPP V. OHIO, 367 U.S. 643 (1961)

NORTH CAROLINA V. PEARCE, 395 U.S. 71, 711, (1969)

WEAVER V. GRAHAM, 450 U.S. 24 (1981)

U.S. V. LUNDIEN, 796 F.2d. 981 (CA.4 (VA) 1985)

U.S. V. WOOD, 378 F.3d. 342 (2004)

GREENLAW V. U.S., 544 U.S. 237 (2008)

ADDITIONAL CASE LAW ON "STANDING"

VIRGINIA:

CAIRNS V. COM., 40 VA. App. 271 (2003)

COM. V. GREER, 63 VA. App. 561 (2014)

EARLY V. LANDSIDLE, 237 VA 365 (1999)

HERNANDEZ V. COM., 55 VA. App 190 (VA. 2009)

HUMPHREYS, 180 VA. AT 772

LILLY V. COM, 50 VA. App 173, 187-88 (2007)

MORRISON, 239 VA. AT 170

RAWLS V. COM., 278 VA 213 (2009)

SINGH V. MOONEY, 261 VA. (2001)

ADDITIONAL CASE LAW ON "STANDING"

VIRGINIA:

STARRS V. COM., 287 VA. 1 (VA. 2014)

VIRGINIA-PILOT MEDIA COMPANIES, LLC. V. DOW JONES + CO. INC., 280 VA 464 (VA. 2010).

UNITED STATES:

GREENLAW V. U.S., 544 U.S. 237 (2008)

MAPP V. OHIO, 367 U.S. 643 (1961)

NORTH CAROLINA V. PEARCE, 395 U.S. 711 (1969)

U.S. V. WOOD, 378 F.3d 342 (2004)

WEAVER V. GRAHAM, 450 U.S. 24 (1981)

APPENDIX "I", 2 of 2

CASE LAW

SUPPORTING COURTS
CAN NOT SIMPLY INCREASE
SENTENCES AT A LATER DATE.

VIRGINIA - GAIRNS V. COM., 40 VA. App. 271 (2003)

U.S. 4TH CIR. - U.S. V. LUNDIEN, 769, F.2d 981 (4TH CIR 1989).

U.S. 4TH CIR. - U.S. V. COOK, 890, F.2d 672 (4TH CIR 1989).

NORTH CAROLINA V. PEARCE, 395 U.S. 711 (1969).