VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 14th day of February, 2020.

Quintin Irving Brown,

Appellant,

against Record No. 190774
Court of Appeals No. 1078-18-2

Commonwealth of Virginia,

Appellee.

From the Court of Appeals of Virginia

Upon consideration of appellant's petition for appeal from the Court of Appeals of Virginia, the Court is of the opinion that an appeal should be awarded as to Assignment of Error II to the extent it asserts the Court of Appeals of Virginia erred in refusing to apply the ends of justice exception to Rule 5A:18 and consider appellant's contention that

> [t]he trial court erred in convicting Mr. Brown of lesser included misdemeanor offenses of receiving stolen property, and false identification, following Mr. Brown's Motion to Set Aside the Verdict without determining if Mr. Brown knowingly, and intelligently, waived his right to a jury on those two, new misdemeanor offenses.

Upon further consideration whereof, and for the following reasons, we affirm.

As we explained in our order denying Brown's habeas petition, the circuit court's June 11 and 13, 2018 orders that purported to reduce Brown's felony convictions for receiving stolen property and identity theft to misdemeanors were void *ab initio* under Rule 1:1, and the circuit court's February 20, 2018 conviction and sentencing orders remain in full force and effect. *Brown v. Irving, Sheriff, etc., et al.* Record No. 180226. Accordingly, regardless of whether the Court of Appeals correctly applied Rule 5A:18, it could not consider whether Brown had to waive his right to a jury before his felony convictions were reduced to lesser included misdemeanor offenses. *See Rives v. Commonwealth*, 284 Va. 1, 2 (2012) ("An appellate court may properly affirm a judgment appealed from where the court from which the appeal was taken reached the correct result but assigned a different reason for its holding."). Further, to avoid

APPENDIX A

additional confusion regarding the operative conviction and sentencing orders in this case, we vacate the circuit court's orders of June 11 and 13, 2018.

Upon further consideration of the record and the pleadings filed in this case, the Court refuses Assignment of Error I and the remainder of Assignment of Error II. The Court dismisses Assignments of Error III and IV as insufficient under Rule 5:17(c)(1)(iii) because they do not address any finding or ruling of the Court of Appeals or any failure of the Court of Appeals to rule on an issue.

It is ordered that the Commonwealth of Virginia recover of the appellant the costs in this Court and in the courts below.

This order shall be certified to the Court of Appeals of Virginia and to the Circuit Court of the City of Richmond.

Costs due the Commonwealth
by appellant in Supreme
Court of Virginia:

Public Defender $950.00 plus costs and expenses

A Copy,

Teste:

Clerk

APPENDIX A

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 12th day of August, 2019.

Quintin Irving Brown, Appellant,

against Record No. 190774
Court of Appeals No. 0178-18-2

Commonwealth of Virginia, Appellee.

From the Court of Appeals of Virginia

On June 13, 2019 came the appellant, by counsel, and filed a petition for a writ of certiorari in this case.

Upon consideration whereof, a writ of certiorari is hereby awarded, directed to Edward F. Jewett, Clerk of the Circuit Court of the City of Richmond, requiring him forthwith to send to the Clerk of this Court the motion to set aside filed by Quintin Irving Brown on April 12, 2018 in case nos. CR17F-3201 and CR15F-5052.

This order shall be certified to the Clerk of the Circuit Court of the City of Richmond, which certification shall have the same force and effect as if a writ of certiorari were formally issued and served.

A Copy,

Teste:

Clerk

APPENDIX B

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 5th day of March, 2019.

Quintin Irving Brown, No. 1146667, Petitioner,

against Record No. 180226

Antionette V. Irving, Sheriff, City of Richmond, et al., Respondents.

Upon a Petition for a Writ of Habeas Corpus

Upon consideration of the petition for a writ of habeas corpus filed February 15, 2018, the amended petition filed March 22, 2018, the rule to show cause, the respondents' motions to dismiss, and petitioner's replies, the Court is of the opinion that the motions should be granted and the writ should not issue.

On June 28, 2017, petitioner was tried and found guilty in the Circuit Court of the City of Richmond ("circuit court") of felony eluding, felony receiving stolen property, misdemeanor driving on a suspended or revoked operator's license with priors, and two traffic infractions for failing to obey a highway or traffic sign or signal ("June 28 convictions").

On January 30, 2018, petitioner was tried and found guilty in the circuit court of felony identity theft, second or subsequent offense ("January 30 conviction"), and was sentenced on that conviction to five years' imprisonment with five years suspended and on his June 28 felony and misdemeanor convictions to nine years and ten days' imprisonment with five years suspended. He received no incarceration on the two traffic infractions.

On February 20, 2018, the circuit court entered final sentencing orders memorializing its June 28, 2017 and January 30, 2018 rulings. In its first February 20 sentencing order, the court sentenced petitioner on his convictions for felony eluding, felony receiving stolen property, and misdemeanor driving on a suspended or revoked operator's license with priors to nine years and ten days' imprisonment with five years suspended and imposed no incarceration for the two traffic infractions. In its second February 20 sentencing order, the court sentenced petitioner on his conviction for felony identity theft, second or subsequent offense, to five years' imprisonment with five years suspended. On February 28, 2018, petitioner's

APPENDIX C

appellate counsel filed a notice of appeal to the Court of Appeals of Virginia, appealing all of petitioner's convictions. That appeal is presently pending in the Court of Appeals.

On March 13, 2018, the circuit court entered orders suspending its two February 20 sentencing orders until April 23, 2018, to hear post-trial motions.

At a hearing on April 23, 2018, the circuit court announced in open court that it would grant petitioner's motion to set aside his convictions for felony receiving stolen property and felony identity theft, second or subsequent offense, reduce those convictions to misdemeanors, and impose a new sentence of twelve months' incarceration with twelve months suspended on each such conviction. That same day, the circuit court entered an order further suspending petitioner's first February 20 sentencing order until April 27, 2018, but did not enter an order further suspending the second February 20 sentencing order beyond April 23, 2018.

On June 11, 2018, the circuit court entered a "Resentencing Order," memorializing its rulings announced at the April 23 hearing to reflect that petitioner's felony conviction for receiving stolen property and felony conviction for identity theft, second or subsequent offense, were reduced to misdemeanor convictions, and to reflect the new sentences imposed on each of those convictions. On June 13, 2018, the circuit court entered another re-sentencing order correcting a clerical error in the June 11 order.

Pursuant to Rule 1:1 "final judgments . . . shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer." Accordingly, once the circuit court's suspension of each February 20 final sentencing order expired on April 23 and April 27, 2018, respectively, the February 20 final orders went into full force and effect and the twenty-one-day period pursuant to Rule 1:1 began to run. Because the circuit court entered the June 11 and 13, 2018 re-sentencing orders after the twenty-one-day period expired as to each February 20 order, the June 11 and 13 orders are void and of no effect, the court having no jurisdiction over petitioner's cases when it entered those orders. Consequently, the February 20, 2018 sentencing orders remain in full force and effect.

On August 29, 2017, petitioner filed a petition for a writ of habeas corpus in the circuit court against then Richmond City Sheriff C.I. Woody, challenging the legality of his confinement pursuant to his June 28 convictions. Petitioner subsequently moved to amend and filed an amended petition in the circuit court on April 8, 2018. To date, the circuit court has not

APPENDIX C

granted petitioner leave to file an amended petition and has not ordered the sheriff to respond to the petition.

On February 15, 2018, petitioner filed a petition for a writ of habeas corpus in this Court ("the petition"), challenging the legality of his confinement pursuant to all of his convictions and pursuant to an additional indictment for identity theft, second or subsequent offense, brought against him in the Circuit Court of the City of Richmond in Case Number CR15-F-5106. Petitioner subsequently moved to amend his petition, which motion the Court granted and ordered the amended petition received on March 22, 2018 filed ("amended petition").

In claim (a) in the petition, petitioner contends the evidence was insufficient to convict him of felony receiving stolen property.

In a portion of claim (b) in the petition, petitioner contends he was deprived his right to a speedy trial on his charges for felony eluding and misdemeanor driving on a suspended or revoked operator's license with priors and on his traffic infractions for failure to obey a highway or traffic sign or signal.

In claim (c) in the petition, petitioner contends "falsus ino uno testimony by car owner; falsification of summonses by law enforcement officer."

The Court declines to consider claims (a) and (c) and this portion of claim (b). Petitioner presented these claims in his first habeas petition filed in the circuit court, which is presently pending.

In another portion of claim (b) in the petition, petitioner contends he was denied his right to a speedy trial on his charge for identity theft, second or subsequent offense, in Case Number CR15-F-5106.

The Court holds this portion of claim (b) is not cognizable in habeas corpus because the record, including the circuit court record for Case Number CR15-F-5106, demonstrates petitioner is not being detained on the indictment in that case because the circuit court granted petitioner's motion to quash it. *See* Code § 8.01-654 ("The writ of habeas corpus . . . shall be granted forthwith by the Supreme Court . . . to any person who shall apply for the same by petition, showing by affidavits or other evidence probable cause to believe that he is detained without lawful authority).

APPENDIX C

In claim (a) in the amended petition, petitioner contends the trial court denied petitioner his right to pursue a direct appeal in Case Number CR15-F-5106.

The Court holds claim (a) is barred by Code § 8.01-654(B)(2) and *Dorsey v. Angelone*, 261 Va. 601, 604, 544 S.E.2d 350, 352 (2001). This claim, the facts of which were known prior to petitioner's first petition for a writ of habeas corpus in the circuit court, were not previously raised. Further, claim (a) is not cognizable in habeas corpus because the record, including the circuit court record for Case Number CR15-F-5106, demonstrates petitioner is not being detained on the indictment in that case because the circuit court granted petitioner's motion to quash it. *See* Code § 8.01-654.

In claim (b) in the amended petition, petitioner contends he was "subjected to double jeopardy by same facts in [Case Number] CR17-3201," which is his conviction for identity theft, second or subsequent offense.

In claim (d) in the amended petition, petitioner contends the February 20, 2018 sentencing order is incorrect because it does not include a sentence for his conviction for identity theft, second or subsequent offense.

The Court holds claims (b) and (d) are barred because these non-jurisdictional issues could have been raised during the direct appeal process and, thus, are not cognizable in a petition for a writ of habeas corpus. *Slayton v. Parrigan*, 215 Va. 27, 29 (1974), *cert. denied*, 419 U.S. 1108 (1975).

In claim (c) in the amended petition, petitioner contends "inadequacy of counsel (6th, 9th, 14th Amendments); deprivation of rights to bail/appeal."

The Court holds claim (c) asserts conclusions or opinions without providing factual support and, therefore, will not support the issuance of a writ of habeas corpus. *Penn v. Smyth*, 188 Va. 367, 370-71 (1948).

In petitioner's reply to Harold W. Clarke's motion to dismiss, petitioner raises new claims of ineffective assistance of counsel and trial court error for the first time. Because petitioner has not moved for leave to amend his petition to add these claims, we decline to consider them. *See* Rule 5:7(e) ("If the statute of limitations has not expired, a petitioner may move — at any time before a ruling is rendered on the merits of the petition as initially filed—for

APPENDIX C

leave of this Court to substitute an amended petition. This amendment can include additional claims not presented in the petition as initially filed.")

Upon consideration, petitioner's requests for an evidentiary hearing and for leave to file a Motion to Vacate his sentences are denied.

Accordingly, the petition and amended petition are dismissed and the rule is discharged.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By: Deputy Clerk

APPENDIX C

VIRGINIA:

In the Court of Appeals of Virginia on **Thursday** *the* **28th** *day of* **February, 2019.**

Quintin Irving Brown, Appellant,

against Record No. 1078-18-2
Circuit Court Nos. CR15-F-5052, CR15-F-5107,
CR15-M-5108 through CR15-M-5110 and CR17-F-3201

Commonwealth of Virginia, Appellee.

From the Circuit Court of the City of Richmond

Per Curiam

This petition for appeal has been reviewed by a judge of this Court, to whom it was referred pursuant to Code § 17.1-407(C), and is denied for the following reasons:

I. Appellant was convicted at a bench trial of felony eluding, driving with a suspended license, failure to obey a highway sign, failure to a obey stop sign, receiving stolen property, and identity theft, second offense. He contends that the "trial court erred in finding [him] guilty of receiving stolen property as there was insufficient evidence that [he] knew the vehicle he was driving was stolen."[1]

"Upon a review of a challenge to the sufficiency of the evidence to support a conviction, 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" Spratley v. Commonwealth, 69 Va. App. 314, 317 (2018) (quoting Kelly v. Commonwealth, 41 Va. App. 250, 257 (2003) (*en banc*)). "If there is evidentiary support for the conviction, 'the reviewing court is not permitted to substitute its own judgment, even if its opinion might differ from the conclusions reached by the finder of fact at the trial.'" Chavez v. Commonwealth, 69 Va. App. 149, 161 (2018) (quoting Banks v. Commonwealth, 67 Va. App. 273, 288 (2017)). "Therefore, under this highly deferential standard of review on appeal, '[t]he

[1] Appellant does not challenge the sufficiency of the evidence supporting his other convictions.

APPENDIX D

judgment of the trial court is presumed to be correct and will be reversed only upon a showing that it is "plainly wrong or without evidence to support it."'" Ervin v. Commonwealth, 57 Va. App. 495, 503 (2011) (*en banc*) (quoting Viney v. Commonwealth, 269 Va. 296, 299 (2005)).

On June 4, 2015, Joshua Meyers discovered that his Toyota Camry had been stolen from the parking lot outside of his apartment building in Richmond. Meyers reported the theft to the police. Approximately three weeks later, the police recovered Meyers' car. In the car's trunk, Meyers found "trash bags full of bank statements, letters all addressed to [appellant]."

On June 22, 2015, Capital Police Officer Andrew Sentipal was on patrol in the City of Richmond when he observed a Toyota Camry make an illegal U-turn. Sentipal pulled in behind the Camry and activated his emergency lights to initiate a traffic stop. The car pulled to the side of the road near a highway entrance ramp. Sentipal approached the vehicle and observed that appellant was the car's driver. Sentipal asked for appellant's license and registration. Appellant stated that he did not have his license with him and told Sentipal that his name was "William James." Sentipal returned to his car to "run the information" but as soon as he sat down, appellant "pulled away from the stop." Sentipal activated his sirens and began following appellant. Appellant drove onto Interstate 95 North and then onto Interstate 64 East. The traffic was "pretty heavy" at the beginning of the pursuit and "started to open up a little bit more" as they continued traveling east. Appellant drove in a "reckless" manner, was "speeding excessively," made multiple lane changes, drove on the shoulder, and repeatedly "went across all of the lanes of the highway all at once." Sentipal drove as fast as 120 miles per hour to keep up with appellant. Other cars on the highway either moved out of appellant's way or were cut off by appellant. The trial court viewed Sentipal's dash-cam video of the incident. The pursuit began in the City of Richmond and ended in New Kent County when appellant pulled into the highway median and surrendered.

In a search incident to appellant's arrest, Sentipal located two wallets — one contained appellant's identification and "the other wallet had Willie James's identification in it." When he searched the car, Sentipal found several sets of license plates, including paper temporary tags and a set of permanent tags. The

APPENDIX D

tags on the car were registered to appellant but were for a different vehicle. The permanent tags inside the car were Meyers' tags. Sentipal also discovered that appellant had numerous driving convictions and that his license was suspended.

"If any person buys or receives from another person, or aids in concealing, any stolen goods or other thing, knowing the same to have been stolen, he shall be deemed guilty of larceny thereof, and may be proceeded against, although the principal offender is not convicted." Code § 18.2-108(A). "[A]n essential element of the offense of receiving stolen property is guilty knowledge." Covil v. Commonwealth, 268 Va. 692, 695 (2004) (quoting Roberts v. Commonwealth, 230 Va. 264, 270 (1985)). "[G]uilty knowledge may be supplied by circumstantial evidence, including the circumstance that the accused was in possession of recently stolen property." Id. (quoting Roberts, 230 Va. at 270). In addition, circumstantial evidence of a defendant's efforts to evade arrest may be sufficient to prove that appellant received the vehicle with guilty knowledge. See Spitzer v. Commonwealth, 233 Va. 7, 9 (1987) (holding that the defendant's "frantic efforts to evade arrest" was sufficient "to prove concealment with guilty knowledge"). "Guilty knowledge 'is sufficiently shown if the circumstances proven are such as must have made or caused the recipient of stolen goods to believe they were stolen.'" Bazemore v. Commonwealth, 42 Va. App. 203, 212 (2004) (*en banc*) (quoting Snow v. Commonwealth, 33 Va. App. 766, 775 (2000)).

Here, in finding that the evidence demonstrated that appellant knew the car was stolen, the trial court emphasized appellant's possession of the recently stolen car and the presence of multiple license plates, including the plates on the car which were registered to appellant but belonged to a different vehicle. The trial court also noted appellant's attempt to flee from the police and the presence of his mail throughout the vehicle. Appellant argues that "these circumstances do not exclude the reasonable hypothesis of innocence that [he] did not know the vehicle was stolen" and that the evidence "is as consistent with his innocence as it is with any alleged knowledge of the stolen status of the vehicle."

APPENDIX D

Whether a "hypothesis of innocence is reasonable is a question of fact and, therefore, is binding on appeal unless plainly wrong." Wood v. Commonwealth, 57 Va. App. 286, 306 (2010) (quoting Emerson v. Commonwealth, 43 Va. App. 263, 277 (2004)).

"Appellant's exclusive possession of the stolen automobile was sufficiently 'recent' to justify the inference" that he knew the car was stolen. Winston v. Commonwealth, 26 Va. App. 746, 757 (1998). See Montgomery v. Commonwealth, 221 Va. 188, 190 (1980) (holding that "[f]our weeks is not, as a matter of law, so long a time that goods may not be considered recently stolen"); Wright v. Commonwealth, 2 Va. App. 743, 748 (1986) (holding that "the one month time lapse between when the items were discovered missing and when they were found in [the defendant's possession] is sufficiently brief to be construed as recent possession"). Appellant's possession of the car along with his determined effort to evade the police, the presence of his license plates from another car on the stolen Camry, and the other evidence, provided the trial court with sufficient evidence to conclude appellant possessed the stolen car with the requisite knowledge.

II. Appellant asserts that the "trial court erred in finding [him] guilty of felony eluding as there was insufficient evidence that [he] drove in a manner that interfered with, or endangered, the operation of the law-enforcement vehicle or a person, in the City of Richmond." He argues that his "driving behavior of 120 miles per hour, and multiple lane changes, did not occur in the City of Richmond." He concedes that he failed to challenge venue before the trial court but states that "[t]his issue can be heard by this Court under the ends of justice exception to Rule 5A:18."

Code § 46.2-817(B) provides, in pertinent part:

> Any person who, having received a visible or audible signal from any law-enforcement officer to bring his motor vehicle to a stop, drives such motor vehicle in a willful and wanton disregard of such signal so as to interfere with or endanger the operation of the law-enforcement vehicle or endanger a person is guilty of a Class 6 felony.

"No ruling of the trial court . . . will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable the Court of Appeals to attain the ends of justice." Rule 5A:18. "The purpose of this contemporaneous objection

APPENDIX D

requirement is to allow the trial court a fair opportunity to resolve the issue at trial, thereby preventing unnecessary appeals and retrials." Creamer v. Commonwealth, 64 Va. App. 185, 195 (2015). "The 'ends of justice' exception to Rule 5A:18 is 'narrow and is to be used sparingly.'" Melick v. Commonwealth, 69 Va. App. 122, 146 (2018) (quoting Pearce v. Commonwealth, 53 Va. App. 113, 123 (2008)). "[T]he ends of justice analysis is a two-step process: determining whether the alleged error occurred, and, if so, whether justice requires application of the ends of justice provision." Hines v. Commonwealth, 59 Va. App. 567, 572 (2012). "In order to avail oneself of the exception, a *defendant must affirmatively show* that a miscarriage of justice has occurred, not that a miscarriage might have occurred." Melick, 69 Va. App. at 146 (quoting Redman v. Commonwealth, 25 Va. App. 215, 221 (1997)). "In order to show that a miscarriage of justice *has* occurred, thereby invoking the ends of justice exception, the appellant must demonstrate that he or she was convicted for conduct that was not a criminal offense or the record must affirmatively prove that an element of the offense did not occur." Le v. Commonwealth, 65 Va. App. 66, 74 (2015) (quoting Redman, 25 Va. App. at 221-22). From our review of the record, we conclude that there is no affirmative evidence of innocence to show that a criminal offense did not occur.

"Venue, while important to the orderly conduct of litigation, is not a matter affecting the merits of the trial." Gheorghiu v. Commonwealth, 280 Va. 678, 689 (2010). "Venue is not an element of the crime that must be shown beyond a reasonable doubt to sustain a conviction." Id. "The General Assembly has limited the time in which objections to venue may be raised, Code § 19.2-244, and issues of venue may be waived." Id. "On this record, it is fair to assume that in whatever venue these charges were prosecuted, the end result would be no different." Id. Furthermore, the trial court specifically noted that "even before [appellant] got out of the City of Richmond, [he was] weaving in and out of traffic," indicating that appellant did, in fact, endanger a person while eluding Sentipal in Richmond. Appellant has not met his burden of showing that a miscarriage of justice has occurred. Moore v. Commonwealth, 59 Va. App. 795, 814 (2012). Accordingly, "there is no basis upon which to apply the ends of justice exception to this case." Copeland v.

APPENDIX D

Commonwealth, 42 Va. App. 424, 442 (2004). We decline to apply the ends of justice exception to address the merits of appellant's argument, and Rule 5A:18 bars consideration of his venue challenge on appeal.

III. Appellant contends that the trial court erred in convicting him "of lesser included misdemeanor offenses of receiving stolen property and false identification, following [his] motion to set aside the verdict without determining if [he] knowingly, and intelligently, waived his right to a jury on those two, new misdemeanor offenses." He again concedes that he failed to raise this issue before the trial court but requests that this Court address the issue under the ends of justice exception to Rule 5A:18.

Appellant originally was convicted of felony receiving stolen property and felony identity theft. In a motion to set aside the verdicts, appellant argued that the evidence failed to establish that the value of the stolen car exceeded two hundred dollars or that he previously had been convicted of identity theft. The Commonwealth agreed with both arguments. Appellant's counsel specifically requested that the trial court reduce the two convictions to misdemeanors. On appeal, appellant argues that at no time did he "enter a plea, of either guilty or not guilty, to the amended misdemeanor charges, nor was he specifically found guilty by the trial court of the amended misdemeanor charges." In Fitzgerald v. Commonwealth, 31 Va. App. 739, 742 (2000), this Court found that the trial court "exceeded its authority" by "failing to order a new trial on the lesser offense" and that a "trial judge presiding over a jury trial" is not authorized "to find the defendant guilty of a lesser offense where the trial judge finds the evidence insufficient to support the jury's conviction of the greater offense." Here, unlike in Fitzgerald, appellant was not tried by a jury on the original charges. Id. at 743.

Additionally, appellant specifically requested that the trial court reduce the convictions to misdemeanors. In Manns v. Commonwealth, 13 Va. App. 677 (1992), the defendant was convicted in a bench trial of maliciously throwing a missile at a moving vehicle. At the sentencing hearing, defense counsel expressly requested that the trial court find him guilty of the lesser-included offense of interfering with the property rights of another. On appeal, the defendant argued that the evidence was insufficient to support the lesser-included offense. This Court affirmed the conviction, finding that the defendant, having specifically

APPENDIX D

requested that the trial court find him guilty of the lesser offense, could not assume an inconsistent position on appeal. See id. at 679-80. "No litigant, even a defendant in a criminal case, will be permitted to approbate and reprobate — to invite error . . . and then to take advantage of the situation created by his own wrong." Powell v. Commonwealth, 267 Va. 107, 144 (2004) (quoting Fisher v. Commonwealth, 236 Va. 403, 417 (1988)). The record is clear that appellant specifically asked for the remedy he received.

Appellant's reliance on the ends-of-justice exception to Rule 5A:18 is misplaced. "The approbate-reprobate doctrine is broader and more demanding than Rule 5A:18. The very fact that [appellant] 'invited the error' . . . renders Rule 5A:18's ends-of-justice exception inapplicable." Alford v. Commonwealth, 56 Va. App. 706, 709 (2010). See also Vay v. Commonwealth, 67 Va. App. 236, 263 n.12 (2017). Accordingly, appellant will not now be heard to complain of actions by the trial judge that he himself asked the judge to take.

This order is final for purposes of appeal unless, within fourteen days from the date of this order, there are further proceedings pursuant to Code § 17.1-407(D) and Rule 5A:15(a) or 5A:15A(a), as appropriate. If appellant files a demand for consideration by a three-judge panel, pursuant to those rules the demand shall include a statement identifying how this order is in error.

It is ordered that the Commonwealth recover of the appellant the costs in this Court, which costs shall include a fee of $400 for services rendered by the Public Defender on this appeal, in addition to counsel's necessary direct out-of-pocket expenses, and the costs in the trial court.

This Court's records reflect that the Office of the Public Defender for the City of Richmond is counsel of record for appellant in this matter.

APPENDIX D

Costs due the Commonwealth
by appellant in Court of
Appeals of Virginia:

Public Defender $400.00 plus costs and expenses

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By: Marty L P. Ring
Deputy Clerk

APPENDIX D

VIRGINIA:

In the Court of Appeals of Virginia on **Tuesday** *the* **14th** *day of* **May, 2019**.

Quintin Irving Brown, Appellant,

against Record No. 1078-18-2
Circuit Court Nos. CR15-F-5052, CR15-F-5107,
CR15-M-5108 through CR15-M-5110 and CR17-F-3201

Commonwealth of Virginia, Appellee.

From the Circuit Court of the City of Richmond

Before Chief Judge Decker, Judges Beales and Malveaux

For the reasons previously stated in the order entered by this Court on February 28, 2019, the petition for appeal in this case hereby is denied.

It is ordered that the Commonwealth recover of the appellant an additional fee of $100 for services rendered by the Public Defender on this appeal, in addition to counsel's costs and necessary direct out-of-pocket expenses. The Commonwealth shall also recover of the appellant the costs reflected in this Court's February 28, 2019 order.

This order shall be certified to the trial court.

Additional costs due the Commonwealth
by appellant in Court of Appeals of Virginia:

Public Defender $100.00 plus costs and expenses

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By: Kristen M. McKenzie

Deputy Clerk

APPENDIX E