VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 15th day of October, 2021.

Antron Adon Tucker, Appellant,

against Record No. 201195
Court of Appeals No. 2011-19-3

Commonwealth of Virginia, Appellee.

From the Court of Appeals of Virginia

On February 16, 2021 came court-appointed counsel and by motion requested leave to withdraw. The Court, finding that counsel has complied with the requirements of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967), in filing the requisite brief and in furnishing the appellant with a copy thereof, hereby grants the motion to withdraw.

The Court, upon further consideration of the entire record, finds no legal issues arguable on their merits and therefore refuses the petition for appeal and the pro se supplemental petition for appeal without appointment of additional counsel.

The Circuit Court of Wythe County shall allow court-appointed counsel the fee set forth below and also counsel's necessary direct out-of-pocket expenses. And it is ordered that the Commonwealth recover of the appellant the costs in this Court and in the courts below.

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

Attorney's fee $400.00 plus costs and expenses

A Copy,

Teste:

Muriel-Theresa Pitney, Acting Clerk

By: _____

Deputy Clerk

Petitioner's
EXHIBIT 1

VIRGINIA: IN THE CIRCUIT COURT OF WYTHE COUNTY

COMMONWEALTH OF VIRGINIA

v.

ANTRON ADON TUCKER

ORDER
FILE NO. CR17-440-00 THRU-02 F

A motion for a continuance was made by the defendant for the reasons stated to the record. After reviewing the motion, the Court finds that the continuance should be GRANTED for the reasons stated in the record. The Court hereby revokes the defendants bond and the defendant is to be held at the New River Valley Regional Jail. It is further ordered that the defendant pay for the cost of the Jury requested on January 10, 2019.

Therefore, the Court ORDERS that the case be continued until January 24th, 2019 at 9:30 a.m.

Enter this Order this 16th day of January 2019.

Josiah T. Showalter, Jr., Judge

VIRGINIA:

In the Court of Appeals of Virginia on **Monday** *the* **10th** *day of* **August, 2020.**

Antron Adon Tucker, Appellant,

against Record No. 2011-19-3
Circuit Court Nos. CR17000440-00 through CR17000440-02

Commonwealth of Virginia, Appellee.

From the Circuit Court of Wythe County

Before Senior Judges Annunziata, Frank and Retired Judge Bumgardner*

Counsel for appellant has moved for leave to withdraw. The motion to withdraw is accompanied by a brief referring to the part of the record that might arguably support this appeal. A copy of this brief has been furnished to appellant with sufficient time for appellant to raise any matter that appellant chooses. Appellant has not filed any *pro se* supplemental pleadings.

The Court has reviewed the petition for appeal, fully examined all of the proceedings, and determined the case to be wholly frivolous for the following reasons:

I. A jury convicted appellant of one count of possession with the intent to distribute more than one-half ounce but less than five pounds of marijuana, in violation of Code § 18.2-248.1; one count of possession of a Schedule I or II controlled substance with the intent to distribute, second or subsequent offense, in violation of Code § 18.2-248; and one count of transporting a Schedule I or II controlled substance into the Commonwealth, in violation of Code § 18.2-248.01. He contends that the trial court erred by denying his motion for the appointment of an expert to conduct a forensic examination of state police computer records, "denying him a possible defense."

* Retired Judge Bumgardner took part in the consideration of this case by designation pursuant to Code § 17.1-400(D).

In his written motion, appellant sought the appointment of a "forensic computer technician" and for the entry of an order allowing the technician "to examine all the computers/databases of the Virginia State Police in all its facilities located in Wythe County, Virginia" for:

> 1. Any and all radio communications between members of the Virginia State Police involved in the stop, detention, search, and seizure of the defendant within a period of one hundred twenty (120) minutes of the initial stop of the automobile containing the defendant which was stopped while travelling northbound on interstate seventy seven at the thirty one point six (31.6) mile marker at eleven zero seven A.M. (11:07 A.M.).

At the hearing on his motion, appellant asserted that he "believe[d] that the Commonwealth ha[d] not provided him with everything" in its discovery responses and that he further "believe[d] that there [were] recordings of radio conversations between state police officers that were involved in stopping and searching the vehicle he was found in . . . ." Appellant requested the appointment of a forensic expert "to actually go in and examine the state police computers."[1] After confirming with the Commonwealth that all discovery had been provided to appellant and that the Commonwealth had an "open file" policy, the trial court denied the motion.

Appellant asserts that the trial court erred by denying his motion

> [s]ince the members of the Virginia State Police had testified on previous occasions in the record of the case that they in fact had no advanced knowledge of the appellant's possible presence, the only manner in which this evidence could be elicited is by an expert forensic computer technician be[ing] allowed

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[1] When appellant made this motion, he had already been before the trial court twice on unsuccessful motions to suppress. The second suppression motion asserted that the traffic stop was unlawful because the trooper making the stop did not notice a dangling object on his rearview mirror until after making the stop; however, appellant ultimately withdrew the motion after the trooper testified that he saw the dangling object before pursuing appellant. Appellant argued in his motion that the appointment of the expert and his examination of the computer databases were

> necessary to establish that the . . .Virginia State Police officers were aware of the defendant's path of travel and intended to stop, detain, search, and seize the defendant and anything which could be found in his vehicle without the necessity of probable cause creating a "pretext" stop[,] which violates the defendant's constitutional rights under the fourth, fifth, and sixth amendments of the United States Constitution and Article I[,] Section eight of the Constitution of Virginia.

> to access the Virginia State Police database as neither the appellant nor counsel possessed the requisite knowledge to do so.
>
> Had the Court allowed such funds to be expended and *such supposition proved to be correct* then it would have brought serious credibility issues upon the Commonwealth's witnesses both as to their testimony and potential source of their information.

(Emphasis added). In essence, appellant sought the appointment of an expert based on a "supposition" that the officer's testimony regarding the basis for the stop was not credible.

"Whether a defendant has made the required showing of particularized need [for the authorization of state funds to hire an expert witness] is a determination that lies within the sound discretion of the trial court." Payne v. Commonwealth, 65 Va. App. 194, 219 (2015), aff'd, 292 Va. 855 (2016) (quoting Commonwealth v. Sanchez, 268 Va. 161, 165 (2004)). To obtain government funds for an expert, appellant had to demonstrate that "the subject which necessitate[d] the assistance of the expert [wa]s 'likely to be a significant factor in his defense,'" and that "he w[ould] be prejudiced by the lack of expert assistance." Id. at 220 (quoting Husske v. Commonwealth, 252 Va. 203, 212 (1996)). To satisfy that burden, he had to show "that 'the services of an expert would materially assist him in the preparation of his defense and that the denial of such services would result in a fundamentally unfair trial.'" Dowdy v. Commonwealth, 278 Va. 577, 592-93 (2009) (quoting Husske, 252 Va. at 212).

When appellant sought the appointment of an expert, he had already withdrawn his suppression motion challenging the legitimacy of his traffic stop, and there was no suppression motion pending. The lawfulness of the stop was not a defense to the drug charges at trial, and the Commonwealth presented overwhelming evidence of appellant's guilt at trial, including video footage of appellant admitting to the police that he was coming from Georgia, that he possessed the drugs, and that he intended to sell them to students on spring break. Even assuming that the legitimacy of the stop would have "materially assist[ed] him in the preparation of his defense," appellant did not demonstrate a particularized need by sheer speculation that the computer records would demonstrate that the trooper had lied at the suppression hearing. "Mere hope or suspicion that favorable evidence is available is not enough to require that such help be

provided." Husske, 252 Va. at 212 (quoting State v. Mills, 420 S.E.2d 114, 117 (N.C. 1992). Accordingly, the trial court did not abuse its discretion by denying appellant's motion.

II. Appellant contends that the trial court erred by denying his *pro se* motion "to discharge and forever bar . . . prosecution against him" because his speedy trial rights under Code § 19.2-243 were violated.

"[A] statutory speedy trial challenge presents a mixed question of law and fact. The Court reviews legal questions de novo, while giving deference to the trial court's factual findings." Young v. Commonwealth, 297 Va. 443, 450 (2019). Appellant was indicted on January 16, 2018. The trial date was continued for a variety of reasons, and on January 10, 2019, appellant was incarcerated. On January 10, 2019, the trial court continued the trial date on appellant's motion to January 24, 2019. On January 23, 2019, defense counsel moved to withdraw, and the parties appeared before the trial court on January 24, 2019. Appellant concurred in his attorney's motion. The trial court granted the motion, appointed new counsel, and set the trial over to April 2, 2019.

The record is silent regarding why the case was not tried on April 2, 2019. However, appellant filed a motion to suppress on April 29, 2019. Following a hearing on May 8, 2019, on the suppression motion, the Commonwealth moved to continue the trial to August 7, 2019. The trial court granted the continuance over appellant's objection. On August 1, 2019, appellant moved to dismiss the charges on statutory speedy trial grounds, asserting that he had been held in custody continuously since January 10, 2019. The Commonwealth responded that he was not in custody until May 8, 2019, and therefore, his statutory speedy trial rights had not been violated. After noting that new counsel had been appointed for appellant, the trial court denied the motion.

"The five-month requirement of Code § 19.2-243 translates to 152 and a fraction days." Turner v. Commonwealth, 68 Va. App. 72, 78 (2017). The record supports appellant's assertion that he was held in custody continuously from January 10, 2019 until August 7, 2019, a period of time that exceeds the

five-month deadline in Code § 19.2-243.[2] However, the fourteen days between January 10, 2019 and January 24, 2019 were attributable to appellant because he moved for a continuance. Code § 19.2-243(4). Further, the delay from January 24, 2019 until April 2, 2019 was attributable to appellant because he sought the appointment of new counsel and did not object to the trial court continuing the case. See Young, 297 Va. at 453 ("The defendant's failure to object to the court's action in fixing the trial date is an acquiescence in the fixing of a trial date beyond the five-month speedy trial period and [these circumstances] constitute[ ] a continuance of the trial date under Code § 19.2-243(4)."") (quoting Heath v. Commonwealth, 261 Va. 389, 394 (2001)).

The record is silent concerning why the trial was delayed past the April 2, 2019 date. However, even assuming that the period from April 2, 2019 until the trial date on August 7, 2019 was attributable to the Commonwealth, the delay was less than 152 and a fraction days.[3] Accordingly, the trial court did not err by denying appellant's motion.

III. Appellant asserts that the trial court erred by denying his motion to dismiss on double jeopardy grounds. He notes that he moved to dismiss "because the elements of the transportation offense and the

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[2] Code § 19.2-243 provides in pertinent part:

> Where a district court has found that there is probable cause to believe that an adult has committed a felony, the accused, if he is held continuously in custody thereafter, shall be forever discharged from prosecution for such offense if no trial is commenced in the circuit court within five months from the date such probable cause was found by the district court . . . .

Although the Commonwealth referred to a preliminary hearing in arguing appellant's motion, the date that appellant was indicted supplants the preliminary hearing date. See Herrington v. Commonwealth, 291 Va. 181, 186-87 (2016). Therefore, we shall assume, for purposes of appellant's argument that the speedy trial deadline began to run when the indictments were returned on January 16, 2018. However, as appellant's argument focuses only on the time that he was incarcerated from January 10, 2019 until August 7, 2019, we shall also assume that any delays in the trial before January 10, 2019 were attributable to appellant and shall not include them in our speedy trial calculation.

[3] The total number of days between April 2, 2019 and August 7, 2019 is 128 days.

elements of possession with distribution offense" were the same "except for the transportation . . . ." Appellant did not elaborate on this argument further, and the trial court denied the motion.

Although appellant asserts that the trial court erred by denying his motion, he offers no argument in support of that position. The petition for appeal does not comply with Rule 5A:12(c)(5) because it does not contain sufficient principles of law and authorities or the record to fully develop appellant's argument. "If . . . parties believe[] that the circuit court erred, it [i]s their duty to present that error to us with legal authority to support their contention." Fadness v. Fadness, 52 Va. App. 833, 851 (2008). This Court "will not search the record for errors in order to interpret the appellant's contention and correct deficiencies in a [petition for appeal]." Yap v. Commonwealth, 49 Va. App. 622, 629 (2007) (quoting Buchanan v. Buchanan, 14 Va. App. 53, 56 (1992)). "Nor is it this Court's 'function to comb through the record . . . in order to ferret-out for ourselves the validity of [appellant's] claims.'" Burke v. Catawba Hosp., 59 Va. App. 828, 838 (2012) (quoting Fitzgerald v. Bass, 6 Va. App. 38, 56 n.7 (1988) (*en banc*)).

We conclude that the defects in the petition for appeal with respect to this assignment of error are significant. See Jay v. Commonwealth, 275 Va. 510, 520 (2008) ("the Court of Appeals should . . . consider whether any failure to strictly adhere to the requirements of [the Rules of Court] is insignificant . . . ."). Thus, we decline to consider appellant's assertion that the trial court erred by denying his motion. See Atkins v. Commonwealth, 57 Va. App. 2, 20 (2010).

Accordingly, we deny the petition for appeal and grant the motion for leave to withdraw. See Anders v. California, 386 U.S. 738, 744 (1967). This Court's records shall reflect that Antron Adon Tucker is now proceeding without the assistance of counsel in this matter and is representing himself on any further proceedings or appeal.

The trial court shall allow Randy C. Jones, Esquire, the fee set forth below and also counsel's necessary direct out-of-pocket expenses. The Commonwealth shall recover of the appellant the costs in this Court and in the trial court.

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

Attorney's fee $400.00 plus costs and expenses

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By: Kristen M. McKenzie

Deputy Clerk

Additional material from this filing is available in the Clerk's Office.