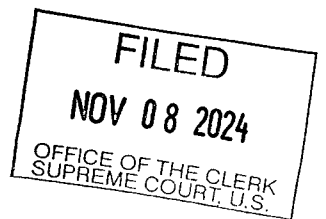


24-6523



In The
Supreme Court Of The United States

No. _____

Timothy W. Wright, Jr.,
Petitioner,

- against -

Commonwealth of Virginia,
Respondent

Petition For A Writ Of Certiorari
To The Virginia Supreme Court

Timothy W. Wright, Jr., #1400848

VDOC CMDC

3521 Woods Way

State Farm, Virginia 23160

(434) 797-2000

Questions Presented

Whether the Virginia Supreme Court can "refuse assignment of error" without providing a specific, appealable reason.

Parties

The petitioner is Timothy W. Wright, Jr., a prisoner at Green Rock Correctional Center in Chatham, Virginia, in the Virginia Department of Corrections. The respondent is the Commonwealth of Virginia

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Exhibits

Motion To Vacate Sentencing Order As Void Ab Initio

Motion To Vacate Sentencing Order As Void Ab Initio, Amendment
Notice

Notice of Unauthorized Correspondence, Commonwealth's Attorney
Marsha L. Barst, Jan. 17, 2024

Notice of Appeal

Petition For Appeal

Notice of Unauthorized Correspondence, Attorney General, 3/14/24

Letter to the Office of the Attorney General, March 29, 2024

Letter to Supreme Court of Virginia, March 17, 2024

Office of the Attorney General, March 25, 2024

Virginia Supreme Court, April 2, 2024

Letter to the Virginia Supreme Court, June 20, 2024

Virginia Supreme Court, June 27, 2024

Request For Clarification to the Supreme Court of Virginia, Sept. 16, 2024

Virginia Supreme Court, September 26, 2024

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Cases:

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Statutes and Rules:

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Constitutional Amendment

United States Constitution, Amendment XIV, Section 1.	3, 9
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Decisions Below

The decision of the Virginia Supreme Court is unreported. A copy is attached as Appendix A to this petition. (A.1) The order of the Amherst County Circuit Court is not reported. A copy is attached as Appendix B to this petition. (A.2) The decision of the Amherst County Circuit Court is not reported. A copy is attached as Appendix C to this petition. (A.3)

Jurisdiction

The judgment of the Virginia Supreme Court was entered on September 5, 2024. Jurisdiction is conferred by 28 U.S.C. § 1257.

Constitutional And Statutory Provisions Involved

This case involves Amendment XIV to the United States Constitution, which provides:

Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This case involves Virginia Code § 19.2-295.2 and § 18.2-10(g) which provides:

§ 19.2-295.2(A). "At the time the court imposes sentence upon a conviction for any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, in addition to any other punishment imposed if such other punishment includes an active term of incarceration in a state or local correctional facility, except in cases in which the court orders a suspended term of confinement of at least six months, impose a term of postrelease supervision of not less than six months nor more than three years, as the court may determine...."

§ 18.2-10(g). "Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine."

Statement Of The Case

On December 10, 2008, Judge J. Michael Gamble, Circuit Court Judge for Amherst County, Virginia, sentenced the Petitioner to 50 years for first degree murder, 3 years for use of a firearm, 5 years for discharging a firearm at a motor vehicle and 5 years for maliciously shoot at an occupied vehicle. (St. Dec. 10, 2008 p. 44) He also imposed upon Petitioner, 3 years for each charge, post-release supervision as required by Va. Code § 19.2-295.2, however, he failed to sentence the Petitioner under the mandatory provisions of Va. Code § 18.2-10(g) to a term of post-release incarceration to be conditioned upon successful completion of a period of post-release supervision pursuant to Va. Code § 19.2-295.2. (St. Dec. 10, 2008 p. 45)

On December 10, 2008, Judge J. Michael Gamble, Circuit Court Judge for Amherst County, Virginia, also prepared and finalized the Petitioner's Sentencing Order, sentencing him to 63 years with NONE suspended. He also spelled out the periods of post-release supervision as required by Va. Code § 19.2-295.2 and suspended those upon successful completion of post-release, yet failed to spell out the mandatory requirement of post-release incarceration as required by Va. Code § 18.2-10(g).

On December 11, 2023, Petitioner submitted a Motion To Vacate Sentencing Order As Void Ab Initio with a Certificate of Service, a copy of his Sentencing Order and a copy of Virginia Form 10. Contents of Sentencing Orders to the Amherst County Circuit Court, the Commonwealth

Attorney for Amherst County, Mr. Lyle Carver and the Commonwealth Attorney for Rockingham County, Ms. Marsha L. Carst, on charges of first degree murder, unlawful use of a firearm in the commission of a murder, unlawful shooting at an occupied motor vehicle and unlawful use of a firearm while inside a motor vehicle. The foregoing was mailed Certified Mail - Return Receipt Requested.

On December 19, 2023, Petitioner submitted an Amendment Notice to the Amherst County Circuit Court Clerk, Ms. Deborah C. Menzies, the Commonwealth Attorney for Amherst County, Mr. Lyle Carver and the Commonwealth Attorney for Rockingham County, Ms. Marsha L. Carst, to correct the Respondents and Cause Date.

On January 17, 2024, Petitioner received a VDOC Notice of Unauthorized Correspondence stating that the Office of the Commonwealth's Attorney, Ms. Marsha L. Carst sent "Legal Mail" to the institutional address, instead of the VDOC Central Mail Distribution Center. Despite the Notice, the Commonwealth's Attorney did not provide Petitioner with a copy of her Response to the Motion by proper address.

On January 19, 2024, Amherst County Circuit Court Judge, Mr. Jeffrey P. Bennett, entered an ORDER denying and dismissing Petitioner's Motion To Vacate Sentencing Order As Void Ab Initio and included a (2) page letter explaining his decision.

On January 30, 2024, Petitioner timely filed his Notice of Appeal and

Certificate of Service to the Amherst County Circuit Court, the Commonwealth Attorney for Amherst County, Mr. Lyle Carver and the Commonwealth Attorney for Rockingham County, Ms. Marsha L. Garst. The foregoing was sent by Certified Mail.

On February 16, 2024, Petitioner submitted his Petition For Appeal to the Virginia Supreme Court and counsel for the Commonwealth, Deputy Commonwealth Attorney, Mr. Christopher Bean, by Certified Mail. (Record No. 240157, Timothy W. Wright, Jr. v. Commonwealth of Virginia)

On March 25, 2024, Petitioner received a letter from the Clerk of the Virginia Supreme Court by way of the Virginia Assistant Attorney General, notifying the Virginia Supreme Court that pursuant to the provisions of Rule 5:18, the Commonwealth does not intend to file a brief in opposition.

On September 5, 2024, the Virginia Supreme Court issued its decision in Petitioner's Appeal, stating that assignment of error no. 1 is insufficient as it does not address any findings or rulings of the circuit court or any failure of the circuit court to rule on an issue, and refusing assignment of error no. 2 presumably because the Court could not find a procedural way to avoid responding to a clear violation of due process.

On September 16, 2024, Petitioner sent a Request For Clarification to the Virginia Supreme Court asking for further clarification or explanation for its decision and wording, specifically "Upon further consideration whereof, the Court refuses assignment of error no. 2.", because he cannot properly

perfect his writ to the U.S. Supreme Court without further clarification or explanation.

On September 26, 2024, the Deputy Clerk of the Virginia Supreme Court acknowledge receipt of Petitioners' Request for Clarification and that the "office is not permitted to interpret or explain orders of the Court,

Basis For Federal Jurisdiction

This case raises the question of can the State Supreme Court refuse to answer the petitioner's assignment of errors in violation of the Due Process Clause of the 14th Amendment of the United States Constitution.

Reasons For Granting The Writ

A. Importance of the Question Presented

This case presents a fundamental question of whether the Virginia Supreme Court can dodge an assignment of error by refusing the assignment, and refuse to provide a reason for doing so that fundamentally prevents the appellant from having an appealable explanation.

The question presented is of great public importance because there is no published case in which the Courts have used this language, there are no statutes or case law regarding this language and this language is used to deny appellants an appealable explanation for an error that could result in a void ab initio finding in petitioner's sentencing order.

The issue's importance is enhanced by the fact that the 14th Amendment to the United States Constitution provides, "...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

However, the Virginia Supreme Court's decision in the petitioner's case, denies him the due process of law. Petitioner has cited clear and binding Virginia Supreme Court precedent, clear and binding legislative statute and a clear and specific violation of the law that resulted in a void ab initio sentencing order. Yet, the Court "refused" the assignment of error, without providing an appealable explanation, unlike all other published precedent demonstrates.

B. Importance of Due Process

Due Process is the underpinning to public confidence in the judicial process and integrity of criminal procedure. Any violation of this confidence is a threat on the integrity of the judicial system and despite the Circuit Court's best efforts to minimize the issue identified by petitioner as an error and the Virginia Supreme Court's effort to dodge the error, this raises a serious legal issue.

Does the Virginia Supreme Court have the right to refuse an assignment of error when a serious question of due process arises, or do dozens of prior precedent decisions require the Court to overturn petitioner's sentencing order as void ab initio?

Quoting *Baynton v. Kilgore*, 271 Va. 220, 227 (2006), the Court said, "We are bound by 'the plain language of a statute unless the terms are ambiguous or applying the plain language would lead to an absurd result.'" Quoting *Barr v. Town & Country Props., Inc.*, 240 Va. 292, 295 (1990) the Court said, "We must.... assume that the legislature chose, with care, the words it used when it enacted the relevant statute, and we are bound by those words as we interpret the statute." Quoting *Johnson v. Commonwealth*, 53 Va. App. 608, 612 (2009) the Court of Appeals said, "Courts 'are required to ascertain and give effect to the intention of the legislature, which is usually self-evident from the statutory language.'" "

This is all the more evident in long standing precedent captured by quoting *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249 (1992), "We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. See e.g., *United States v. Ron*, *** 398; *Pair Enterprises, Inc.*, 489 U.S. 235, 241-242 (1989); *United States v. Goldenberg*, 168 U.S. 95, 102-103 (1897); *Oneale v. Thornton*, 10 U.S. 53, 6 Cranch 53, 68 (1810)."

The Virginia Supreme Court created precedent in its decision of *Commonwealth v. Washington*, 55 Va. 358, HN1 (2001), that the Court must impose a term of confinement which shall be suspended conditioned upon successful completion of a period of post-release supervision in accordance with Va. Code 19.2-295.2 and 18.2-10(g).

This decision was further etched in stone by Virginia Supreme Court precedent such as *Thomas v. Commonwealth*, 296 Va. 301 (2018) stating, "Sentencing orders must conform to statutory requirements.", and *Wright v. Commonwealth*, 275 Va. 77 (2008) stating, "The provisions of these two statutes (Va. Code 19.2-295.2 & 18.2-10(g)) are mandatory."

It is for these reasons, that the Virginia Supreme Court's decision to "refuse assignment of error" without providing an explanation that could be appealed, violates the very essence of Due Process. This sets a dangerous precedent if allowed to stand and will be used by the lower courts to avoid answering serious questions of law that aren't convenient to its goal of finality.

Conclusion

For the foregoing reasons, certiorari should be granted in this case.

November 1, 2024

Respectfully Submitted,

Timothy W. Wright, Jr. #1400848

VDDE CMDC

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