

Appendix A

Decision of the Virginia Supreme Court (A.I.)

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 5th day of September, 2024.

TIMOTHY W. WRIGHT, JR.,

APPELLANT,

against Record No. 240157

Circuit Court Nos. CR08013342-01 through CR08013342-04

COMMONWEALTH OF VIRGINIA,

APPELLEE.

FROM THE CIRCUIT COURT OF AMHERST COUNTY

Upon consideration of the record and the pleadings filed in this case, the Court finds that assignment of error no. 1 is insufficient as it does not address any finding or ruling of the circuit court or any failure of the circuit court to rule on an issue in *Commonwealth of Virginia v. Timothy W. Wright, Jr.*, Circuit Court Nos. CR08013342-01 through CR08013342-04, from which an appeal is sought. Accordingly, the petition for appeal is dismissed as to that assignment of error. Rule 5:17(c)(1)(iii).

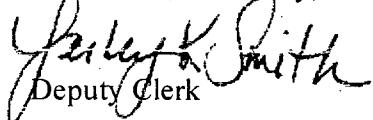
Upon further consideration whereof, the Court refuses assignment of error no. 2.

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By:


Muriel-Theresa Pitney
Deputy Clerk

Appendix B

Order of the Amherst County Circuit Court (A.2.)

VIRGINIA: IN THE CIRCUIT COURT OF AMHERST COUNTY
COMMONWEALTH OF VIRGINIA,

V.

CR08013342-01 through CR08013342-04

**TIMOTHY W. WRIGHT, JR.,
DEFENDANT.**

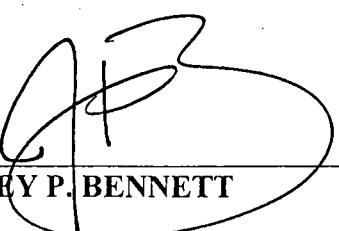
ORDER

Came this day the Defendant, Timothy W. Wright, Jr., upon his Motion to Vacate Sentencing Order as Void *Ab Initio*, and the Commonwealth of Virginia by her special prosecutor, Deputy Commonwealth's Attorney Christopher Bean, Esq., in opposition to the same.

Upon consideration of the arguments and authorities presented, and for the reasons set forth in the Court's letter of January 19, 2024, which is incorporated herein, the Court finds that the Sentencing Order of December 10, 2008, is not void *ab initio*. The Court ORDERS that the Motion to Vacate Sentencing Order as Void *Ab Initio* is **DENIED and DISMISSED**.

The Clerk is directed to send a copy of this Order to Timothy W. Wright, Jr., and the special prosecutor for Amherst County, Deputy Commonwealth's Attorney Christopher Bean, Esq.

ENTERED this 19th day of January, 2024.


JEFFREY P. BENNETT, JUDGE

A Copy, Teste:
Deborah Coffey Mozingo, Clerk
By:
Jeffrey P. Bennett, Deputy Clerk

Appendix C

Decision of the Amherst County Circuit Court (A.3.)

TWENTY-FOURTH JUDICIAL CIRCUIT OF VIRGINIA

JEFFREY P. BENNETT, JUDGE
AMHERST CO. CIRCUIT COURT
113 TAYLOR ST., 2ND FLOOR
P. O. BOX 1290
AMHERST, VA 24521



TELEPHONE
(434) 946-9329

FACSIMILE
(434) 946-9327

COMMONWEALTH OF VIRGINIA
CITY OF LYNCHBURG
COUNTIES OF AMHERST, BEDFORD, CAMPBELL, AND NELSON

January 19, 2024

Mr. Timothy W. Wright, Jr., #1400848
GROC P.O. Box 1000
Chatham, VA 24531

Christopher Bean, Esq.
Deputy Commonwealth's Attorney
53 Court Square, Suite 210
Harrisonburg, VA 22801

Re: Commonwealth of Virginia v. Timothy W. Wright, Jr.
Circuit Court Case CR08013342-01 through CR08013342-04

Dear Mr. Wright and Counsel:

I have received and reviewed Defendant's Motion to Vacate Sentencing Order as Void *Ab Initio* and the Commonwealth's Brief in Opposition to the same. For the reasons set forth below, I find the sentencing order is not void *ab initio*.

Defendant was convicted of first-degree murder, use of a firearm in commission of a murder, maliciously shooting at an occupied motor vehicle, and discharging a firearm while in a motor vehicle. On December 10, 2008, the Court sentenced Defendant, in accordance with a jury's recommendation, to a total period of incarceration of sixty-three (63) years, with none of that time suspended. The sentencing order also explicitly provides for post-release supervision pursuant to Va. Code § 19.2-295.2, "for a period of 3 years in each case, suspended if [Defendant] complies with post release." The order does not separately or explicitly impose a period of post-release incarceration pursuant to Va. Code § 18.2-10.

Defendant argues that the sentencing order is void *ab initio* for failing to explicitly impose a required period of post-release incarceration pursuant to Va. Code § 18.2-10. The Commonwealth counters that any such error was voidable and is now beyond the reach of this Court pursuant to Virginia Supreme Court Rule 1:1. The Commonwealth is correct on the law.

"The distinction between an action of the court that is void *ab initio* rather than merely 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 Va. 48, 51, 541 S.E.2d 549, 551 (2001). This is not a case in which the court lacked jurisdiction to render an order.

January 19, 2024

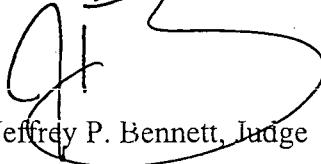
Page 2 of 2

Furthermore, this is not a case in which the Court sentenced Defendant to a term of incarceration that is longer than what was prescribed by law. Quite the opposite – if error occurred, it resulted in a shorter period of total incarceration than what he ought to have received. “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.” *Commonwealth v. Watson*, 297 Va. 355, 361, 827 S.E.2d 778, 781 (2019) (emphasis in original).

Finally, the Virginia Court of Appeals considered this exact question in the unpublished case of *Eggleston v. Commonwealth*, 2017 Va. App. LEXIS 235. I find that case instructive and persuasive on this point as well. *Eggleston* involved a probation violation in which the underlying sentencing order imposed a period of post-release supervision pursuant to Va. Code § 19.2-295.2 but failed to explicitly impose post-release incarceration pursuant to Va. Code § 18.2-10. In discussing the underlying sentencing order’s omission of the required post-release incarceration period, the Court said such an error “is not jurisdictional, and the sentencing order was voidable, not void *ab initio*.” *Id.* at 14. Applying Virginia Supreme Court Rule 1:1 to the voidable sentencing order, *Eggleston* went on to note that the trial court “lacked authority more than twenty-one days after entry of the unappealed order to graft onto it a term of post-release confinement.” *Id.*

If this Defendant’s sentencing order was in error by failing to impose a post-release incarceration period, any such error was not jurisdictional and would not render the order void *ab initio*. Assuming without finding that the order was voidable in this regard, it is long-since final pursuant to Va. Sup. Ct. R. 1:1. Accordingly, the Motion to Vacate is denied and dismissed. A copy of my order to this effect is enclosed.

Sincerely,



Jeffrey P. Bennett, Judge

Enclosure

cc: Lyle Carver, Esq.
Commonwealth’s Attorney for Amherst County

Court file

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