
IN THE
COURT OF APPEALS OF VIRGINIA

RECORD NO. 1295-20-3

BRIAN DAVID HILL,
Appellant,

v.

COMMONWEALTH OF VIRGINIA,
Appellee.

PETITION FOR APPEAL

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**IN THE
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RECORD NO. 1295-20-3

BRIAN DAVID HILL,

Appellant,

v.

CITY OF MARTINSVILLE,

Appellee.

PETITION FOR APPEAL

STATEMENT OF THE CASE

Brian David Hill was charged with misdemeanor indecent exposure in violation of local ordinance incorporating Code § 18.2-387 in the Martinsville General District Court. (R. 1). Hill was convicted in a bench trial and sentenced to 30 days' incarceration, then appealed to the circuit court. (R. 2).

Hill filed various pretrial motions pro se, including: a motion to admit evidence that an anonymous man threatened his mother's life if he did not remove his clothing in public (R. 68-70), a motion to admit evidence that he suffered from

carbon monoxide poisoning at the time of the events giving rise to his prosecution (R. 79-93), a motion to expedite his trial date (R. 94-98), a motion to request an insanity defense (R. 115-22), a request for substitute counsel (R. 126-33), a motion to suppress evidence against him (R. 326-78), and a motion to dismiss the charge against him (R. 402-20). The Commonwealth filed a demand for a jury trial. (R. 110).

By motion filed November 11, 2019, Hill requested permission to withdraw his appeal. (R. 421-31). By order entered November 18, 2019, the circuit court reinstated Hill's conviction, apparently without a hearing. (R. 433).

This appeal is from the court's reinstatement of Hill's conviction. Undersigned counsel contacted the clerk's office of the trial court to inquire about the method by which transcripts of the proceedings may be ordered; counsel was informed that no in-court proceedings were held, and that no transcripts were thus available.

ASSIGNMENT OF ERROR

Hill assigns the following error to the judgment of the circuit court:

The trial court committed reversible error by accepting Hill's withdrawal of his appeal without ascertaining whether Hill was accepting the general district court's judgment voluntarily and with an understanding of the consequences of his withdrawal, in violation of Rules 3A:8(b)(2) and 7C:6(a).

(This assignment of error is not preserved within the trial record; Hill requests that this Court consider its merits under the good cause shown exception to Rule 5A:18.)

STATEMENT OF FACTS

The complaint against Hill alleged as follows:

On [September 21, 2018] I [(Sergeant R. Jones of the Martinsville Police Department)] responded to the area of Pine St. at the steps for the Dick and Willie Trail due to a naked white male that had been seen running on Hooker St[.] from Church St. Officers were in the area of Hooker St[.] and had not located the male. I walked down the steps to the trail where [I] he[a]rd foot steps [sic] coming towards me. I could see a person walking on the trail and they stopped. I signed my light on the male and he turned and ran. He was naked except for his shoes and socks. The male had items in his hand when he ran. I chased the suspect off the left side of the trail down a bank and into the creek. I was yelling stop and show me your hands during the chase. When the male was detained he was read Miranda and started talking about a black male in a hoodie made him get naked and take pictures of himself. He was transported to the hospital due to knee pain. While at the [h]ospital he stated that he was alone when he took the photos of himself and he gave Ofc. Warnick [permission] to view his camera. On the [c]amera [were] several photo[s] of himself naked around the city. He was medically and psychologically cleared. He was arrested for indecent [e]xposure. Mr. Hill's clothing was located in his bag. All took place in the city.

(R. 3).

ARGUMENT

I. The trial court erred by reinstating Hill’s conviction without ascertaining whether he was withdrawing his appeal voluntarily and with an understanding of the consequences of such withdrawal.

A. Standard of Review

A trial court’s interpretation of the Rules of the Supreme Court of Virginia “presents a question of law” which is reviewed de novo. *Graham v. Cmty. Mgmt. Corp.*, 294 Va. 222, 225 (2017) (quoting *Amin v. Cnty. of Henrico*, 286 Va. 231, 235 (2013)).

B. The circuit court erred by accepting Hill’s withdrawal of his guilty plea without ascertaining whether it was knowing or voluntary.

Under Code § 16.1-133, a circuit court’s acceptance of a defendant’s written notice of withdrawal of appeal from the general district court has the effect of “affirming the judgment of the lower court.” For all practical purposes concerning guilt or innocence, such acceptance is indistinguishable from a circuit court’s acceptance of a guilty or no contest plea to the same charge.

Rule 3A:8(b)(2) prohibits a circuit court from accepting “a plea of guilty or nolo contendere to a misdemeanor charge except in compliance with Rule 7C:6.”

In turn, Rule 7C:6(a) provides as follows:

A court *must not* accept a plea of guilty or nolo contendere to any misdemeanor charge punishable by confinement in jail without first determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea.

(emphasis added).

In this case, the circuit court manifestly abandoned its duty to determine whether Hill was withdrawing his appeal “voluntarily” and “with an understanding of the nature of the charge and the consequences” of his withdrawal.

Counsel is not aware of any cases addressing this particular set of facts or this specific argument, but contends that the plain language of Rules 3A:8(b)(2) and 7C:6(a) are unambiguous and control the result in this case. This Court should grant Hill an appeal, reverse his conviction, and remand to the circuit court for further proceedings.

Preservation

Hill contends that because the trial court terminated his appeal and reinstated his conviction without a hearing, he never had an opportunity to present his argument to that court. Where an appellant lacks opportunity to make an objection, the good cause shown exception to Rule 5A:18 applies. *See M. Morgan Cherry & Assocs. v. Cherry*, 38 Va. App. 693, 701 (2002) (finding the exception did not apply where a litigant had opportunities to object but failed to do so).

Alternatively, to the extent that Hill’s post-trial “Motion to Vacate Fraudulent Begotten Judgment” might be construed as a motion to reconsider the court’s acceptance of his motion to withdraw his appeal, this argument is properly preserved. Either way, this Court may reach the merits of this argument.


CONCLUSION

Because the Martinsville City Circuit Court committed reversible error by reinstating Hill's conviction without determining whether his motion to withdraw his appeal was knowing or voluntary, this Court should grant Hill an appeal, reverse his conviction, and remand for further proceedings.

Respectfully submitted,

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Appellant herein


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CERTIFICATE OF SERVICE

On April 13, 2021, this petition for appeal was electronically filed using the Virginia Appellate Courts Electronic System (VACES). On the same date, a PDF copy was emailed to G. Andrew Hall, Commonwealth’s Attorney, Office of the Commonwealth’s Attorney for the City of Martinsville, counsel for the appellee, at ahall@ci.martinsville.va.us. In accordance with Rule 5A:4(d), the undersigned certifies that the petition, excluding the cover page, table of contents, table of authorities, and certificate contains 1,162 words.

BY: 

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