

Tuesday 25th

February, 1997.

Timothy Clark, s/k/a
Timothy Lamont Clark, Appellant,
against Record No. 2248-94-3
Circuit Court No. CR94010223-00
Commonwealth of Virginia, Appellee.

Upon Rehearing En Banc

Before Chief Judge Moon, Judges Baker, Benton, Coleman,
Willis, Bray, Fitzpatrick, Annunziata and Overton

Robert Bryan Haskins (Turner, Haskins &
Whitfield, on brief), for appellant.

Monica S. McElyea, Assistant Attorney
General (James S. Gilmore, III, Attorney
General, on brief), for appellee.

By opinion dated July 16, 1996, a majority of a panel of
this Court affirmed the decision of the trial court. Clark v.
Commonwealth, 22 Va. App. 673, 473 S.E.2d 663 (1996). Upon motion of
Timothy Clark, we granted a rehearing en banc. Upon such rehearing,
the judgment of the trial court is affirmed for those reasons set
forth in the panel's majority opinion, and accordingly, the stay of
this Court's July 16, 1996 mandate is lifted.

Judge Benton would reverse the judgment of the trial court
for those reasons set forth in the panel's dissenting opinion. See
id. at 678, 473 S.E.2d at 665 (Benton, J., dissenting).

It is ordered that the trial court allow counsel for the
appellant an additional fee of \$200 for services rendered the

appellant on the rehearing portion of this appeal, in addition to counsel's costs and necessary direct out-of-pocket expenses. This amount shall be added to the costs due the Commonwealth in the July 16, 1996 mandate.

This order shall be published and certified to the trial court.

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:

Deputy Clerk