Tuesday 5th

December, 2000.

Dennis M. Williams, s/k/a Dennis Muhammed Williams,

Appellant,

Record No. 1038-99-3 against

Circuit Court Nos. CR96000902-00 and

CR97000392-00

Commonwealth of Virginia,

Appellee.

Upon a Rehearing En Banc

Before Chief Judge Fitzpatrick, Judges Benton, Coleman, Willis, Elder, Annunziata, Bumgardner, Frank, Humphreys and Clements

Rickey G. Young for appellant.

Richard B. Smith, Senior Assistant Attorney General (Mark L. Earley, Attorney General, on brief), for appellee.

A panel of this Court reversed that part of the judgment of the trial court with regard to appellant's conviction of possession of more than five pounds of marijuana with intent to distribute (CR96000902-00). See Williams v. Commonwealth, 32 Va. App. 554, 529 S.E.2d 799 (2000). We stayed the mandate of that decision and granted rehearing en banc.

Upon rehearing en banc, the judgment of the trial court with regard to that conviction is affirmed without opinion by an evenly divided Court. The appellant shall pay to the Commonwealth of Virginia thirty dollars damages. Accordingly, the opinion previously rendered by a panel of this Court on June 13, 2000 is withdrawn, and the mandate entered on that date is vacated.

Chief Judge Fitzpatrick, Judges Benton, Coleman, Willis and Elder voted to reverse the judgment of the trial court and remand for a new hearing.

Judges Annunziata, Bumgardner, Frank, Humphreys and Clements voted to affirm the judgment.

Appellant did not challenge on appeal that part of the judgment pertaining to appellant's conviction of failure to appear (CR97000392-00).

The Commonwealth shall recover of the appellant the amount previously awarded to Mark T. Williams, Esquire, for his representaiton of appellant, counsel's costs and necessary direct out-of-pocket expenses, and the fees and costs to be assessed by the clerk of this Court and the clerk of the trial court.

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

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

Attorney's fee \$725.00 plus costs and expenses

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:

Deputy Clerk