

COURT OF APPEALS OF VIRGINIA

Present: Judges Willis, Bumgardner and Frank
Argued at Alexandria, Virginia

WILLIAM EUGENE JONES, S/K/A
WILLIAM EUGENE JONES, JR.

v. Record No. 1128-98-4

MEMORANDUM OPINION* BY
JUDGE RUDOLPH BUMGARDNER, III
MARCH 21, 2000

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF ARLINGTON COUNTY
Benjamin N. A. Kendrick, Judge

Marvin D. Miller (Law Offices of Marvin D.
Miller, on briefs), for appellant.

Robert H. Anderson, III, Assistant Attorney
General (Mark L. Earley, Attorney General, on
brief), for appellee.

The trial court convicted William Eugene Jones on his plea of guilty of feloniously escaping from the custody of a court pursuant to Code § 18.2-479. On appeal, the defendant argues the trial court could only have convicted him of a misdemeanor. He contends that the trial court erred by not reducing the sentence to a misdemeanor penalty or in not allowing him to withdraw his guilty plea. For the following reasons, we affirm.

On March 13, 1997, the trial court convicted and sentenced the defendant for distributing cocaine. It then allowed him to remain on electronic home detention until March 31, 1997 when it

* Pursuant to Code § 17.1-413, recodifying Code § 17-116.010, this opinion is not designated for publication.

ordered him to report to begin serving his sentence. The defendant did not appear as ordered and was charged with escape under Code § 18.2-479.

At his trial for escape held September 10, 1997, the trial court accepted a guilty plea. Both sides stipulated the evidence; the trial court ordered a pre-sentence report and continued the case for sentencing. When the pre-sentence report was prepared, the trial court sentenced the defendant to five years, with four years and three months suspended.

After sentencing, the defendant filed a motion to correct a sentencing irregularity or alternatively to withdraw his guilty plea. The trial court held a hearing on April 10, 1998 but denied the defendant's motion. The defendant never claimed that his plea was involuntary but claimed that his attorney did not understand that he was on pretrial electronic home detention when he failed to report to jail. The defendant argues that escape from pretrial detention could be no more than a misdemeanor and the trial court abused its discretion by denying him the relief requested.

The defendant has not provided a sufficient record for us to review his claim of error. The defendant must provide an adequate record enabling this Court to determine whether the trial court erred. See Anderson v. Commonwealth, 251 Va. 437, 439, 470 S.E.2d 862, 863 (1996); Smith v. Commonwealth, 16 Va. App. 630, 635, 432 S.E.2d 2, 6 (1993). His claim of error is a

claim that the facts do not support his conviction of escape from the custody of a court. However, the evidence at trial does not indicate any such error. The parties stipulated that the defendant was "allowed to stay out on electronic detention" and that he did not report as ordered. Neither he nor his attorney disputed the recitation of the facts. The record supports the trial court's finding that he was guilty of the offense as charged, a violation of Code § 18.2-479.

To assess the defendant's claim, we need a record of the April 10, 1998 hearing when the trial court heard the motion. We most likely would also need a record of the sentencing portion of the March 13, 1997 trial and of the sentencing order that released the defendant to home electronic detention. The defendant argues that the narrative portion of the pre-sentence report constitutes an official statement of facts needed to support his motion. While a pre-sentence report is filed as a part of the record, see Code § 19.2-299, its narrative of trial proceedings is not a substitute for properly designated portions of the transcript or a statement of facts, or copies of the orders. See Rule 5A:8.

Whether or not a defendant may withdraw a plea of guilty rests within the sound discretion of the trial court. See Parris v. Commonwealth, 189 Va. 321, 324, 52 S.E.2d 872, 873 (1949). Again, we cannot assess this attack without a proper record of the hearing that considered the motion. "When the

appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues, any assignments of error affected by such omission shall not be considered." Rule 5A:8(b).

Accordingly, we affirm.

Affirmed.