

COURT OF APPEALS OF VIRGINIA

Present: Judges AtLee, Causey and Callins

CARSON CARNELL DAVIS, JR.

v. Record No. 1140-22-1

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION*
PER CURIAM
NOVEMBER 14, 2023

FROM THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH
James C. Lewis, Judge

(Roger A. Whitus; Slipow & Robusto, P.C., on brief), for appellant.

(Jason S. Miyares, Attorney General; Timothy J. Huffstutter,
Assistant Attorney General, on brief), for appellee.

After examining the briefs and record in this case, the panel unanimously holds that oral argument is unnecessary because “the appeal is wholly without merit.” Code § 17.1-403(ii)(a); Rule 5A:27(a). Carson Carnell Davis, Jr. failed to timely file the transcripts or a written statement of facts in lieu of the transcripts necessary to the appeal pursuant to Rule 5A:8. As a result, we cannot reach his assignments of error and we affirm the convictions.

Davis was convicted, following a jury trial, of second-degree murder, two counts of using a firearm in the commission of a felony, and aggravated malicious wounding. By final order entered July 18, 2022, the trial court sentenced Davis to 88 years of incarceration, with all but 25 years suspended.

On appeal, Davis contends that the evidence is insufficient to prove he acted with malice. Davis further contends that the trial court erred when it excluded the content of the decedent’s threats, which were communicated to him before the incident. He argues that the content of the

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

decedent's threats was not hearsay and the threats were offered to show the effect they had on him. This effect, he asserts, supported his heat of passion and self-defense theories and the exclusion of the threats' content was not harmless error.

The record on appeal does not contain timely-filed transcripts of Davis's jury trial held on March 14, 15, and 16, 2022, or his sentencing hearing held on July 13, 2022.¹ The trial court sentenced Davis by final order entered July 18, 2022. Under Rule 5A:8(a), a transcript must be filed no later than "60 days after entry of the final judgment," which was September 16, 2022. *See* Code § 1-210(B). On August 29, 2022, Davis moved this Court to extend the deadline to timely file a transcript. This Court granted Davis's motion on August 31, 2022, and extended the transcript deadline to October 17, 2022. Davis filed the transcripts from his three-day jury trial with the trial court one day late on October 18, 2022.

"If . . . the transcript [or statement of facts] is indispensable to the determination of the case, then the requirements for making the transcript [or statement of facts] a part of the record on appeal must be strictly adhered to." *Bay v. Commonwealth*, 60 Va. App. 520, 528 (2012) (alterations in original) (quoting *Turner v. Commonwealth*, 2 Va. App. 96, 99 (1986)). "This Court has no authority to make exceptions to the filing requirements set out in the Rules." *Shiembob v. Shiembob*, 55 Va. App. 234, 246 (2009) (quoting *Turner*, 2 Va. App. at 99); *see also Bay*, 60 Va. App. at 528-29. "Whether the record is sufficiently complete to permit our review on appeal is a question of law subject to our *de novo* review." *Bay*, 60 Va. App. at 529.

After reviewing the record and the opening brief, we conclude that timely-filed transcripts, or a written statement of facts in lieu of transcripts, are indispensable to a determination of the assignments of error on appeal. *See Smith v. Commonwealth*, 32 Va. App.

¹ Davis timely filed a transcript from the general district court certification proceeding on August 30, 2019.

766, 772 (2000); *Turner*, 2 Va. App. at 99-100. Therefore, we cannot address the merits of Davis's assignments of error. Rule 5A:8(b)(4)(ii). Consequently, we affirm the convictions.

CONCLUSION

For the foregoing reasons, the trial court's judgment is affirmed.

Affirmed.