

Tuesday 14th

December, 1999.

Deshon W. Pitt, Appellant,
against Record No. 1015-97-1
Circuit Court No. CR96-3180
Commonwealth of Virginia, Appellee.

Upon a Rehearing En Banc

Before Chief Judge Fitzpatrick, Judges Benton, Coleman, Willis,
Elder, Bray, Annunziata, Bumgardner, Lemons and Frank

Donald S. Clarke for appellant.

Kathleen B. Martin, Assistant Attorney General
(Mark L. Earley, Attorney General, on brief),
for appellee.

A divided panel of this Court affirmed the judgment of the
trial court. See Pitt v. Commonwealth, 28 Va. App. 730, 508 S.E.2d
891 (1999). We stayed the mandate of that decision and granted
rehearing en banc.

Upon rehearing en banc, the judgment of the trial court is
affirmed without opinion by an evenly divided Court. Accordingly,
the opinion previously rendered by a panel of this Court on
January 5, 1999 is withdrawn, and the mandate entered on that date is
vacated.

Chief Judge Fitzpatrick, Judges Benton, Coleman, Willis and Bumgardner voted to reverse the judgment of the trial court.

Judges Elder, Bray, Annunziata, Lemons and Frank voted to affirm said judgment.

It is ordered that the trial court allow counsel for the appellant a total fee of \$925 for services rendered the appellant on this appeal, in addition to counsel's costs and necessary direct out-of-pocket expenses.

The Commonwealth shall recover of the appellant the amount paid court-appointed counsel to represent him in this proceeding, 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	\$925.00	plus costs and expenses
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A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:

Deputy Clerk