

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 19th day of July, 2018.

Present: All the Justices

Clinton Arthur, Jr., Appellant,

against Record No. 170672
 Court of Appeals No. 0184-16-1

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Court of Appeals of Virginia.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that the assignment of error is insufficient, and so dismisses the appeal.

On January 27, 2016, Clinton LaShawn Arthur, Jr. (Arthur) was tried by a jury in the Circuit Court of the City of Norfolk on an indictment charging him with being a felon in possession of a firearm in violation of Code § 18.2-308.2. At trial, Arthur offered to “stipulate to the fact that he is a convicted felon,” and objected to the Commonwealth’s use of his conviction order to establish his predicate felony. He asserted that “the probative value of the conviction record itself was outweighed by the substantial risk of prejudice to the defendant.” The court admitted the conviction order into evidence.

Later in the trial, the circuit court informed Arthur that if Arthur “ask[ed] [the court] to give” an instruction to the jury that Arthur’s conviction order could only be considered to establish the predicate felony, but not as character evidence or as evidence that Arthur committed

the crime as charged, the circuit court would give such an instruction. However, Arthur did not request such an instruction.

The jury found Arthur guilty as charged. Arthur appealed to the Court of Appeals of Virginia, arguing that the circuit court “erred in allowing the Commonwealth to introduce Arthur’s previous felony conviction in that Arthur offered to stipulate to that element of the offense.” Arthur claimed the admission of his conviction order was unfairly prejudicial under Va. R. Evid. 2:403.

In its unpublished opinion, *Arthur Clinton, s/k/a Clinton Arthur, Jr. v. Commonwealth*, Record No. 0184-16-1, 2017 Va. App. LEXIS 105 (Apr. 18, 2017), the Court of Appeals stated that “prejudice [to the accused], if any, may be alleviated by a jury instruction limiting the purpose for which the evidence is offered.” *Id.* at *5. It noted that although the circuit court stated its willingness to grant a limiting instruction if it were requested, Arthur “never requested such an instruction, nor did he move for a mistrial.” *Id.* The Court of Appeals concluded that Arthur was barred from arguing prejudice on appeal, because he had not requested a limiting instruction and had “rejected the opportunity to resolve any possible prejudice.” *Id.* at *5-6. Accordingly, it affirmed the conviction without further addressing the merits of Arthur’s argument that the admission of his conviction order violated Va. R. Evid. 2:403.

In his appeal to this Court, Arthur alleges one assignment of error: “The trial court erred in allowing the Commonwealth to introduce Arthur’s previous felony conviction in that Arthur offered to stipulate to that element of the offense.” Arthur’s sole assignment of error is addressed to the actions of the “trial court,” rather than the Court of Appeals. However, upon determining that Arthur was procedurally barred from arguing any prejudice, the Court of Appeals did not “rule[] upon the specific merits of the alleged trial court error.” Rule

5:17(c)(1)(iii). Arthur's assignment of error fails to address the Court of Appeals' determination that his assigned error presented to the Court of Appeals was procedurally barred due to his failure to request a limiting instruction. Arthur's failure to assign error to that determination by the Court of Appeals bars review of that ruling by this Court. *See* Rule 5:17; *Davis v. Commonwealth*, 282 Va. 339, 339-40, 717 S.E.2d 796, 796-97 (2011); *Williams v. Commonwealth*, 270 Va. 580, 582-83, 621 S.E.2d 98, 99 (2005). The Court of Appeals' determination on that issue is thus an unchallenged, independent basis for its ruling. *See Manchester Oaks Homeowners Ass'n v. Batt*, 284 Va. 409, 422-23, 732 S.E.2d 690, 698 (2012).

Accordingly, for the above reasons, we dismiss Arthur's appeal as insufficient under Rule 5:17(c)(1)(iii).

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of the City of Norfolk.

A Copy,

Teste:

A handwritten signature in black ink, appearing to read "Peter L. Harris".

Clerk