

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 4th day of April, 2019.

Present: Chief Justice Lemons, Justice Goodwyn, Justice McClanahan, Justice Powell, Justice Kelsey, Justice McCullough, and Senior Justice Russell

Roderick Brandell Bryant, Sr., Appellant,

against Record No. 180561
Court of Appeals No. 1889-17-1

Commonwealth of Virginia, Appellee.

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

Roderick Brandell Bryant, Sr. appeals an order of the Court of Appeals dismissing his appeal from a conviction in the Circuit Court of the City of Chesapeake on procedural grounds. Upon consideration of the briefs, the record, and the arguments of counsel, we conclude that the Court of Appeals erred in dismissing the appeal.

On February 16, 2017, Bryant was convicted on his pleas of guilty in the circuit court to indictments charging him with burglary with intent to commit rape, murder, or robbery while armed; malicious wounding; and assault upon a person having a protective order against Bryant. The case was continued to June 5, 2017 for sentencing.

At the time of the convictions, Bryant was on probation pursuant to a suspended sentence imposed for earlier convictions. The probation officer, on March 6, 2017, reported to the court that Bryant was in violation of his probation as a result of his new convictions of February 16, 2017. The court continued the probation revocation proceeding to June 5, 2017, to be heard together with the sentencing for the new convictions.

The new convictions and the revocation proceeding were identified by separate record numbers in the circuit court but were docketed for June 5, 2017 to be heard together. On that date, Jason Barlow, Esq., who had represented Bryant in the new convictions case, also

represented him in the revocation proceeding. At the joint hearing, the court imposed sentences totaling 45 years' imprisonment for the new convictions, with 33 years suspended. In the revocation proceeding, the court revoked 3 years and 25 days of the previously suspended sentence and re-suspended all but one year of it. Bryant indicated his desire to appeal both cases and the court appointed the office of the public defender to represent him on appeal.

Bryant filed a timely notice of appeal. The circuit court transmitted the record in the revocation case to the Court of Appeals on October 25, 2017. It was designated Record No. 1149-17-1. The record pertaining to the new convictions was transmitted to the Court of Appeals on November 27, 2017, where it was designated Record No. 1889-17-1.

Also on November 27, 2017, Bryant filed in the Court of Appeals a "Motion for Extension of Time to file Petition." The motion's heading showed only the record number of the revocation case, but in the body of the motion counsel pointed out that although the records of the two cases had been transmitted to the Court of Appeals on different dates, the matters were "all heard together on June 5, 2017 at a joint sentencing hearing" and the same counsel had been appointed to represent Bryant in both appeals. The motion further stated, "[A] Joint Petition will be most expeditious in this case, as the sentences that are being appealed were heard together in a joint sentencing hearing on June 5, 2017." The motion requested an extension for an additional 30 days for filing the petition.

On December 13, 2017 the Court of Appeals entered an order granting an extension of time until January 3, 2018 "to file the petition for appeal in this case." The record number and circuit court numbers on the caption of the order, however, were only those pertaining to the new convictions.

Thereafter, the Court of Appeals entered a "corrected copy" of the December 13, 2017 order. Its caption bore only the record number and circuit court numbers for the probation revocation proceeding.

On January 3, 2018, Bryant filed a single petition for appeal in the Court of Appeals. The cover page and the first page of the petition mentioned only Record No. 1149-17-1, the number pertaining to the probation revocation proceeding. The body of the petition, however, stated that both cases were being appealed, gave the circuit court record numbers pertaining to both, and stated that the two cases had been heard together and decided together at a joint

sentencing hearing on June 5, 2017. The petition contained two assignments of error: (1) that the circuit court had imposed a sentence in the new convictions case that was “excessive and disproportionate” and (2) that the circuit court had imposed a sentence in the probation revocation proceeding that was “excessive and disproportionate.” Thus, the only issues on appeal were those arising from the joint sentencing hearing on June 5, 2017.

On January 22, 2018, the Commonwealth filed a brief in opposition in the Court of Appeals. It bore only the record number pertaining to the probation revocation proceeding but treated the appeal as applying to both cases. It defended the circuit court’s sentences in both proceedings, arguing that both fell within the applicable statutory limits.

On February 23, 2018, the Court of Appeals entered an order in the new convictions case, Record No. 1889-17-1, stating:

The record in this case was filed on November 27, 2017. Thus, appellant was required to file a petition for appeal by January 8, 2018. No petition for appeal has been filed. Accordingly, the case hereby is dismissed.

(Citations omitted.)

Bryant petitioned to set aside the dismissal and for a new hearing, which the court denied. We awarded Bryant an appeal.*

On appeal to this Court, the sole issue is whether Bryant complied with the Rules of Court in his petition for appeal to the Court of Appeals. This presents a question of law to be reviewed de novo. *Moore v. Commonwealth*, 276 Va. 747, 753 (2008).

Rule 5A:12(f) applies to this case. It provides:

Whenever two or more cases were tried together in the trial court or commission below, one petition for appeal may be used to bring all such cases before the Court of Appeals even though the cases were not consolidated below by formal order.

* The probation revocation followed a separate course. After the joint sentencing hearing, the public defender filed a notice of appeal in that case. The Court of Appeals considered that case on the joint petition for appeal and denied an appeal. Bryant filed a notice of appeal followed by a petition for appeal in this Court.

Here, Bryant's appellate counsel clearly expressed an intention to file such a joint petition in his request for an extension of time. The cases had been heard and decided in the same court, by the same judge, in a single hearing. The petition addressed both cases and contained sufficient assignments of error covering both. The Commonwealth made no objection to the joint petition and responded with a brief in opposition addressing the merits in both cases. The Rules contain no provision requiring an appellant to obtain leave from the Court of Appeals to file such a joint petition for appeal.

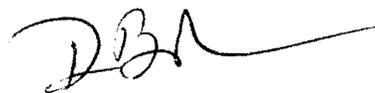
Had counsel listed the record numbers of both cases on the cover page of the joint petition for appeal, conservation of time and judicial resources might have resulted. Nevertheless, failure to do so does not create a jurisdictional defect justifying dismissal of an appeal. The Rules contain no provision requiring the inclusion of a record number in a petition for appeal.

Because Bryant filed a timely notice of appeal and a timely petition for appeal containing sufficient assignments of error, the Court of Appeals acquired active appellate jurisdiction of the case. *See Amin v. County of Henrico*, 286 Va. 231, 236 (2013). It therefore erred in dismissing the case.

Accordingly, the judgment of the Court of Appeals is reversed and the case is remanded to that court, which is directed to treat the petition for appeal filed in Record No. 1149-17-1 as having been jointly filed in Record No. 1889-17-1 on January 3, 2018, and which is further directed to consider whether assignment of error I in the said petition should be granted or denied.

A Copy,

Teste:

A handwritten signature in black ink, appearing to be the initials 'DBA' followed by a long horizontal flourish.

Clerk