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## Sheppard v. Early 168 F.3d 689 (4th Cir. 1999)

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## Sheppard v. Early 168 F.3d 689 (4th Cir. 1999)

In *Sheppard v. Early*,<sup>1</sup> Mark Sheppard (“Sheppard”), a death row inmate in Virginia, brought a federal action challenging the constitutionality of section 53.1-232.1 of the Virginia Code.<sup>2</sup> The statute requires a trial court which has imposed a death sentence to hold a hearing for the purpose of setting an execution date within ten days of receiving written notice from the Attorney General that habeas relief has been denied or that the time to file a petition for habeas relief has expired.<sup>3</sup> Section 53.1-232.1 further requires that the execution date be no later than sixty days after the hearing date.<sup>4</sup> Sheppard claimed that the statute violated his Fourteenth Amendment right to equal protection in the following two ways: (1) by truncating the time otherwise afforded to file a petition for certiorari in the United States Supreme Court; and (2) by permitting capital petitioners less time to seek certiorari from the Supreme Court than non-capital petitioners.<sup>5</sup>

Because death row inmates are not a suspect class for equal protection purposes,<sup>6</sup> and because inmates have no constitutional right to petition the Supreme Court for certiorari,<sup>7</sup> the court reviewed section 53.1-232.1 under a rational basis standard. Thus, the court reasoned that the statute was constitutional so long as the Commonwealth was seeking to advance a legitimate goal and “it was reasonable for lawmakers to believe that the use of the challenged classification would further that purpose.”<sup>8</sup> Because the court found the Commonwealth’s interests in the finality of criminal judgments and in executing sentence on “the most serious offenders” to be legitimate, and because the truncated filing period furthered these legitimate goals, Sheppard’s first claim was denied.<sup>9</sup> Similarly, the court decided that because death row inmates (unlike non-capital inmates) benefit from delay

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1. 168 F.3d 689 (4th Cir. 1999).

2. VA. CODE ANN. § 53.1-232.1 (Michie 1999).

3. *Sheppard v. Early*, 168 F.3d 689, 691 (4th Cir. 1999).

4. *Id.* at 692.

5. *Id.*

6. *Id.* (citing *Evans v. Thompson*, 881 F.2d 117, 121 (4th Cir. 1989)).

7. *Id.* (citing *Netherland v. Tuggle*, 515 U.S. 951, 952 (1995)).

8. *Id.*

9. *Id.*

in the review process, the Commonwealth was justified in treating them differently and expediting the review process.<sup>10</sup> The court did not explain how giving capital inmates less process than non-capital inmates comports with the need for increased reliability in a sentence of death acknowledged by the United States Supreme Court in *Woodson v. North Carolina*.<sup>11</sup>

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10. *Id.* at 693.

11. 428 U.S. 280, 305 (1976) (plurality opinion) (holding that a North Carolina statute that mandated a death sentence for a broad category of offenses was unconstitutional).

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# **CASE NOTES:**

**Virginia Supreme Court**

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