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VA. CODE ANN. S 18.2-10(a) (Michie 2000) VA.
CODE ANN. S 19.2-264.4(A) (Michie 2000) VA.
CODE ANN. S 19.2-11.01(A)(3)(c) (Michie
2000)

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VA. CODE ANN. § 18.2-10(a) (Michie 2000)
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VA. CODE ANN. § 19.2-11.01(A)(3)(c) (Michie 2000)

I. Introduction

The Virginia General Assembly amended three sections of the Virginia Code in the 2000 session that have implications for the practice of capital defense.

II. Discussion

A. Virginia Code Section 18.2-10(a)

Code section 18.2-10(a) prevents convicted capital defendants under the age of sixteen from receiving the death penalty.¹ The statute mandates a sentence of life imprisonment for an individual convicted of a Class 1 felony who was under the age of sixteen when the offense was committed.² The amendment to Code section 18.2-10(a) did not break new ground because twelve years before its enactment the United States Supreme Court, in *Thompson v. Oklahoma*,³ held that no individual under the age of sixteen at the time of the offense was eligible for the sentence of death.⁴

B. Virginia Code Section 19.2-264.4(A)

Code section 19.2-264.4(A), as amended, provides that in all capital cases a jury instruction shall be given that a sentence of life imprisonment does not permit release on parole (“life means life”).⁵ Prior to the amend-

1. VA. CODE ANN. § 18.2-10(a) (Michie 2000) (authorizing punishment of death for conviction of a Class 1 felony, “if the person so convicted was sixteen years of age or older at the time of the offense . . . [i]f the person was under sixteen years of age at the time of the offense, the punishment shall be imprisonment for life . . .”).

2. *Id.*

3. 487 U.S. 815 (1988).

4. *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988) (plurality opinion) (holding that the “Eighth and Fourteenth Amendments prohibit the execution of a person who was under 16 years of age at the time of his or her offense”). Virginia Code § 18.2-10(a) could also be read as explicit legislative intent to permit the imposition of the death penalty on persons 16 years of age at the time of the offense and subsequently convicted of capital murder.

5. VA. CODE ANN. § 19.2-264.4(A) (Michie 2000) (providing that upon the request of the defendant, “a jury shall be instructed that for all Class 1 felony offenses committed after January 1, 1995, a defendant shall not be eligible for parole if sentenced to imprisonment for life”).

ment the statute did not contain any language concerning a jury instruction.⁶ At sentencing, the defense attorney should request the "life means life" instruction and emphasize the fact that the defendant will never be released from prison. However, this instruction is not new to the practitioner because the United States Supreme Court has already permitted this instruction in *Simmons v. South Carolina*⁷ and the Supreme Court of Virginia held that this instruction was available in *Yarbrough v. Commonwealth*.⁸

C. Virginia Code Section 19.2-11.01(A)(3)(c)

The relevant portion of the amendment added subsection (c) to this Code section and allowed victims to request and obtain from the Attorney General notice of any appeal or habeas corpus proceeding involving the victim's case.⁹ The definition of "victim" is quite broad and includes a person who suffers any type of harm directly as a result of the commission of the offense.¹⁰ The scope also includes the spouse, children, parents, and siblings of the one directly harmed as a result of the enumerated felonies.¹¹ Defendants should be aware of the statutorily granted right to notice of court proceedings to a broadly defined group of persons.

6. See § 19.2.264.4(A). The statute previous to the amendment lacked the language quoted in note five. See *supra* note 5.

7. 512 U.S. 154 (1994).

8. See *Simmons v. South Carolina*, 512 U.S. 154, 162 (1994) (holding that due process forbids the State from preventing a "life means life" instruction at capital sentencing when the prosecution relies on the aggravator of future dangerousness); *Yarbrough v. Commonwealth*, 519 S.E.2d 602, 616 (Va. 1999) (permitting "life means life" instruction to the jury when the prosecution relies on the vileness aggravator); see also Matthew K. Mahoney, Case Note, 12 CAP. DEF. J. 279 (1999) (analyzing *Yarbrough v. Commonwealth*, 519 S.E.2d 602 (Va. 1999) which permits the "life means life" jury instruction upon the proffer of a proper instruction from the defendant or when defendant asks for the instruction after the jury inquires what imprisonment for life means).

9. VA. CODE ANN. § 19.2-11.01(A)(3)(c) (Michie 2000) ("[v]ictims shall receive notification, if requested . . . from the Attorney General of the filing and disposition of any appeal or habeas corpus proceeding involving their case").

10. VA. CODE ANN. § 19.2-11.01(B) (2000) ("[V]ictim means (i) person who has suffered physical, psychological or economic harm as a direct result of the commission of a felony or of assault and battery, . . . stalking, . . . sexual battery, . . . attempted sexual battery, . . . maiming or driving while intoxicated . . . (ii) a spouse or child of such a person, (iii) a parent or legal guardian of such a person who is a minor, or (iv) a spouse, parent, sibling or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide . . .").

11. *Id.*

III. Conclusion

The primary purpose of this note is to alert the attorney to changes which may cast new light on the process of defending capital cases. Practitioners are encouraged to contact Virginia Capital Case Clearinghouse to obtain updates on motions utilizing the aforementioned amended Code sections.

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CASE NOTES:

Court of Appeals of Virginia

