

4137  
199 Va. 92

# Record No. 4657

---

In the  
Supreme Court of Appeals of Virginia  
at Richmond

---

**W. FRANK SMYTH, JR., SUPERINTENDENT  
OF THE VIRGINIA STATE PENITENTIARY**

v.

**JAMES RAYMOND HOLLAND**

---

FROM THE HUSTINGS COURT OF THE CITY OF RICHMOND, PART II

---

## RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

199VA92



## RULE 5:12—BRIEFS

**§1. Form and Contents of Appellant's Brief.** The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

**§2. Form and Contents of Appellee's Brief.** The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

**§3. Reply Brief.** The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

**§4. Time of Filing.** As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

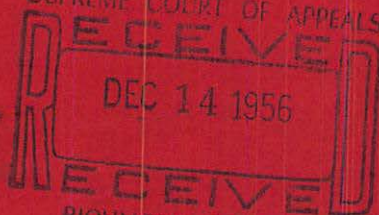
**§5. Number of Copies.** Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

**§6. Size and Type.** Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

**§7. Effect of Noncompliance.** If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.



CLERK  
SUPREME COURT OF APPEALS



RICHMOND, VIRGINIA

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND

---

**Record No. 4657**

---

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 9th day of October, 1956.

W. FRANK SMYTH, JR., SUPERINTENDENT OF THE  
VIRGINIA STATE PENITENTIARY, Plaintiff in  
error.

*against*

JAMES RAYMOND HOLLAND, Defendant in error.

---

From the Hustings Court of the City of Richmond, Part II

---

Upon the petition of W. Frank Smyth, Jr., Superintendent of the Virginia State Penitentiary, a writ of error and *superseas* is awarded him to a judgment rendered by the Hustings Court of the City of Richmond, Part II, on the 20th day of February, 1956, in a certain proceeding then therein depending wherein James Raymond Holland was plaintiff and the petitioner was defendant; no bond being required.

## RECORD

\* \* \* \* \*

page 2 }

\* \* \* \* \*

Filed by order December 5th 1955.

Teste:

CHAS. R. PURDY, Clerk  
By IVA M. ROBB, D. C.

O. B. 36. Page 483.

PETITION FOR WRIT OF *HABEAS CORPUS*.

To the Honorable M. Ray Doubles, Judge of said Court:

Your petitioner, James Raymond Holland, respectfully shows that he is unlawfully imprisoned, detained, confined and restrained of his liberty by M. L. Royster, Superintendent of the Virginia State Farm, in the County of Goochland, Virginia, as an inmate of said State Farm, which is a part of the Virginia State Penitentiary; that his imprisonment, detention, confinement and restraint are illegal, and that the illegality thereof consists in this, to-wit: That the only pretext or cause of such arrest and detention is by virtue of the following conviction orders hereinafter set forth, and by which he is detained by the said Superintendent as a prisoner in the Virginia State Penitentiary at the State Farm.

1. That at the January term 1935, in the Corporation Court of the City of Norfolk, Virginia, he was indicted by a grand jury on two counts, the first count charging that your petitioner on January 5, 1935, made an assault and by use of a pistol robbed one Bessie H. Etheridge, of \$20.00 in currency and two suits of clothes valued at \$30.00.

The second count charged your petitioner that on the same day and at the same place he made a felonious assault on the said Bessie H. Etheridge, and stole from her the sum of \$20.00 in currency and the same two suits of clothes.

2. That at the February term 1935, of the Corporation

Court of the City of Norfolk, your petitioner was indicted for the theft of an automobile belonging to M. B. Schneider, of the value of \$500.00.

page 3 } 3. At the March term 1935, of the Corporation

Court of the City of Danville, Virginia, your petitioner was indicted by a grand jury for a felony alleged to have been committed on the 11th day of August, 1934, for the *felonious* theft of a pocket watch of the value of \$70.00, the property of one T. D. Cunningham.

4. In consequence of said indictments he was tried and convicted, and duly certified copies of said conviction orders are hereto attached and made evidence in this matter.

5. Your petitioner being ignorant of how to defend himself on the said charges, and having no means of employing Counsel, and listening to the advice of other prisoners, and people equally ignorant in such matters, thought that it would go easier with him if he pleaded guilty, did so. He was not aware of the fact that the first count in the said indictment in the Corporation Court of Norfolk, that he was being tried for armed robbery, and for which the death penalty could have been invoked, and nevertheless the Trial Judge failed to appoint any Counsel to defend him, or to advise him of his rights or the effect of his plea of guilty, nor did the said Judge make any inquiry to see if he understood the effect of his plea of guilty, or advised with him concerning his guilt or innocence, but sentenced him to serve 25 years in the said Penitentiary. Your petitioner alleges that the second count in the said indictment is for the same offense charged in the first count, omitting only the charge that the use of firearms was employed; that he was ignorant of how to make any defense to this count, and was not represented by Counsel, nor advised of the effect of a plea of guilty.

6. At the same term and time on which he was tried of the aforesaid indictment he was also convicted on the indictment charging the theft of the said automobile, and no Counsel was assigned him, nor did he have any Counsel. Upon this indictment he was sentenced to serve—years in the said Penitentiary, as shown by the attached certified copy of the conviction order, filed as evidence with this petition, and your petitioner subsequently found that had he been advised

page 4 } by the Court, or given the benefit of Counsel, he could only have been convicted of unauthorized use of the said *automobile*, as there was no evidence to show any intention to steal the same, and had he been informed of his rights he would have pleaded guilty only to a charge of unauthorized use of the same.

7. Your petitioner further shows that on the aforesaid indictment in the Corporation Court of the City of Danville, Virginia, which the grand jury found against him at the March term of said Court 1935, for the theft of the said watch, alleged to be of the value of \$70.00, the property of one T. D. Cunningham, your petitioner was tried for the said felony on a plea of guilty without any Counsel having been assigned to him by the Court, he being financially unable to obtain Counsel, that neither the Court nor anyone else advised him of the effect and implication of waiving a jury and pleading guilty, which your petitioner subsequently found was ill-advised and unlawful, your petitioner being ignorant of both the facts in the case and the effect of waiving a jury and pleading guilty. The facts were, as your petitioner discovered long afterwards, that the said T. D. Cunningham lived in Danville, but at the time the watch was stolen it was taken from his room, #12, at the Breakers Hotel, Virginia Beach, by someone other than your petitioner, and the theft never occurred in Danville, the Court had no jurisdiction in Danville to indict or try your petitioner, and the said conviction was utterly void, and he has in his possession a report signed by the Chief of Police of the town of Virginia Beach to prove this, although he did not secure this report until 1941. The evidence adduced against him in the said Corporation Court of Danville was false, but your petitioner being ignorant of how to defend himself, and with no Counsel appointed for him, and no advice given him by the Judge as to the effect of the plea of guilty, but having been led to believe that that was the best thing for him to do, and being  
page 5 } in dread and terror of the situation in which he  
found himself, he was sentenced to six years in the Penitentiary.

Your petitioner did not know that it was pleading guilty to a charge, which if he had had the benefit of Counsel, could easily have resulted in his *acquittal*, was ignorant of the fact that this second conviction made him subject to an additional Penitentiary sentence for the commitment of a second felony.

Your petitioner has served many years in the Penitentiary due to the fact that the Judges of the said Courts did not safeguard his rights under the said Federal Constitution, and that he has been deprived thereby of an opportunity to defend himself, and the fact that he was ignorant of how to proceed made it all the more incumbent upon the said Trial Judges to see that he was given the benefit of Counsel, not only in the charge of armed robbery, carrying with it a possible death sentence, but on the other charges as well, and his plea of

guilty should not have been accepted by the Courts without first explaining to him its effect and seeing to it that it was his desire in fact to plead guilty and to waiving a jury.

Wherefore, and since your petitioner is remediless save by the means of this writ, he trusts that a writ of *habeas corpus ad subjiciendum* be granted, directed to the said M. L. Royster, Superintendent of the Virginia State Farm, in the County of Goochland, Virginia, in whose custody your petitioner is, commanding and directing him to bring the body of your petitioner before this Honorable Court, at such time as may be designated in said writ, that the said M. L. Royster may show cause, if any he shall have, why your petitioner is detained by him and not delivered up and discharged as of right he should be, and that this Honorable Court may make such order and grant such relief to your petitioner as the nature of his case may require and as may be proper in the premises.

Respectfully,

JAMES RAYMOND HOLLAND.

P. A. L. SMITH, JR., p. q.  
1008 Travelers Building,  
Richmond, Virginia.

page 6 } State of Virginia,  
County of Goochland, to-wit:

I, P. A. L. Smith, Jr., a Commissioner in Chancery for the Circuit Court of the County of Goochland, do hereby certify that James Raymond Holland, whose name is signed to the foregoing petition, appeared before me in my County aforesaid and made oath that the statements made therein, so far as are stated on his own information, are true, and so far as are stated on knowledge or information derived from others, he believes the same to be true.

Given under my hand this 17th day of June, 1955.

P. A. L. SMITH, JR.  
Commissioner in Chancery.

\* \* \* \* \*

page 7 }



CLERK'S OFFICE CORPORATION COURT  
Norfolk, Virginia

May 10th, 1955.

Mr. P. A. L. Smith, Jr.  
Attorney at Law  
1008-9 Travelers Building  
Richmond, Va.

*Re: Cmlth v. James Holland*

Dear Sir:

Please be advised that we are unable to locate any record of an Attorney having been appointed by the Court in this case.

Yours very truly,

W. L. PRIEUR, JR., Clerk  
By GEORGE R. OLD, D. C.

page 8 }

\* \* \* \* \*

In the Corporation Court of the City of Norfolk,

The Grand Jurors of the Commonwealth of Virginia in and for the body of the City of Norfolk, and now attending the said Court, at its January term, 1935, upon their oaths, present that JAMES HOLLAND to-wit on the 5th day of January in the year 1935, in the said City of Norfolk, On and upon one, Bessie A. Etheridge, then and there being, feloniously did make an assault and by the threat and presenting of firearms, to-wit, a pistol, her, the said Bessie A. Etheridge, in bodily fear feloniously did put, and Twenty Dollars of United States Currency of the value of Twenty Dollars, and two suits of clothes of the value of Thirty Dollars, all of the total value of Fifty Dollars, of the goods, chattels and moneys of the said Bessie A. Etheridge, from the person to-wit: the presence and against the will of the said Bessie A. Etheridge, then and there feloniously and violently did steal, take and carry away, against the peace and dignity of the Commonwealth of Virginia.

SECOND Count—And the Grand Jurors aforesaid, upon their aforesaid, do further present, that the said James Holland, on the 5th day of January, in the year 1935, in the said City of Norfolk, on and upon one Bessie A. Etheridge, then and there being, feloniously did make an assault, and her, the said Bessie A. Etheridge, in bodily fear feloniously did put, Twenty Dollars of United States Currency of the value of Twenty Dollars and two suits of clothes of the value of Thirty Dollars, all of the total value of Fifty Dollars, of the goods, chattels and moneys of the said Bessie A. Etheridge, from the person, to-wit: the presence and against the will of the said Bessie A. Etheridge, then and there feloniously and violently did steal, take and carry away, against the peace and dignity of the Commonwealth of Virginia.

\* \* \* \* \*

page 9 }

\* \* \* \* \*

In the Corporation Court of the City of Norfolk,

The Grand Jurors of the Commonwealth of Virginia in and for the body of the City of Norfolk, and now attending the said Court, at its February term, 1935, upon their oaths, present that JAMES R. HOLLAND to-wit on the 20th day of December in the year 1934, in the said City of Norfolk, one automobile of the value of Five Hundred Dollars, of the goods, chattels and moneys of M. R. Schneider, then and there being found, then and there feloniously did steal, take and carry away, against the peace and dignity of the Commonwealth of Virginia.

\* \* \* \* \*

page 10 } Virginia:—

Corporation Court of Danville, on Tuesday, the 5th day of March, in the year A. D. 1935.

James Raymond Holland, alias D. L. Taylor, who stands indicted of Grand Larceny, was set to the bar in custody of the jailor of this Court, thereof arraigned and in his proper person pleaded guilty to said indictment against him, and by consent as well of the Attorney for the Commonwealth as of

the accused, the Court proceeded without the intervention of a jury to try the matter in controversy and having heard the evidence adduced, doth find the said James Raymond Holland, alias D. L. Taylor guilty of Grand Larceny as charged in said indictment and fixes his punishment at Six years in the Penitentiary.

Therefore it is considered by the Court that the said James Raymond Holland, alias D. L. Taylor for the offence aforesaid be imprisoned in the Penitentiary of this State for Six (6) years, his imprisonment by the Court ascertained against him on said indictment. And it is ordered that he be allowed a credit, of 11 days time spent in jail awaiting trial.

IN TESTIMONY that the foregoing is a true copy, taken from the records of said Court, I, T. BRYAN TATE, Clerk thereof, hereto set my hand and affix the Seal of said Court this 21st day of April, 1949.

(Seal)

T. BRYAN TATE

Clerk of the Corporation Court,  
Danville, Va.

page 11 }

\* \* \* \* \*

## TOWN OF VIRGINIA BEACH

### POLICE AND FIRE DEPARTMENT

20th Street and Arctic Avenue

September 27, 1941.

Mr. James R. Holland,  
State Farm, Va.

Re: HAMILTON WRIST WATCH CASE  
#706220—M#54606

Dear Sir:

In reply to your letter in regards to the above watch. This watch was reported stolen by Mr. T. D. Cunningham, 401 W. Main Street, Danville, Va. on August 11, 1934 at 9:00 p. m. It was taken from Room #12 at the Breakers Hotel, Virginia Beach.

W. Frank Smyth, Jr., etc., v. James Raymond Holland 9

In addition to his watch his wallet containing about \$9.00 was also taken. The complainant reported that the theft occurred sometime between 4:00 and 7:00 p. m.

My records do not show this watch being located and if you have any information I would appreciate same so that I may clear my records.

Yours sincerely,

A. L. BARCO, JR.,  
Asst. Chief of Police.

page 12 }

\* \* \* \* \*

P. A. L. SMITH, JR.

Attorney-at-Law

1008-9 Travelers Building

RICHMOND, VA.

May 9, 1955.

Clerk,  
Corporation Court, City of Danville,  
Danville, Virginia.

Dear Sir:

On or about March, 1935, James Raymond Holland was tried in your Court and sentenced to six years in the Penitentiary.

Will you kindly advise me whether any lawyer was appointed by the Court to *defend* him in this case, and if so send me a copy of the order showing the name of the Attorney appointed for this purpose, and I will immediately forward you any charge for the order.

Thanking you, I am,

Yours very truly,

PALS, JR./s

P. A. L. SMITH, JR.



Dear Mr. Smith:

From the order of this Court of March 5, 1935, it seems that James Raymond Holland did not have an attorney, but pleaded guilty and was tried before the Judge without the intervention of a jury.

If you would like to have a copy of the order we will send it to you at a cost of 50c.

Sincerely,

T. F. TUCKER, Clerk  
By JEAN S. GAULDIN  
Deputy Clerk.

page 13 } Commonwealth of Virginia,  
          City of Danville, to-wit:

In the Corporation Court of Danville.

The Jurors of the Commonwealth of Virginia, in and for the body of the City of Danville, and now attending said Court at its March term, in the year 1935, upon their oaths present that James Raymond Holland, alias D. L. Taylor on the 11th day of August in the year 1934, in said City, one pocket watch of the value of \$70.00, of the goods and chattels of one T. D. Cunningham, then and there being found, feloniously did steal, take and carry away, against the peace and dignity of the Commonwealth.

This indictment is found upon the evidence of T. D. Cunningham, S. C. Cunningham, Jake Lowenstein, J. C. Lewis, witnesses sworn in Court and sent to the Grand Jury.

(on back)

### INDICTMENT FOR GRAND LARCENY.

Commonwealth of Virginia

*v.*

James Raymond Holland, alias D. L. Taylor

A true bill.

T. A. FULGHUM  
Foreman.

1935 Mch. Co. Indictment found 1935 Mch. Co. Judgmt. by Co. 6 Yrs. in Pen. and sentenced to same, and allowed 11 days credit, time in jail awaiting trial.

IN TESTIMONY that the foregoing is a true copy, taken from the records of said Court, I, T. Bryan Tate, Clerk thereof, hereto set my hand and affix the seal of said Court this 21st day of April, 1949.

T. BRYAN TATE, Clerk  
of the Corporation Court, Dan-  
ville, Va.

	Costs
Clerk	3.50
Sgt.	2.00
Comth. Atty.	10.00
	<hr/>
	\$15.50
	.75
	<hr/>
	\$16.25

1935 Mar. 30th *Fifa* issued.

page 14 } Virginia:

In the Corporation Court of the City of Norfolk, on the 12th day of February, 1935.

James Holland, who stands indicted for Robbery, was this day led to the bar in the custody of the Jailor of this Court, and upon being arraigned plead guilty to the first count of the said indictment, and on his motion, with the consent of the attorney for the Commonwealth, the whole matter of law and fact was heard and determined by the Court. Whereupon it is considered by the Court that the said defendant is guilty as charged in the first count of the said indictment, and that his punishment be fixed at twenty five years in the Penitentiary. Whereupon it being demanded of him, if anything for himself he had or knew to say, why the Court here should not now proceed to pronounce judgment against him, according to law, and nothing being offered or alleged in delay of judgment, it is, therefore, considered by the Court that the said James Holland be confined in the Penitentiary of this Commonwealth for the term of twenty-five years, subject to a credit of thirty-seven days spent in jail awaiting trial.

And the prisoner was remanded to jail.

\* \* \* \* \*

page 15 } Virginia:

In the Corporation Court of the City of Norfolk, on the 12th day of February, 1935.

James R. Holland, who stands indicted for Grand Larceny, was this day led to the bar in the custody of the Jailor of this Court, and upon being arraigned plead guilty to the said indictment, and on his motion, with the consent of the attorney for the Commonwealth, the whole matter of law and fact was heard and determined by the Court. Whereupon it is considered by the Court that the said defendant is guilty as charged in the said indictment, and that his punishment be fixed at one year in the Penitentiary. Whereupon it being demanded of him, if anything for himself he had or knew to say, why the Court here should not now proceed to pronounce judgment against him, according to law, and nothing being offered or alleged in delay of judgment, it is, therefore considered by the Court that the said James R. Holland be confined in the Penitentiary of this Commonwealth for the term of one year, subject to a credit of thirty-seven days spent in jail awaiting trial. The aforesaid sentence of one year in the Penitentiary is not to run concurrently with the sentence of twenty-five years given in this Court on the same day against James Holland.

And the prisoner was remanded to jail.

\* \* \* \* \*

page 16 }

\* \* \* \* \*

In the Hustings Court of the City of Richmond, Part II, the 5th day of December 1955.

### ORDER.

This day came the petitioner, James Raymond Holland, by counsel, and by leave of Court filed his Petition for a Writ of *Habeas Corpus*.

And it appearing proper so to do the Court doth order that the respondent do show cause why a writ should not issue herein by filing his Answer to this Rule on or before December 22, 1955.

\* \* \* \* \*

\* \* \* \* \*

Filed in Clerk's Office December 22nd 1955.

Teste:

CHAS R. PURDY, Clerk  
By IVA M. ROBB, D. C.

Now comes the Respondent, by counsel, and in response to the Order to show cause Petitioner does say as follows:

1. Respondent is now serving upon a six-year sentence for grand larceny from the Corporation Court of the City of Danville, Virginia, which sentence expires on November 12, 1959, as indicated from the records attached hereto.

2. Petitioner does not state a case for the issuance of a writ of *habeas corpus* in connection with the aforesaid Danville proceedings, upon which he is now being detained, for the reason that he plead guilty to an uncomplicated non-capital offence in a court having jurisdiction over the person and the subject matter. In alleging said conviction to be void, Petitioner merely alleges certain facts in connection with the offence which cannot be considered in *habeas corpus* proceedings, and avers that his plea of guilty and waiving of a jury were "subsequently found" to be "ill-advised and unlawful." Accordingly, his allegation of absence of counsel does not present a case for inquiry through *habeas corpus* proceedings.

3. Petitioner had had experience in a number of court proceedings prior to the said Danville proceedings.

4. Petitioner's acquiescence and failure to object to the said Danville proceedings to this date have precluded his raising this matter through *habeas corpus* proceedings. In accordance with the totality of the record, the writ of *habeas corpus* ought not to issue.

And now, having fully answered, the Petitioner respectfully requests that the rules to show cause be discharged and the petition for a writ of *habeas corpus* be dismissed.

W. FRANK SMYTH, JR., Superintendent,  
Virginia State Penitentiary,  
By THOMAS M. MILLER,  
Assistant Attorney General.

\* \* \* \* \*



page 19 }

James Raymond Holland

#33666.

Norfolk City—Robbery—25 years Expired—Nov. 24, 1954  
Norfolk City—Grand Larceny—1 year. Expired—Nov. 12, 1955  
Danville City—Grand Larceny—6 yrs. Expires Nov. 12, 1959  
2nd conviction—Richmond City—1 year. Expires July 1, 1960

Now serving on 6 year sentence for Grand Larceny from Danville City.

page 20 }

Camp No. Farm

### PRISON RECORD.

---

Date December 8, 1955.

Name James Raymond Holland Number 33666 Race White  
Alias D. L. Taylor  
Committed April 3, 1935  
Age 36 Married, Single, Widower, Divorced, Occupation  
Court (1) Norfolk City Corporation Court February 12, 1935  
(2) Danville City Corporation Court Date March 5, 1935  
Crime (1) Robbery-25, Grand Larceny-1 (2) Grand Larceny-6  
Term 32 Years  
Added for escapes None Years  
Richmond City Circuit Court—2nd conviction—11-4-35.  
Added for Second Conviction 1 Years. Total Term 33 Years  
Served 17 Years 9 Months 17 Days 40 days in jail time included.  
Term Expires July 1, 1960  
Eligible for Parole 2-23-46

---

### PRISON RULES VIOLATED

Paroled: 3-19-46. Returned violation of parole: 2-25-49.  
(Arrested violation of parole: 2-17-49)  
52 days good conduct time taken on 2-18-55, infraction of rules.

W. Frank Smyth, Jr., etc., v. James Raymond Holland 15

51 days good conduct time taken on 3-30-55, infraction of rules.

1st Conviction: #22802—J. Raymond Holland. Received: 2-2-28.

Sentenced Jan. 18, 1928, Isle of Wight County.

Att. Bank Robbery 10 yrs.

Discharged: 2-2-34.

CURTIS R. MANN, Director  
Bureau of Records and Criminal  
Identification  
Virginia Penitentiary, Richmond,  
Va.

(on back)

F. B. I. #874015

## Criminal Record

Contributor of Fingerprints	Name and Number	Arrested or Received	Charge	Disposition
As James R. Holland, Circuit Court, Isle of Wight Co., Va. 1-18-28. Att. Bank Robbery; 10 yrs. in St. Pr.				
SP. Richmond, Va.	J. Raymond Holland #22802	2-2-28	att. bank rob.	10 yrs.— 2-2-34 rel. exp. full term.
PD. Norfolk, Va.	James Raymond Holland, #13269	1-6-35	#1. holdup and robbery;  #2. larc. of auto	2-12-35, #1. 25 yrs. in Pen.  #2. 1 yrs. in Pen. not to run con- cur.

PD. Danville, Va.	James Raymond Holland, #4147	2-23-35	G. L.	
SP. Richmond, Va.	James Raymond Holland, #33666	4-3-35	G. L.	6 yrs. paroled 3-19-46.
PD. Richmond Va.	James Raymond Holland, #29862	5-16-48	housebreaking; poss. burg. tools	
The Pen. Richmond, Va.	James Raymond Holland #33666	returned 2-25-49	P. V. G. L. 6, robb. 25, G. L. 1, 2nd conv. 1)	33 yrs.



page 21 } Virginia:—

Corporation Court of Danville, on Tuesday, the 5th., day of March in the year A. D. 1935.

James Raymond Holland, alias D. L. Taylor, who stands indicted of Grand Larceny, was set to the bar in custody of the jailor of this Court, thereof arraigned and in his proper person pleaded guilty to said indictment against him, and by consent as well of the Attorney for the Commonwealth as of the accused, the Court proceeded without the intervention of a jury to try the matter in controversy and having heard the evidence adduced, doth find the said James Raymond Holland, alias D. L. Taylor guilty of Grand Larceny as charged in said indictment and fixes his punishment at Six years in the Penitentiary.

Therefore, it is considered by the Court that the said James Raymond Holland alias D. L. Taylor for the offense aforesaid be imprisoned in the Penitentiary of this State for Six (6) years, his imprisonment by the Court ascertained against him on said indictment. And it is ordered that he be allowed a credit of 11 days time spent in jail awaiting trial.

And thereupon he is remanded to Jail.

\* \* \* \* \*

page 22 }

\* \* \* \* \*

## COMMONWEALTH OF VIRGINIA

### INDICTMENT for Grand Larceny

James Raymond Holland, alias,  
D. L. Taylor

A TRUE BILL

T. A. FULGHUM, Foreman.

1935 Mch. Co. Indictmt. found.  
1935 Mch. Co. Judgmt. by Co. 6 yrs. in Pen. & sentenced  
to same, & allowed 11 days credit, time in Jail awaiting trial.

(on back)

Commonwealth of Virginia,  
City of Danville, to-wt:

In the Corporation Court of Danville.

The Jurors of the Commonwealth of Virginia, in and for the body of the City of Danville, and now attending said Court at its March term, in the year 1935, upon their oaths present that James Raymond Holland, alias, D. L. Taylor on the 11th day of August in the year 1934, in said City, one pocket watch of the value of \$70.00, of the goods and chattels of one T. D. Cunningham, then and there being found, feloniously did steal, take and carry away, against the peace and dignity of the Commonwealth.

This indictment is found upon the evidence of T. D. Cunningham, S. C. Cunningham, Jake Lowenstein, J. C. Lewis witnesses sworn in Court and sent to the Grand Jury.

page 23 }

\* \* \* \* \*

In the Hustings Court of the City of Richmond, Part II, the 30th day of January, 1956.

\* \* \* \* \*

### ORDER.

Upon a consideration of the Petition for a Writ of *Habeas Corpus* and the Answer to the Rule To Show Cause heretofore filed herein, the Court doth order that a Writ of *Habeas Corpus* do issue herein returnable to 2:00 o'clock P. M., February 20, 1956 upon so much of the Petition as alleges that the trial of the Petitioner in the Corporation Court of the City of Norfolk at the January 1935 Term for Armed Robbery was void.

Enter 1/30/56.

M. R. D.

\* \* \* \* \*

page 24 }

\* \* \* \* \*

To: W. Frank Smyth, Jr., Superintendent of the Virginia State Penitentiary, Richmond, Virginia.

We command you to take the body of James Raymond Holland detained by you and under your custody as it is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called, you have before our Hustings Court of the City of Richmond, Part II, in the Courtroom thereof at 10th and Hull Streets, Richmond, Virginia, at 2:00 o'clock P. M., on the 20th day of February, 1956, to do, submit to and receive all and singular those things which shall then and there be considered of him in this behalf. And have then there this writ.

Witness, Chas. R. Purdy, Clerk of our said Court, at the Courthouse thereof, in the City of Richmond, the 30th day of January, 1956, and in the 180th year of our Commonwealth.

CHAS. R. PURDY, Clerk.

\* \* \* \* \*

page 25 }

\* \* \* \* \*

### ORDER.

This day came the respondent and in obedience to the Writ of *Habeas Corpus* heretofore issued herein produced the petitioner, James Raymond Holland, before the Court.

And after hearing the evidence and argument of counsel, the Court being of opinion that failure of the petitioner to have counsel resulted in a lack of due process of law in the trial of the petitioner held in the Corporation Court of the City of Norfolk on February 12, 1935, and that the judgment of the Court sentencing the petitioner to twenty-five (25) years in the penitentiary for armed robbery (a capital offense), is void; and that the time allegedly served by the petitioner on such conviction should actually be credited as served upon other sentences totalling eight (8) years, which, if so credited, will have been completely served, entitling the petitioner to his release;

Therefore, the Court doth adjudge and order that the petitioner be released from custody by the respondent; to which action of the Court, the respondent, by his counsel, the Assistant Attorney General, objects and excepts.

And the respondent, having indicated his intention to apply to the Supreme Court of Appeals of Virginia for a Writ of Error to the aforesaid judgment of the Court, the Court doth suspend execution of its judgment herein for a period of four months and for such time thereafter until the Supreme Court of Appeals of Virginia shall have made final disposition of the case, on condition that the respondent do perfect and present his petition for a writ of error within four months from the date of this order.

And no bond is required of the respondent.

It is further ordered that pending the prosecution of a writ of error by the respondent, the petitioner is remanded to the custody of the respondent.

Enter 2/20/56.

M. R. D.

\* \* \* \* \*

page 27 }

\* \* \* \* \*

February 20th, 1956.

### ANSWER OF RESPONDENT.

Now comes the Respondent, by counsel, and, in response to the order of this Court, does say as follows:

1. Respondent is now serving upon a six year sentence for grand larceny from the Corporation Court of the City of Danville, Virginia, which sentence expires on November 12, 1959, as indicated from the records attached hereto.

2. Petitioner does not state a case for the issuance of a writ of *habeas corpus* in connection with the aforesaid Danville proceedings, upon which he is now being detained, for the reason that he plead guilty to an uncomplicated non-capital offense in a court having jurisdiction over the person and the subject matter. In alleging said conviction to be void, Petitioner merely alleges certain facts in connection with the offense which cannot be considered in *habeas corpus* proceedings, and avers that his plea of guilty and waiving of a jury were "subsequently found" to be "ill-advised and unlawful". Accordingly, his allegation of absence of counsel



does not present a case for inquiry through *habeas corpus* proceedings.

3. Petitioner had had experience in a number of court proceedings prior to the said Danville proceedings.  
 page 28 } 4. Petitioner's acquiescence and failure to object to the said Danville proceedings to this date have precluded his raising this matter through *habeas corpus* proceedings. In accordance with the totality of the record, the writ of *habeas corpus* ought not to issue.

And now having fully answered, the Petitioner respectfully requests that the writ be discharged and the petition for a writ of *habeas corpus* be dismissed.

W. FRANK SMYTH, JR., Superintendent  
 of the Virginia State Penitentiary.  
 By: THOMAS M. MILLER,  
 Assistant Attorney General.

\* \* \* \* \*

page 29 }

February 17, 1956.

TO WHOM IT MAY CONCERN: *Re:* JAMES RAYMOND  
 HOLLAND, #33666

Norfolk City

Convicted Feb. 12, 1935

1. Robbery—25 years  
 Expired Nov. 24, 1954

2. Grand Larceny—1 year  
 Expired July 29, 1955

Danville City

Convicted Mar. 5, 1935

3. Grand Larceny—6 years  
 Expires Nov. 12, 1959

Richmond City Circuit Court

Convicted Nov. 4, 1935

4. Second Conviction—1 year  
 Expires July 1, 1960

CURTIS R. MANN, Director,  
 Bureau of Records and Criminal  
 Identification, The Penitentiary,  
 Richmond, Virginia.

\* \* \* \* \*

\* \* \* \* \*

Filed in Clerk's Office, March 23rd, 1956.

Teste:

CHAS. R. PURDY, Clerk.  
By IVA M. ROBB, D. C.

# NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

W. Frank Smyth, Jr., Superintendent of the Virginia State Penitentiary, by counsel, hereby gives notice of appeal from the final order of the Hustings Court of the City of Richmond, Part II, entered in the above styled matter on February 20, 1956, releasing the petitioner, James Raymond Holland, from the custody of the respondent (under which he was being detained by virtue of a judgment order of conviction dated March 5, 1935, of the Corporation Court of the City of Danville, sentencing the petitioner to six years' imprisonment for the felony of grand larceny). Said order of February 20, 1956, held that the petitioner was denied due process of law in a trial held in the Corporation Court of the City of Norfolk on February 12, 1935, sentencing the petitioner to twenty-five years for armed robbery and that the time served on such Norfolk conviction should be credited as served upon other sentences which, if so credited, would entitle the petitioner to release.

The assignments of error to be relied upon by the respondent, W. Frank Smyth, Jr., Superintendent of the Virginia State Penitentiary, Commonwealth of Virginia, are herein-after set forth.

The Commonwealth assigns as error the following:

1. The Court erred in its action by order of February 20, 1956, in ordering the release of James Raymond Hall from custody of the respondent as the Hustings Court, Part II, of the City of Richmond is without jurisdiction for page 33 } reason that the prisoner is being detained under a valid judgment order of conviction.
2. The Court erred in that it was without jurisdiction or authority in its action by order of February 20, 1956, in ordering that the time spent by James Raymond Holland under a prior conviction adjudged to be void herein should be applied

and credited as time served under a valid conviction, which is the basis for the present detention.

3. The Court erred in its action by order of February 20, 1956, ordering the release of James Raymond Holland from custody by the respondent for reason that *habeas corpus* does not lie to review convictions other than that causing present detention, and the petitioner is presently detained upon an admitted valid judgment order of conviction of the Corporation Court of the City of Danville which does not expire until 1959.

4. The Court erred in its action by order of February 20, 1956, for reason that it was without jurisdiction to adjudicate the validity of the detention herein and *habeas corpus* does not lie to consider the validity of any conviction other than the judgment order of conviction under which James Raymond Holland is presently detained.

W. FRANK SMYTH, JR., Superintendent  
of the Virginia State Penitentiary.

By: THOMAS M. MILLER,  
Assistant Attorney General.

\* \* \* \* \*

page 34 }

\* \* \* \* \*

#### TESTIMONY OF PETITIONER, JAMES RAYMOND HOLLAND.

This witness, duly sworn, testified that he was born in 1898; that he had been convicted for attempted bank robbery in the Circuit Court of Isle of Wight County and sentenced to ten years' imprisonment pursuant to a trial by jury, wherein he was represented by an attorney of his own choosing, who had been provided in his behalf; that he served this sentence in the penitentiary where he learned that other inmates had received as much as forty years for armed robbery convictions; that years thereafter he was arrested on the streets of Norfolk by the Captain of Detectives several days after an offense had occurred in which a woman was robbed; that he was not told and did not inquire as to why he was arrested; that he had no preliminary hearing; that he was held in jail some ten days or two weeks; that during that time he did not inquire nor learn what he was charged

with; that he made no request for anyone to secure him a lawyer but would have been able to make provisions to retain an attorney; that he did not know that he was going to be tried until he was carried to court; that a charge was read against him, the import of which he was not fully aware; that he plead guilty; that he thought he was taking the easiest way out; that he made no request for an attorney; that the court did not offer him the services of an attorney; that no one gave him any advice; that some people said he was guilty; that there was no evidence heard; that there were a number of people and newspaper reporters in the court room; that he knew the Commonwealth's Attorney; that the matter lasted less than five minutes and that he was sentenced to the penitentiary for twenty-five years for armed robbery; that he further made no protest to anyone during the period of time shortly after he came to the penitentiary; that he was later paroled from this offense but thereafter returned to the penitentiary; that he has completed service of this sentence for armed robbery and is now being detained for service of a sentence for another offense.

Tendered: April 18, 1956.

M. RAY DOUBLES, Judge.

Signed and Certified: April 18, 1956.

M. RAY DOUBLES, Judge.

A Copy—Teste:

H. G. TURNER, Clerk.

## INDEX TO RECORD

	Page
Writ of Error and <i>Supersedeas</i> Awarded .....	1
Record .....	2
Petition for Writ of <i>Habeas Corpus</i> .....	2
Letter of W. L. Prieur, Jr., Clerk, dated May 10, 1955 ..	6
Indictments—Corporation Court of the City of Norfolk ..	6
Judgment of Corporation Court of Danville—March 5, 1935 .....	7
Letter, A. L. Barco, Jr., Asst. Chief of Police, dated September 27, 1941 .....	8
Letter, P. A. L. Smith, Jr., Attorney, dated May 9, 1955 ..	9
Letter, T. F. Tucker, Clerk .....	10
Indictment—Corporation Court of Danville .....	10
Judgment—February 12, 1935, Corporation Court of the City of Norfolk .....	11
Judgment—February 12, 1935, Corporation Court of the City of Norfolk .....	12
Order—December 5, 1955, Hustings Court of the City of Richmond, Part II .....	12
Answer of W. Frank Smyth, Jr., Supt., &c. ....	13
Prison Record, etc. ....	14
Judgment—March 5, 1935, Corporation Court of Danville ..	18
Indictment—Corporation Court of Danville .....	18
Order—January 30, 1956, Hustings Court of the City of Richmond, Part II .....	19
Writ of <i>Habeas Corpus</i> —January 30, 1956, Hustings Court of the City of Richmond, Part II .....	20
Order—February 20, 1956, Hustings Court of the City of Richmond, Part II .....	20
Answer of W. Frank Smyth, Jr., Supt., &c., filed February 20, 1956, with exhibits .....	21
Notice of Appeal and Assignments of Error .....	23
Testimony of James Raymond Holland .....	24