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# Record No. 4746

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

**W.FRANK SMYTH, JR., SUPERIN-  
TENDENT, &C.**

v.

**WILLIAM G. MIDGETT**

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

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## 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.



## 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.





IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND.

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**Record No. 4746**

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 24th day of April, 1957.

W. FRANK SMYTH, JR., SUPERINTENDENT, &c.,  
Plaintiff in Error,

*against*

WILLIAM G. MIDGETT, Defendant in Error.

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

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Upon the petition of W. Frank Smyth, Jr., Superintendent of the Virginia State Penitentiary, a writ of error and *supersedeas* is awarded him to a judgment rendered by the Hustings Court of the City of Richmond, Part II, on the 6th day of December, 1956, in a certain proceeding then therein depending wherein William G. Midgett was plaintiff and the petitioner was defendant; no bond being required.

## RECORD

## VIRGINIA:

In the Hustings Court of the City of Richmond, Part II,  
the 23rd day of March 1956.

\* \* \* \* \*

## ORDER.

Upon the Petition for a Writ of *Habeas Corpus* heretofore filed on behalf of the petitioner, the Court doth order that the respondent do Show Cause why a Writ of *Habeas Corpus* should not issue herein, and if issued, why the same should not be made returnable to the Circuit Court of Princess Anne County; this Rule to be answered not later than April 16, 1956, and argument thereon to be had at 2:00 o'clock, P. M. on April 30, 1956.

Enter 3/23/56.

M. R. D.

\* \* \* \* \*

page 3 }

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Filed March 20th, 1956.

Teste:

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

PETITION FOR A WRIT OF *HABEAS CORPUS*.

To the Honorable Ray Doubles, Judge of the Hustings Court, Part II, of the City of Richmond, Virginia.

Your petitioner, William G. Midgett, respectfully represents to the Court as follows:

1. That he is presently, unjustly, unlawfully, and illegally being detained and imprisoned by W. F. Smyth, Jr., Superintendent of the State Penitentiary for the State of Virginia, 500 Spring Street, Richmond, Virginia.

2. That he is thirty-three (33) years of age, and has completed the ninth grade in one of the public schools for the City of Washington, District of Columbia.

3. That at the time of his arrest, your petitioner was twenty (20) years of age; that prior to this particular arrest, he had never had any difficulty with the law, except one minor involvement with the Juvenile Court in the City of Washington, District of Columbia.

4. That never, prior to this difficulty, did your petitioner have reason to seek the advice or services of an attorney; he was not familiar with court procedure and specifically had no knowledge of the different degrees of crime that were, or could have been involved in the specific offenses with which he was charged.

5. That between the date of his arrest and the date on which he entered his pleas of guilty, he did not contact any member of his family, or any of his friends, because of the possible embarrassment that would have been caused them, and for the further reason that he knew he had done wrong, and thought it only right and proper that he be punished; that while in custody, he was interrogated at length about a series of burglaries and larcenies which apparently had occurred in the area at that approximate time; that he refused to admit guilt or confess to any of the crimes except those in which he was involved; during the course of these interviews, he was told that unless he entered a plea of guilty when arraigned in Court, he would receive a sentence of not less than eighty-eight (88) years.

6. That he was arrested on the 15th day of June 1942, in Princess Anne County, Virginia, and charged with eight (8) violations of the criminal laws of the State of Virginia; that subsequent to his arrest, he was indicted by a Grand Jury in the Circuit Court of Princess Anne County, Virginia, on two charges of burglary and five (5) charges of grand larceny and unauthorized use, and one charge of grand larceny.

7. That five of said indictments contained two (2) counts, one (1) charging grand larceny and the other unauthorized use; the property involved in each case was an automobile; the circumstances surrounding the taking of each automobile designated in the indictments and the use made of the same by the defendant substantiates a charge of unlawful use, but not grand larceny.

8. The petitioner has no knowledge as to the value of the articles in the grand larceny indictment charging theft of the property from the Chesapeake and Potomac Telephone Company, but says that the description of the same in the indictment, is so vague and indefinite that it necessarily raises a question as to the sufficiency of said indictment.

9. That your petitioner was brought into Court on the 13th day of July 1942, at which time he was asked by the Judge of said Court if he was guilty or not guilty of the offenses with which he was charged; that your petitioner was not given an opportunity to consult counsel, nor did the Court inquire as to whether or not he would like to have counsel appointed to represent him in the matter; because of his lack of knowledge of the full force of a plea of guilty to the charges involved, and his fear that if he did anything other than plead guilty to the charges, he would receive a sentence such as had been indicated, your petitioner did enter a general plea of guilty to each indictment; that as will appear from the notation on the back of the grand larceny indictments which contain two (2) counts, one (1) a felony and the other a misdemeanor, it is not clear to which count he entered his plea, nor is this clarified by the sentence orders of the Court; a general plea of guilty under these circumstances was repugnant to the charges in the indictment and should not have been permitted by the Court.

page 6 } 10. That at the time your petitioner entered the pleas of guilty to the various indictments, he did not knowingly waive his constitutional right to be represented by counsel; he respectfully contends that when the Court had knowledge, as it did in this case, that your petitioner was not represented by counsel and was called upon to enter a plea of guilty to eight (8) felony indictments, two (2) of which charged a capital offense, six (6) of which contained two (2) counts, and the other being so vague and indefinite as to create a doubt as to its validity, the Court should then, as a matter of right, have appointed counsel for your petitioner, in order that he could be fully guaranteed and assured the protection of all of his constitutional rights.

11. That the sentence in each case was two (2) years, all of which run consecutively, thus making a total of sixteen (16) years.

12. Your petitioner says that the sentences hereinabove recited which he is now serving in the State Penitentiary in Richmond, Virginia, are void because at the time he received said sentences, he was denied the constitutional rights guaranteed him by the Fifth and Fourteenth Amendments.

13. Your petitioner has never before applied to this Court or any other Court for a writ of *habeas corpus* involving these matters.

WHEREFORE your petitioner asks that writ be granted directing W. F. Smyth, Jr., Superintendent of the  
page 7 } State Penitentiary at Richmond, Virginia, to produce your petitioner before a Judge of the Hustings Court of the City of Richmond, Virginia, Part II, for the purpose of inquiring into the cause of the commitment and the detention of your petitioner and to do and abide by such orders as the Court may make in the premises.

WM. G. MIDGETT,  
Petitioner.

page 8 } COMMONWEALTH OF VIRGINIA,  
County of Princess Anne, to-wit:

In the Circuit Court of the County of Princess Anne:

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Princess Anne and now attending the said Court, upon their oaths, present that

John Walker alias Skee, Albert Spry and William C. Midgett on the 12th day of June in the year 1942, in the said County of Princess Anne, Virginia, did unlawfully, wilfully and feloniously steal, take and carry away the goods and chattels of Samuel E. Neel of the County of Princess Anne, Virginia, to-wit:

One 1941 Buick convertible coupe, Va. license No. 303-051 of the value of Nine Hundred (\$900.00) Dollars.

Second Count:

And the Jurors aforesaid upon their oaths present that on the 12th day of June, 1942, in the County of Princess Anne, the said John Walker alias Skee, Albert Spry and William C. Midgett did unlawfully, wilfully and feloniously did take, drive and use a certain motor vehicle, to-wit: One 1941 Buick convertible coupe, Va. license No. 303-051 of the value of Nine Hundred (\$900.00) Dollars; the property of Samuel E. Neel, without the consent of the owner thereof and in the absence of the owner, and with intent to temporarily deprive



the owner thereof of his possession thereof, without intent to steal the same.  
against the peace and dignity of the Commonwealth of Virginia,

P. W. ACKISS,  
Attorney for the Commonwealth.

(on back)

July 13, 1942 Accused ??? Albert Spry waives a jury,  
pleads not guilty, evidence heard, not guilty.

B. D. W.

William C. Midgett, pleaded guilty, jury waived, evidence heard, punishment fixed at two years in the penitentiary.

B. D. W.

\* \* \* \* \*

page 9 } COMMONWEALTH OF VIRGINIA,  
County of Princess Anne, to-wit:

In the Circuit Court of the County of Princess Anne:

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Princess Anne and now attending the said Court, upon their oaths, present that

William C. Midgett, Elbert Raymond Spry, Albert Spry, and John Walker alias Skee on the 14th day of June in the year 1942, in the said County of Princess Anne, Virginia, did unlawfully, wilfully and feloniously steal, take and carry away the goods and chattels of Lawrence E. Jacobs of the County of Princess Anne, Virginia, to-wit:

One 1942 Buick Sedan, Motor #14328538, D. C. Lic. #101-320 of the value of Twelve Hundred (\$1200.00) Dollars.

Second Count:

And the Jurors aforesaid upon their oaths present that on the 14th day of June, 1942, in the County of Princess Anne, the said William C. Midgett, Elbert Raymond Spry, and John Walker alias Skee, unlawfully, wilfully and feloniously did

take, drive and use a certain motor vehicle, to-wit: One 1942 Buick Sedan, Motor #14328538, D. C. Lic. #101-320; the property of Lawrence E. Jacobs, without the consent of the owner thereof and in the absence of the owner, and with intent to temporarily deprive the owner thereof of his possession thereof, without intent to steal the same. against the peace and dignity of the Commonwealth of Virginia,

P. W. ACKISS,  
Attorney for the Commonwealth.

(on back)

July 13, 1942 Accused ??? Elbert Spry, waives a jury, pleads not guilty, evidence and found not guilty.

B. D. W.

William C. Midgett, pleads guilty, jury waived, evidence heard, punishment fixed at two years in the penitentiary.

B. D. W.

\* \* \* \* \*

page 10 } COMMONWEALTH OF VIRGINIA,  
County of Princess Anne, to-wit:

In the Circuit Court of the County of Princess Anne:

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Princess Anne and now attending the said Court, upon their oaths, present that

William C. Midgett on the 11th day of June, in the year 1942, in the said County of Princess Anne, Virginia, did unlawfully, wilfully and feloniously steal and take away the goods and chattels of Dorothy L. Brownley of the County of Princess Anne, Virginia, to-wit:

One 1940 Plymouth Automobile, Va. Lic. 332-719, Motor #P9-168890B of the value of Six Hundred and Eight (\$608.00) Dollars.

Second Count:

## Supreme Court of Appeals of Virginia

And the Jurors aforesaid upon their oaths present that on the 11th day of June, 1942, in the County of Princess Anne, the said William C. Midgett did unlawfully, wilfully and feloniously take, drive and use a certain motor vehicle, to-wit: One 1940 Plymouth Automobile, Va. Lic. 332-719, Motor #P9-168890B; the property of Dorothy L. Brownley, without the consent of the owner thereof and in the absence of the owner, and with intent to temporarily deprive the owner thereof of her possession thereof, without intent to steal the same.

against the peace and dignity of the Commonwealth of Virginia,

P. W. ACKISS,  
Attorney for the Commonwealth.

(on back)

July 13, 1942 Accused waives jury, pleads not guilty, evidence heard and punishment fixed at two years in the penitentiary.

B. D. W.

\* \* \* \* \*

page 11 } COMMONWEALTH OF VIRGINIA,  
County of Princess Anne, to-wit:

In the Circuit Court of the County of Princess Anne:

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Princess Anne and now attending the said Court, upon their oaths present that

John Walker alias William C. Midgett, and Albert Spry on the 10th day of June in the year 1942, in the said County of Princess Anne, Virginia, did unlawfully, wilfully and feloniously steal and take away the goods and chattels of the Chesapeake & Potomac Telephone Company of Virginia, to-wit:

One lot of miscellaneous telephone equipment of the value of One hundred and Fifty (\$150.00) Dollars.



Then and there found in the County of Princess Anne the property of the Chesapeake & Potomac Telephone Company of Virginia, and unlawfully, wilfully and feloniously did steal, take and carry away the property of the said Chesapeake & Potomac Telephone Company of Virginia, to-wit:

One lot of miscellaneous telephone equipment of the value of One Hundred and Fifty (\$150.00) Dollars.  
against the peace and dignity of the Commonwealth of Virginia.

P. W. ACKISS,  
Attorney for the Commonwealth.

(on back)

July 13, 1942 Accused *sworn*, & Elbert Spry waives a jury, pleads not guilty, evidence heard, not guilty.

B. D. W.

William C. Midgett, pleaded guilty, jury waived, evidence heard, punishment fixed at two years in the penitentiary.

B. D. W.

\* \* \* \* \*

page 12 } COMMONWEALTH OF VIRGINIA,  
County of Princess Anne, to-wit:

In the Circuit Court of the County of Princess Anne:

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Princess Anne and now attending the said Court, upon their oaths, present that

John Walker alias William C. Midgett, and Albert Spry on the 10th day of June in the year 1942, in the said County of Princess Anne, Virginia, did unlawfully, feloniously and wilfully, break and enter in the night time the dwelling house of W. F. Hunger, with intent to steal, take and carry away the goods and chattels of one W. F. Hunger, then and there being found therein, and unlawfully, feloniously and wilfully did

steal, take and carry away from the said dwelling house of W. F. Hunger, the goods and chattels of the said W. F. Hunger, to-wit:

One electric clock of the value of \$10.00.

against the peace and dignity of the Commonwealth of Virginia,

P. W. ACKISS,  
Attorney for the Commonwealth.

(on back)

July 13, 1942 Accused *sworn*, & Elbert Spry waives a jury, & pleads not guilty, evidence heard, found not guilty.

B. D. W.

William C. Midgett, pleaded guilty, jury waived, evidence heard, punishment fixed at two years in the penitentiary.

B. D. W.

\* \* \* \* \*

page 13 } COMMONWEALTH OF VIRGINIA,  
County of Princess Anne, to-wit:

In the Circuit Court of the County of Princess Anne:

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Princess Anne and now attending the said Court, upon their oaths, present that

William C. Midgett and Elbert Raymond Spry on the 13th day of June in the year 1942, in the said County of Princess Anne, Virginia, did unlawfully, wilfully and feloniously steal, take and carry away the goods and chattels of Molly Lewis Knowles of the County of Princess Anne, Virginia, to-wit:

One 1941 Ford Sedan Automobile, Motor #18-6345487, Va. Lic. #290-537 of the value of Seven Hundred and Seventy-five (\$775.00) Dollars.

Second Count:

And the Jurors aforesaid upon their oaths present that on the 13th day of June, 1942, in the County of Princess Anne, the said William C. Midgett and Elbert Raymond Spry, unlawfully, wilfully and feloniously did take, drive and use a certain motor vehicle, to wit: One 1941 Ford Sedan Automobile, Motor #18-6345487, Va. Lic. #290-537; the property of Molly Lewis Knowles, without the consent of the owner thereof and in the absence of the owner, and with intent to temporarily deprive the owner thereof of her possession thereof, without intent to steal the same. against the peace and dignity of the Commonwealth of Virginia.

P. W. ACKISS,  
Attorney for the Commonwealth.

(on back)

July 13, 1942 Accused *sworn*, & Elbert Spry waives a jury, pleads not guilty, evidence heard, not guilty.

B. D. W.

William C. Midgett, pleaded guilty, jury waived, evidence heard, punishment fixed at two years in the penitentiary.

B. D. W.

\* \* \* \* \*

page 14 } COMMONWEALTH OF VIRGINIA,  
County of Princess Anne, to-wit:

In the Circuit Court of the County of Princess Anne:

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Princess Anne and now attending the said Court, upon their oaths, present that



William C. Midgett and Elbert Raymond Spry on the 13th day of June in the year 1942, in the said County of Princess Anne, Virginia, did unlawfully, wilfully and feloniously steal, take and carry away the goods and chattels of I. C. Knowles of the County of Princess Anne, Virginia, to-wit:

One 1941 Cadillac Sedan, Motor #7381231, Va. Lic. #5-024 of the value of Fifteen Hundred and Eighty-five (\$1585.00) Dollars.

Second Count:

And the Jurors aforesaid upon their oaths present that on the 13th day of June, 1942, in the County of Princess Anne, the said William C. Midgett and Elbert Raymond Spry did unlawfully, wilfully and feloniously take, drive and use a certain motor vehicle, to-wit: One 1941 Cadillac Sedan, Motor #73-81231, Va. Lic. #5-024; the property of I. C. Knowles, without the consent of the owner thereof and in the absence of the owner, and with intent to temporarily deprive the owner thereof of his possession thereof, without intent to steal the same.

against the peace and dignity of the Commonwealth of Virginia,

P. W. ACKISS,  
Attorney for the Commonwealth.

July 13, 1942 Accused *sworn*, & Elbert Spry pleads guilty as charged, evidence heard and accused found guilty, punishment fixed at five years in the penitentiary.

B. D. W.

William C. Midgett, pleads guilty, jury waived, evidence heard, punishment fixed at two years in the penitentiary.

B. D. W.

\* \* \* \* \*

page 15 } COMMONWEALTH OF VIRGINIA,  
County of Princess Anne, to-wit:

In the Circuit Court of the County of Princess Anne:

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Princess Anne and now attending the said Court, upon their oaths, present that

John Walker alias William C. Midgett, and Albert Spry on the 3rd day of June in the year 1942, in the said County of Princess Anne, Virginia, did unlawfully, feloniously and wilfully, break and enter in the night time the dwelling house of Lt. Mustard, with intent to steal, take and carry away the goods and chattels of one Lt. Mustard, then and there being found therein, and unlawfully, feloniously and wilfully did steal, take and carry away from the said dwelling house of Lt. Mustard, the goods and chattels of the said Lt. Mustard, to-wit:

One radio

Waffle iron

One watch

One electric clock

One lot of silverware

One lot of miscellaneous, all of the aggregate value of One Hundred (\$100.00) Dollars.

against the peace and dignity of the Commonwealth of Virginia,

P. W. ACKISS,

Attorney for the Commonwealth.

(on back)

July 13, 1942 Accused *sworn*, & Elbert Spry pleads not guilty, waives a jury, evidence heard, not guilty.

B. D. W.

William C. Midgett, pleaded guilty, jury waived, evidence heard, punishment fixed at two years in the penitentiary.

B. D. W.

\* \* \* \* \*

page 16 } VIRGINIA:

In the Circuit Court of Princess Anne County on the 13th day of July, 1942.

\* \* \* \* \*

UPON AN INDICTMENT FOR GRAND LARCENY. 1

This day came the Attorney for the Commonwealth, and the prisoner, William C. Midgett, who stands indicted for Grand Larceny, was led to the bar in the custody of the Sheriff of this Court, and being arraigned plead guilty to the said indictment, tendered in person by the accused, and with the consent of the Attorney for the Commonwealth and the accused, here entered of record, the Court heard and determined the case without the intervention of a jury, and finding the accused guilty according to his said plea, fixed his punishment at two years in the penitentiary.

Whereupon, it being demanded of the prisoner, William C. Midgett, if any thing for himself he had or knew to say why the Court should not now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay thereof, it is considered by the Court that the said William C. Midgett be confined in the penitentiary of this Commonwealth for the period of two years, but that he be given credit for the time actually spent in jail awaiting trial, he having been committed to the jail of this County on the 15th day June, 1942.

And it is ordered that the Clerk of this Court forthwith transmit to the Superintendent of the said penitentiary a copy of this judgment, and that the Sheriff of this County, when required so to do, deliver the said William C. Midgett to the guard authorized to receive him, who shall remove and safely convey him from the jail of this County to the said penitentiary therein to be kept imprisoned and treated in the manner directed by law.

And the prisoner is remanded to jail.

(Seal)

A Copy—Teste:

JOHN V. FENTRESS, Clerk.

By: E. H. ATWOOD, D. C.



page 17 } VIRGINIA:

In the Circuit Court of Princess Anne County on the 13th day of July, 1942.

\* \* \* \* \*

## UPON AN INDICTMENT FOR HOUSEBREAKING. 2

This day came the Attorney for the Commonwealth, and the prisoner William C. Midgett alias John Walker, who stands indicted for Grand Larceny, was led to the bar in the custody of the Sheriff of this Court, and being arraigned plead guilty to the said indictment, tendered in person by the accused, and with the consent of the attorney for the Commonwealth and the accused, here entered of record, the Court heard and determined the case without the intervention of a jury, and finding the accused guilty according to his said plea fixed his punishment at two years in the penitentiary.

Whereupon, it being demanded of the prisoner, William C. Midgett alias John Walker, if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay thereof, it is considered by the Court that the said William C. Midgett alias John Walker be confined in the penitentiary of this Commonwealth for the term of two years; the said term of confinement to commence at the termination of a previous term of confinement for two years, mentioned in the preceding judgment of this Court, this day entered against the said William C. Midgett alias John Walker. And it is ordered that the Clerk of this Court forthwith transmit to the Superintendent of the said penitentiary a copy of this judgment, and that the Sheriff of this County, when required so to do, deliver the said William C. Midgett alias John Walker, to the guard authorized to receive him, who shall remove and safely convey him from the jail of this County to the said penitentiary to be kept imprisoned and treated in the manner directed by law.

And the prisoner is remanded to jail.

(Seal)

A Copy—Teste:

JOHN V. FENTRESS, Clerk.  
By: E. H. ATWOOD, D. C.

page 18 } VIRGINIA:

In the Circuit Court of Princess Anne County on the 13th day of July, 1942.

\* \* \* \* \*

UPON AN INDICTMENT FOR GRAND LARCENY. #3

This day came the Attorney for the Commonwealth, and the prisoner William C. Midgett, who stands indicted for Grand Larceny, was led to the bar in the custody of the Sheriff of this Court, and being arraigned plead guilty to the said indictment, tendered in person by the accused, and with the consent of the Attorney for the Commonwealth and the accused, here entered of record, the Court heard and determined the case without the intervention of a jury, and finding the accused guilty according to his said plea fixed his punishment at two years in the penitentiary.

Whereupon, it being demanded of the prisoner, William C. Midgett, if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay thereof, it is considered by the Court that the said William C. Midgett be confined in the penitentiary of this Commonwealth for the term of two years. The said term of confinement to commence at the termination of two previous terms of confinement in the said penitentiary aggregating four years, mentioned in the two preceding judgments of this Court this day entered against the said William C. Midgett.

And it is ordered that the Clerk of this Court forthwith transmit to the Superintendent of the said penitentiary a copy of this judgment, and that the Sheriff of this Court, when required so to do, deliver the said William C. Midgett to the guard authorized to receive him, who shall remove and safely convey him from the jail of this County to the said penitentiary to be kept imprisoned and treated in the manner directed by law.

And the prisoner is remanded to jail.

(Seal)

A Copy—Teste:

JOHN V. FENTRESS, Clerk.  
By: E. H. ATWOOD, D. C.

page 19 } VIRGINIA :

In the Circuit Court of Princess Anne County, on the 13th day of July, 1942.

\* \* \* \* \*

UPON AN INDICTMENT FOR GRAND LARCENY. #4

This day came the Attorney for the Commonwealth, and the prisoner, William C. Midgett, who stands indicted for Grand Larceny, was led to the bar in the custody of the Sheriff of this Court, and being arraigned plead guilty to the said indictment, tendered in person by the accused, and with the consent of the Attorney for the Commonwealth and the accused, here entered of record, the Court heard and determined the case without the intervention of a jury and finding the accused guilty according to his said plea fixed his punishment at two years in the penitentiary.

Whereupon, it being demanded of the prisoner William C. Midgett, if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay thereof, it is considered by the Court that the said William C. Midgett be confined in the penitentiary of this Commonwealth for the term of two years, the said term of confinement to commence at the termination of three previous terms of confinement in the said penitentiary aggregating six years, mentioned in the three preceding judgments of this Court this day entered against the said William C. Midgett. And it is ordered that the Clerk of this Court forthwith transmit to the Superintendent of the said Penitentiary a copy of this judgment, and that the Sheriff of this Court when required so to do, deliver the said William C. Midgett to the guard authorized to receive him who shall remove and safely convey him from the jail of this County to the said penitentiary to be kept imprisoned and treated in the manner directed by law.

And the prisoner is remanded to jail.

(Seal)

A Copy—Teste:

JOHN V. FENTRESS, Clerk.  
By: E. H. ATWOOD, D. C.

page 20 } VIRGINIA:

In the Circuit Court of Princess Anne County on the 13th day of July, 1942.

\* \* \* \* \*

### UPON AN INDICTMENT FOR GRAND LARCENY. #5

This day came the Attorney for the Commonwealth and the prisoner, William C. Midgett, alias John Walker, who stands indicted for Grand Larceny, was led to the bar in the custody of the Sheriff of this Court, and being arraigned plead guilty as charged in the said indictment, tendered in person by the accused, and with the consent of the Attorney for the Commonwealth and the accused, here entered of record, the Court heard and determined the case without the intervention of a jury, and finding the accused guilty according to his said plea fixed his punishment at two years in the penitentiary.

Whereupon, it being demanded of the prisoner William C. Midgett, alias John Walker, if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay thereof, it is considered by the Court that the said William C. Midgett alias John Walker be confined in the penitentiary of this Commonwealth for the term of two years. The said term of confinement to commence at the termination of four previous terms of confinement in said penitentiary aggregating eight years, mentioned in the four preceding judgments of this Court this day entered against the said William C. Midgett alias John Walker. And it is ordered that the Clerk of this Court forthwith transmit to the Superintendent of the said penitentiary a copy of this judgment, and that the Sheriff of this Court, when required so to do, deliver the said William C. Midgett, alias John Walker, to the guard authorized to receive him who shall remove and safely convey him from the jail of this County to the said

penitentiary to be kept imprisoned and treated in the manner directed by law.

And the prisoner is remanded to jail.

(Seal)

A Copy—Teste:

JOHN V. FENTRESS, Clerk.  
By: E. H. ATWOOD, D. C.

page 21 } VIRGINIA:

In the Circuit Court of Princess Anne County, on the 13th day of July, 1942.

\* \* \* \* \*

# UPON AN INDICTMENT FOR GRAND LARCENY. #6

This day came the Attorney for the Commonwealth and the prisoner William C. Midgett, alias John Walker, alias Skee, who stands indicted for Grand Larceny, was led to the bar in the custody of the Sheriff of this Court, and being arraigned plead guilty as charged in the said indictment, tendered in person by the accused, here entered of record, the Court heard and determined the case without the intervention of a jury, and finding the accused guilty according to his said plea fixed his punishment at two years in the penitentiary.

Whereupon, it being demanded of the prisoner, William C. Midgett, alias John Walker, alias Skee, if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay thereof, it is considered by the Court that the said William C. Midgett, alias John Walker, alias Skee, be confined in the penitentiary of this Commonwealth for the term of two years. The said term of confinement to commence at the termination of five preceding judgments of this Court this day entered against the said William C. Midgett, alias John Walker, alias

Skee. And it is ordered that the Clerk of this Court forthwith transmit to the Superintendent of the said penitentiary a copy of this judgment, and that the Sheriff of this County, when required so to do, deliver the said William C. Midgett, alias John Walker, alias Skee, to the guard authorized to receive him who shall remove and safely convey him from the jail of this County to the said penitentiary to be kept imprisoned and treated in the manner directed by law.

And the prisoner is remanded to jail.

(Seal)

A Copy—Teste:

JOHN V. FENTRESS, Clerk.  
By: E. H. ATWOOD, D. C.

page 22 } VIRGINIA:

In the Circuit Court of Princess Anne County on the 13th day of July, 1942.

\* \* \* \* \*

UPON AN INDICTMENT FOR GRAND LARCENY 7.

This day came the Attorney for the Commonwealth and the prisoner, William C. Midgett, alias John Walker, alias Skee, who stands indicted for Grand Larceny, was led to the bar in the custody of the Sheriff of this Court, and being arraigned plead guilty to the said indictment, tendered in person by the accused, and with the consent of the Attorney for the Commonwealth and the accused, here entered of record, the Court heard and determined the case without the intervention of a jury, and finding the accused, guilty according to his said plea fixed his punishment at two years in the penitentiary.

Whereupon, it being demanded of the prisoner, William C. Midgett, alias John Walker, alias Skee, if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay thereof, it is considered by the Court that the said William C. Midgett,



alias John Walker, alias Skee, be confined in the penitentiary of this Commonwealth for the term of two years. The said term of confinement to commence at the termination of six previous terms of confinement in the said penitentiary aggregating twelve years, mentioned in the six preceding judgments of this Court, this day entered against the said William C. Midgett, alias John Walker, alias Skee; and it is ordered that the Clerk of this Court forthwith transmit to the Superintendent of the said penitentiary a copy of this judgment, and that the Sheriff of this Court, when required *do* to do, deliver the said William C. Midgett alias John Walker, alias Skee, to the guard authorized to receive him, who shall remove and safely convey him from the jail of this County to the said penitentiary to be kept imprisoned and treated in the manner directed by law.

And the prisoner is remanded to jail.

(Seal)

A Copy—Teste:

JOHN V. FENTRESS, Clerk.  
By: E. H. ATWOOD, D. C.

page 23 } Virginia:

In the Circuit Court of Princess Anne County on the 13th day of July, 1942.

\* \* \* \* \*

Certified To Pen. July 18, 1942 Upon an indictment for Housebreaking?

This day came the Attorney for the Commonwealth and the prisoner William C. Midgett, alias John Walker, who stands indicted for Housebreaking, was led to the bar in the custody of the Sheriff of this Court, and being arraigned plead guilty to the said indictment, tendered in person by the accused, and with the consent of the Attorney for the Commonwealth and the accused, here entered of record, the Court heard and determined the case without intervention of a jury, and finding the accused guilty according to this said plea fixed his punishment at two years in the penitentiary.

Whereupon, it being demanded of the prisoner, William C. Midgett, alias John Walker, if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgment against him according to law, and nothing offered or alleged in delay thereof, it is considered by the Court that the said William C. Midgett, alias John Walker be confined in the penitentiary of this Commonwealth for the term of two years. The said term of confinement to commence at the termination of seven previous terms of confinement in the said penitentiary aggregating fourteen years, mentioned in the seven preceding judgments of this Court this day entered against the said William C. Midgett alias John Walker. And it is ordered that the Clerk of this Court forthwith transmit to the Superintendent of the said penitentiary a copy of this judgment, and that the Sheriff of this Court, when required so to do, deliver the said William C. Midgett alias John Walker to the guard authorized to receive him who shall remove and safely convey him from the jail of this County to the said penitentiary to be kept imprisoned and treated in the manner directed by law.

And the prisoner is remanded to jail.

A Copy—Teste:

JOHN V. FENTRESS, Clerk  
By GERALD F. WILLIAMS, D. C.

page 24 } Virginia:

In the Hustings Court of the City of Richmond, Part II,  
the 23rd day of March 1956.

\* \* \* \* \*

#### ORDER.

Upon the Petition for a Writ of *Habeas Corpus* heretofore filed on behalf of the petitioner, the Court doth order that the respondent do Show Cause why a Writ of *Habeas Corpus* should not issue herein, and if issued, why the same should not be made returnable to the Circuit Court of Princess Anne County; this Rule to be answered not later than April 16,

1956, and argument thereon to be had at 2:00 o'clock, P. M. on April 30, 1956.

A Copy—Teste:

CHAS. R. PURDY, Clerk.

Filed March 26th 1956.

Teste:

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

(on back)

Executed within the City of Richmond, Virginia, this 26th day of March, 1956 by delivering a true copy of the within Show Cause Order in writing to W. F. Smyth, Superintendent, Virginia State Penitentiary, Richmond, Virginia.

FRANK A. CAVEDO  
City Sergeant of Richmond, Va.  
By R. B. HALLER  
Deputy City Sergeant.

page 25 }

\* \* \* \* \*

Filed in Clerk's Office April 12th 1956.

Teste: .

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

### ANSWER TO RULE TO SHOW CAUSE.

In answer to the rule to show cause entered herein, the respondent comes and says that:

1. A writ of *habeas corpus* should not issue as the petitioner is detained upon lawful non-capital judgment orders of conviction, as disclosed from the attached record.
2. A writ of *habeas corpus* should not issue as the peti-

tioner has delayed too long in contesting the non-capital judgment orders of conviction upon which he is presently detained. Petitioner has a long criminal record, as disclosed in the attached prison and F. B. I. report.

3. A writ of *habeas corpus* should not issue for reason that it would be contrary to the public interest in view of the extensive criminal record, including relatively recent offenses.

4. A writ of *habeas corpus* should not issue as the petitioner sets forth no substantial grounds for the issuance of such writ. Moreover, the indictments and judgment orders of conviction are in all respects lawful and valid.

5. Respondent respectfully submits that a writ of *habeas corpus* should not issue, but, in the event that such writ should issue, then respondent knows of no reason why  
 page 26 } it should not be made returnable to the Circuit Court of Princess Anne County, and further, in the event of issuance, the respondent would request that it be returnable to the Circuit Court of Princess Anne County where witnesses might be available to refute the allegations of fact set forth by the petitioner.

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

By THOMAS M. MILLER  
 Assistant Attorney General  
 Supreme Court Building  
 Richmond 19, Virginia.

\* \* \* \* \*

page 27 } *Re: William C. Midgett, Va. Pen. #46994*

The six (6) Grand Larceny charges, the two (2) House-breaking charges, and the three (3) Escape charges expired or will expire in the following manner:

(1) Grand Larceny—2 yrs.	Expired: 1-19-44
(2) " " " "	" 11-9-45
(3) " " " "	" 5-2-55

(At large on escape 7 yrs.-6 mos.-10 das.)

(4) Grand Larceny—2 yrs.	Expires 9-2-56
(5) " " " "	" 1-2-57

*Sum*

(6)	"	"	"	"	5-2-58
(7)	Housebreaking—2 yrs.	"			9-2-59
(8)	"	"	"	"	1-2-60
(9)	Escape	—1 yr.	"		9-2-60
(10)	"	"	"	"	5-2-61
(11)	"	"	"	"	1-2-62

CURTIS R. MANN Director  
Bureau of Records and Criminal  
Identification.

CRM/m

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Camp No. Prison

### PRISON RECORD

Date Mar-29-1956.

Name William C. Midgett Number 46994 Race White Alias John Walker Committed July-24-1942 Age 19, Single, Occupation Laborer Court Princess Anne County (Circuit Court) Date July-13-1942 Crime Grand Larceny-2-2-2-2-2, Housebreaking-2-2 Term 16 Years Escape-1. Total 17 yrs. Sentence commuted 11-21-44 to 16 yrs-7 mos-15 das Added for escapes 1-1 Years Added for Second, Third Conviction None Years. Total Term 18 yrs-7 mos-15 das. Years Served 6 Years 3 Monts 4 Days 39 days jail time included. Term Expires Jan-2-1962 Eligible for Parole Aug-24-1954.

### PRISON RULES VIOLATED

Escaped State Farm in Goochland Co. on 2-26-43. Recaptured 2-26-43.

Escaped Camp 29, in Goochland Co. on 6-9-45. Recaptured 6-12-45.

20% good conduct time taken on 8-25-47, for misconduct. 3-26-55.

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

(on back)

## CRIMINAL RECORD

2910153

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD, Va. Beach, Va..	Wm. C. Midgett #197.....	6-15-42	inv.....	.....
SP, Rich., Va.....	Wm. C. Midgett.....	7-24-42	G.L. 2-2-2-2-2-2, H.B. 2-2.... Escaped Camp #29, Gooch- land Co., Va. 6-9-45, re- captured 6-12-45, & ret. to Pen., Richmond, Va., 6-16-45.....	16 yrs.
SP, Rich., Va.....	William C. Midgett #46994.....	ret. 6-16-45	escape G.L. 12, H.B. 4, 1, 2-26-43..	17 yrs.
Prince Geo. Co. Pol., Hyattsville, Md.....	Wm. Garnett Midgett #M-386.....	11-18-47	H.B.-Lar.—4 cases	
PMG. War Dept...	Wm. Garnett Midgett.....	Boiling Field Pass 1-5-42		
PD, Salt Lake City, Utah.....	Wm. Garnett Midgett #27222.....	1-5-48	inv. Auto theft.....	2-16-48, 1-20 yrs* and 1-10 yrs. Utah SP (Inv. G.L. & 2nd Deg. burg.



SO, Salt Lake City, Utah.....	Wm. Garnett Midgett #21845.....	1-7-48 Inquiry	burg. 2nd and G. Lar.....	
Bu. of Narco., Wash., D. C...	Wm. Garnett Midgett #Utah-1533..	1-21-48		
St. Pr. Salt Lake City, Utah.....	William Garnett Midgett, .8267....	2-19-48	G. Lar. & 2nd Deg. Burg.....	1-20 yrs., 1-10 yrs.
Allegheny Co. Det. Bu., Pitts., Pa....	William G. Midgett #64934.....	5-19-50	Safe keeping.....	Held for hearing
SP, Balto., Md.....	Wm. Garnett Midgett #1993.....	6-13-50	A & B, escape, storehouse bkg. larc. RSG.....	14 yrs.
Prince Geo. Co. PD, Hyattsville, Md.....	Wm. Garnett Midgett, Jr. #M-569, Prince George Co. PD Upper Marlboro, Md.....	3-25-55 Inquiry	Escapee, Richmond, Va.....	del. to auth.
The Pen., Rich., Va.	William G. Midgett #46994.....	4-25-55		

W. Frank Smyth, Jr., Supt., &c., v. Wm. G. Midgett

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\* \* \* \* \*  
BILL PARTICULARS.

## MOTION FOR GROUNDS OF DEFENSE.

Motion is hereby made that petitioner name or designate the specific official capacity of the persons referred to in his petition for a writ of *habeas corpus*, wherein it is stated that he was interrogated while in custody and told that unless petitioner entered a plea of guilty he would receive a more severe sentence.

T. M. MILLER, P. D.  
Office of Attorney General.

Filed May 1st 1956.

Teste:

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

page 30 }

\* \* \* \* \*  
BILL OF PARTICULARS.

In response to the Order of this Court requiring the petitioner to furnish to the respondent the official capacities and names of persons who interrogated and advised the petitioner while in custody, the petitioner says that to the best of his knowledge and belief, the capacity and name of the official was Chief White, Chief of Police of Princess Anne County, Virginia.

WILLIAM G. MIDGETT  
By FREDERICK T. GRAY  
Of Counsel.

Filed in Clerk's Office May 16th 1956.

Teste:

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

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\* \* \* \* \*

STIPULATION.

It is hereby stipulated between counsel for the petitioner and the respondent that the attached affidavit of P. W. Ackiss will represent the testimony that Mr. Ackiss would give were he present in person and testifying. It is further stipulated that the entire contents of the affidavit are admitted as evidence for all purposes in connection with this proceeding.

THOMAS M. MILLER  
Assistant Attorney General  
Counsel for Respondents

T. BROOKE HOWARD  
Counsel for Petitioner.

FREDERICK T. GRAY  
Counsel for Petitioner.

Filed July 18th, 1956.

Teste:

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

page 32 }

AFFIDAVIT.

Re: William G. Midgett (*Habeas Corpus*) Convicted 6/13/42 in the Circuit Court of Princess Anne County for some eight violations of criminal laws.

I, P. W. Ackiss, was the Prosecuting Attorney in the above cases, having practiced before Judge White, the presiding Judge, in the Circuit Court of Princess Anne County, for a number of years prior to 1942.

In his later years as presiding Judge and specifically throughout 1942 it was the consistent practice of Judge White to advise persons charged with felonies as to their opportunity to have court appointed counsel. Judge White consistently offered counsel to persons charged with felonies appearing before him at the time in question. Moreover, Judge White fully advised persons charged with felonies as to the nature of the charges against them and the consequences of

their pleas, and further advised them as to their other constitutional rights when not represented by counsel. I know of no instance in 1942 when Judge White heard serious felony charges without the offering of counsel and advising the persons as to their rights.

I do not recall the specific circumstances in connection with the trial of William G. Midgett in 1942 in the Circuit Court of Princess Anne County, it being some fourteen years ago. However, it is my recollection that Midgett was implicated with others in connection with the charges.

The former Chief of Police of Princess Anne County, W. S. White, died in 1944. I knew Chief of Police White well and know of no instance where he advised or threatened prisoners regarding cases. Moreover, it was the consistent  
page 33 } practice of Chief White not to advise prisoners to  
enter pleas of guilty or advise as to the sentences  
that could be anticipated.

P. W. ACKISS.

Dated July 6, 1956.

State of Virginia,  
County of Princess Anne, to-wit:

I, Betty B. Bowdon, a Notary Public in and for the County aforesaid, in the State of Virginia, do hereby certify that P. W. Ackiss, whose name is signed to the foregoing writing, bearing date of July 6, 1956, has this day made oath before me in my County aforesaid that the statements therein contained are, to the best of his knowledge, information and belief, true.

My commission expires: July 28, 1957.

Given under my hand this 6th day of July, 1956.

BETTY B. BOWDON  
Notary Public.

(I was commissioned—Betty Brown).

page 34 } Virginia:

In the Hustings Court of the City of Richmond, Part II,  
the 18th day of July, 1956.

\* \* \* \* \*

ORDER.

It appearing proper so to do, the Court doth order that a Writ of *Habeas Corpus* be issued herein returnable to 2:00 o'clock, P. M., on the 20th day of September, 1956.

Enter 7/18/56.

M. R. D.

\* \* \* \* \*

page 35 } Virginia:

In the Hustings Court of the City of Richmond, Part II, the 18th day of July 1956.

Commonwealth of Virginia:

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

We command you to take the body of William G. Midgett, 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 o'clock P. M., on the 20th day of September, 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 and there this writ.

Witness, Chas. R. Purdy, Clerk of our said Court at the Courthouse thereof, in the City of Richmond, the 18th day of July, 1956, and in the 181st year of our Commonwealth.

CHAS. R. PURDY, Clerk.

Filed in Clerk's Office July 19th 1956.

Teste:

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

(on back)

Executed within the City of Richmond, Virginia, this 19th, day of July, 1956 by delivering a true copy of the within Order in writing to W. F. Smyth, Superintendent, Virginia State Penitentiary, Richmond, Virginia.

FRANK A. CAVEDO  
City Sergeant of Richmond, Va.  
By R. B. HALLER  
Deputy City Sergeant.

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. . . . .

Filed September 20th 1956.

Teste:

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

## ANSWER.

In answer to the petition for a writ of *habeas corpus* filed herein, the respondent comes and says that:

1. A writ of *habeas corpus* should not issue as the petitioner is detained upon lawful non-capital judgment orders of conviction, as disclosed from the previously filed record.
2. A writ of *habeas corpus* should not issue as the petitioner has delayed too long in contesting the non-capital judgment orders of conviction upon which he is presently detained. Petitioner has a long criminal record, as disclosed in the prison and F. B. I. report.
3. A writ of *habeas corpus* should not issue for reason that it would be contrary to the public interest in view of the extensive criminal record, including relatively recent offenses.



4. A writ of *habeas corpus* should not issue as the petitioner sets forth no substantial grounds for the issuance of such writ. Moreover, the indictments and judgment orders of conviction are in all respects lawful and valid.  
page 37 } 5. Respondent, having fully answered, submits that the petition for a writ of *habeas corpus* be dismissed and the writ be discharged.

W. FRANK SMYTH, JR.,  
Superintendent of the Virginia  
State Penitentiary.  
By THOMAS M. MILLER  
Assistant Attorney General  
Supreme Court Building  
Richmond 19, Virginia.

\* \* \* \* \*

page 38 } Virginia:

In the Hustings Court of the City of Richmond, Part II,  
the 25th day of October 1956.

\* \* \* \* \*

### ORDER.

The Court, heretofore having heard this case and taken the same under advisement and now being of opinion that the petitioner was not represented by counsel at his several trials in the Circuit Court of Princess Anne County had on July 13, 1942, and being of the further opinion that lack of counsel under all the circumstances constituted a denial of due process of law as guaranteed by the Constitution of Virginia and the federal constitutions in all of his said trials, the Court doth so adjudge.

And this case is continued on the docket for presentation of an appropriate order on behalf of the petitioner after being advised of the respondent's desires in connection therewith.

Enter 10/25/56.

M. R. D.

\* \* \* \* \*

## ORDER.

The Court, having heretofore heard this case and having adjudged that the petitioner was not represented by Counsel in his several trials in the Circuit Court of Princess Anne County, had on July 13, 1942, and having further adjudged that such lack of Counsel constituted a denial of due process of law as guaranteed by the Constitution of Virginia and the Federal Constitution, and having continued the case on the docket for the presentation of appropriate order on behalf of the petitioner and the petitioner having presented such order, and it appearing from the exhibit filed with the petition that the petitioner has been three times convicted of escape and sentenced to a term of one year in the Virginia State Penitentiary for each such offense and it further appearing from said exhibit that subsequent to the date of each such conviction the petitioner has served at least one year's confinement in said institution allegedly upon a conviction declared void by this order, the Court doth ADJUDGE, ORDER and DECREE that the several trials had on July 13, 1942, in the Circuit Court of Princess Anne County are null and void and that the petitioner has served sufficient time to satisfy each of the said escape convictions and should be credited with time served subsequent to such convictions and the respondent is therefore ordered to release the petitioner from custody; to which actions 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 this 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 Writ of Error within four months from the date of this order.

It is futher ORDERED that pending prosecution of a Writ of Error by the respondent, the petitioner is remanded to the custody of the respondent.

I ask for this:

FREDERICK T. GRAY.

Seen:

THOMAS M. MILLER, p. d.

Enter 12/6/56.

M. R. D.

\* \* \* \* \*

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\* \* \* \* \*

Filed in Clerk's Office February 1st 1957.

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, hereby gives notice of appeal from the final decree entered in the above styled cause on December 6, 1956, and sets forth the following assignments of error:

1. The Court erred in ordering the release from custody of William G. Midgett, as the said Court is without jurisdiction for reason that the prisoner is being detained under a valid judgment order of conviction.

2. The Court erred in its action by said order of December 6, 1956, in ordering that the time served pursuant to several trials had on July 13, 1942, deemed null and void herein, be credited upon and deemed satisfaction of several valid escape

convictions, as the said Court is without jurisdiction or authority to apply and credit time served under convictions deemed void upon service under valid convictions.

3. The Court erred in its action by said order of December 6, 1956, ordering the release of William G. Midgett from custody of the respondent for reason that the Court page 42 } is without jurisdiction or authority to release the prisoner from service of sentence of certain valid convictions which presently operate to detain the prisoner and under which convictions the prisoner is required to complete service of the sentences.

4. The Court erred in its action by order of December 6, 1956, for reason that it was without jurisdiction or authority to order the crediting of time previously served upon valid sentences presently operating to detain the prisoner.

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

By THOMAS M. MILLER  
Assistant Attorney General.

• • • • •  
A Copy—Teste:

H. G. TURNER, Clerk.

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