Overview

The Supreme Court of Virginia (SCV) issued another published order this week on a petition for a writ of habeas corpus. In Gaskins v. Clarke, Record No. 220807, the SCV found that Maryland local jails did not qualify as "local correctional facilities" under Title 53.1 for the purposes of giving credit for time served. As such, Gaskins was not entitled to credit for the 298 days he served in Maryland after Virginia issued a detainer on him.

The Court of Appeals of Virginia (CAV) issued 2 published and 17 unpublished opinions. The CAV also held in a published order that § 19.2-303's 60-day deadline to modify a sentence applied to the circuit court's actions and not the defendant's motion in Abanda v. Com., Record No. 1677-23-2. The CAV published an opinion interpreting the requirements of a defendant's answer to the Commonwealth's Information for civil asset forfeiture in McMillian v. Com., Record No. 0492-23-2, reversing a circuit court's finding of default. Finally, the CAV held that the restrictions in a living trust document superseded the general powers of attorneys-in-fact or power of attorney in Kosmann v. Brown, by her agent Seamans, Record No. 0367-23-4.

14 of the 17 unpublished opinions revolved around criminal law, so fellow criminal practitioners have a lot to read. However, many of these will likely not have much bearing on trial practice. One that will have an impact is Jones v. Com., Record No. 0137-23-1, finding that a traffic stop was not impermissibly extended for 4th Amendment suppression. Commonwealth's attorneys may find Davis v. Com., Record No. 1109-23-1, instructive and helpful on arguing against motions to withdraw guilty pleas.

In the civil context, two of the three unpublished cases could have an impact on practice. Halvorsen, et al. v. Powhatan County Sch. Bd., Record Nos. 0904-23-2 and 1039-23-2, reiterate and re-outline the requirements for a writ of mandamus, finding that in this case, there was an adequate remedy at law for the Halvorsens. Ashburn Village Community Assoc., Inc. v. Waltonwood Ashburn, LLC, Record No. 0169-23-4, found that a property association must take action to protect its interests and that Waltonwood's actions were perfectly within its obligations under the governing documents.

SCV Opinions and Published Orders

Gaskins v. Clarke, Director of VDOC, Record No. 220807: (Published Order)
Writ of habeas corpus; § 8.01-654; Credit for time served; Due process
Gaskins not entitled to credit for time served in Maryland, even though a Virginia detainer was a major reason for his incarceration in Maryland. Virginia had relinquished primary jurisdiction over Gaskins when it granted him an appeal bond, and because Maryland initiated charges before Virginia issued the detainer, Virginia did not regain primary jurisdiction until Maryland dismissed all of Gaskins's charges.

> Gaskins was originally convicted in December 2018 in Fairfax County. He was released on an appeal bond and permitted to live in Maryland. In 2020, Gaskin's appeal was still pending, and he was arrested and charged in both Prince George's County, Maryland and Montgomery County, Maryland. Subsequently, Gaskin's

appeal of his Fairfax conviction was denied, and the conviction affirmed. All of Gaskins's Maryland charges were dismissed by November 2021, but he had been incarcerated in Maryland since early 2020. Gaskins was finally extradited to Virginia and began serving his 5-year sentence, becoming a VDOC inmate on March 8, 2022.

Gaskins asked VDOC to credit him for some of his time spent in the Maryland jails to his sentence, citing § 53.1-187. Specifically, Gaskins asked VDOC to apply all the time that accrued after Virginia issued a detainer against him in January 2021, which was the sole reason he remained incarcerated in Maryland (298 days). His claim was denied for the most part, and he received 8 days of credit for the time he spent incarcerated in Maryland after his last Maryland charge was dismissed. Gaskins filed a petition for a writ of habeas corpus in the SCV, alleging VDOC's failed to properly credit his time violated his Due Process rights.

The SCV first found that § 53.1-187 did not require VDOC to credit him for his time in Maryland because "a local correctional facility is defined for the purposes of the Title as a facility owned, maintained or operated by . . . the Commonwealth." The SCV also rejected Gaskins's Due Process claim, finding that he did not "demonstrate that Virginia, as opposed to Maryland, deprived him of his opportunity to be held on home confinement." Finally, the SCV held that because Gaskins failed to raise an argument of double jeopardy in his initial petition, the SCV would not address the argument.

CAV Published Decisions

Kosmann v. Brown, by her agent Seamans, Record No. 0367-23-4: (Callins, J., writing for Athey and Causey, JJ.)
Trust Agreement; General power of appointment; Contract interpretation; Summary judgment; Statutory interpretation
Brown's power of attorney and trust documents restricted her agents' power of appointment. One Agent's actions removing trustee and putting a 3rd party as trustee were in violation of Brown's living trust documents.

Brown created her living trust in 2015. It was a revocable trust, and she appointed herself and her daughter, Monroe, as trustees, with Nadine Seamans as a successor trustee. Article 4 Section 4 of the Trust contained a provision that restricted general powers of appointment and identified that "Brown's powers under this Trust Agreement are personal to Brown." Brown also executed a "Property Power of Attorney" at the same time and appointed Monroe and Seamans as her agents.

In 2019, Monroe amended the Trust, making it irrevocable and naming herself and Kosmann as trustees, removing Seamans. Several other amendments were made, limiting Seamans's benefits under the Trust. Monroe also executed a document that resigned Brown as trustee, leaving Monroe as the sole initial trustee. Monroe died in November 2019.

In July 2020, Kosmann, as the sole trustee, stopped the Trust paying for Brown's medical care bills. Seamans filed suit, alleging that Monroe amended the trust in violation of Article 4 Section 4. In particular, Seamans alleged that Monroe did this with the knowledge that Monroe was going to die from brain cancer. The circuit court declared that "Kosmann is not the Trustee of the Trust" and instead ordered that Seamans be reinstated as trustee.

The CAV affirmed. Finding that there were no material facts in dispute, the only issues that remain were issues of law and applied a de novo standard of review. The CAV interpreted the definitions of "power of appointment" and "presently exercisable general power of appointment," finding that "the plain text of the Uniform Trust Code does not support Kosmann's contention that attorneys-in-fact are prohibited from exercising powers of appointment."

The CAV stated that when interpreting a trust agreement "the intent of the grantor controls." (quoting Harbour v. SunTrust Bank, 278 Va. 514, 519 (2009)). The CAV found that Brown's intent was to prohibit "her attorney-in-fact from exercising a general power of appointment" and it was a requirement to be "strictly complied with." (quoting Holzbach v. United Va. Bank, 216 Va. 482, 484 (1975) (citation omitted)).

Commentary: This opinion was an in-depth analysis of the statutory construction of the distinctions between the power of appointment and the power of attorney. At the end of the day, I think this case is relatively simple. Brown specifically excluded the general power of appointment in her bundle of rights delivered to her attorneys-in-fact. This general power of appointment was exercised by one of her attorneys-in-fact, which was expressly prohibited.

I will be the first to admit that my forays into power of attorney have been primarily limited to fraud investigations into obtaining power of attorney from unsuspecting victims and misappropriation of funds (also seen in this week's slate of opinions). This is my understanding of the case, and anyone who knows more about power of attorney/power of appointment should feel free to correct me. I would like to learn more about it.

McMillian v. Com., Record No. 0492-23-2: (Beales, J., writing for Decker, CJ., and Lorish, J.)
Civil asset forfeiture; § 19.2-386.1 et seq.; Statutory interpretation
A defendant's answer to civil asset forfeiture claim does not have to prove their allegations, and allegations that, if true, rebut the Commonwealth's Information are sufficient to present a defense and take the case to trial, where the Commonwealth must prove source of funds by clear and convincing evidence.

McMillian (as spelled in Appellant's *pro se* filings) was charged with Poss. of Sch. I/II narcotics. The Commonwealth filed an information for a civil asset forfeiture for $35,293 which was seized from "where McMillian operates his business, Expert

Bumpers." This address was also McMillian's primary residential address. The Commonwealth identified 3 separate possible owners of the seized money, sending all three notice of seizure and forfeiture.

McMillian filed an answer to the Information, stating that "the funds are legitimate proceeds from transactions completed in the regular course of business with the body shop." McMillian filed 5 more answers, each alleging the same. McMillian was convicted of his narcotics charge, which was possession, rather than PWID. McMillian provided a list of items "sold prior to the seizure" that represents "a portion of the proceeds from legitimate business transactions." The list totaled $31,000 and was seven different transactions. McMillian argued that the remaining money "came from customers of the body shop . . . who had paid for the work done on their vehicles."

The Commonwealth filed for default because none of McMillian's answers comported with § 19.2-386.9, which outlines the requirements of a defendant's answer. The circuit court found that McMillian "did not advance a reason why he could not identify any of his own evidentiary sources forming the basis for his sworn claim" as required, and held McMillian in default, ordering forfeiture.

The CAV reversed, stating that the circuit court misinterpreted the burden on defendants in pleadings of forfeitures. The CAV stated that when it comes to pleadings, the defendant "needed only to provide his own allegations in response to the Commonwealth's pleading." The CAV found that McMillian's sworn statement of the source of the funds was sufficient to contest the allegations in the Commonwealth's Information and send the case to trial. The CAV made no statements regarding McMillian's ability to succeed at trial but that McMillian's sworn statements sufficed to demonstrate a defense to the Commonwealth's Information.

Commentary: This is a good clarification of the civil asset forfeiture requirements, nor should it overly affect the Commonwealth's forfeiture dockets. Most defendants do not file a response/Answer, and they generally don't hire counsel for their civil asset forfeiture cases. However, in the cases that are somewhat on the line, where defendants allege non-illicit sources of the funds, this opinion should deliver more of them to trial, where the Commonwealth bears the burden by clear and convincing evidence.

Abanda v. Com., Record No. 1677-23-2: (Published Order: O'Brien, Malveaux, and Raphael, JJ.)
§ 19.2-303; Jurisdiction
Defendants requesting modification or suspension of sentence under § 19.2-303 must obtain an order from the court within 60 days of their transfer. The circuit court loses jurisdiction on the 61st day, regardless if a motion to modify has been filed.

Abanda was convicted of abduction, conspiracy to commit abduction, and A&B by mob. The circuit court imposed an active sentence of 7 years. His convictions were

affirmed in a separate opinion, in Abanda v. Com., Record No. 0770-22-2 (Oct. 24, 2023).

Somewhat relatedly, Abanda moved the circuit court to modify his sentence under § 19.2-303. Specifically, he filed his motion 59 days after he was transferred to the custody of the DOC. § 19.2-303 requires that the circuit court "transfer, suspend or otherwise modify" the sentence within 60 days of the defendant's transfer to the DOC. Eventually, the circuit court denied the motion to modify.

The CAV affirmed, but not for the merits of Abanda's case. Instead, the CAV held that the circuit court "lacked jurisdiction to act on Abanda's motion to modify his sentence." The statutory language requires that the circuit court order the modification within 60 days of transfer to the DOC, so after 60 days, the circuit court lost its statutory jurisdiction on this issue and was well outside of its inherent 21-day jurisdiction to modify its own order under Rule 1:1.

Commentary: This case was published as the initial case interpreting the new amendment of § 19.2-303. Previously, the code section required that the circuit court act prior to the defendant's transfer to DOC, and even when a defendant had filed a motion to modify prior to his transfer, the CAV had held that a circuit court loses its jurisdiction once the defendant is transferred. See Stokes v. Com., 61 Va. App. 388 (2013). The SCV approved that interpretation in Akers v. Com., 298 Va. 448 (2020). However, the General Assembly modified the language to include the 60-day limit on jurisdiction. As such, the CAV saw an opportunity to publish a similar interpretation as in Stokes. The circuit court must act prior to the 60-day deadline. The defendant should not delay filing their motion for modification. This can also be seen as a simple extension of Rule 1:1, where a court loses jurisdiction over its order after 21 days, even if a motion to suspend has been filed. The Court must act within the deadline.

CAV Unpublished Decisions

Eacho v. Com., Record No. 1659-22-2: (Raphael, J., writing for Malveaux, J., and Petty, SJ.)
Parental right to discipline; Excessive force; Sufficiency
CAV rejected Eacho's claims that placing hands on his daughter's neck (strangling) was done with disciplinary purpose, affirming conviction for domestic A&B.

Eacho is the father of A.E. and is divorced from A.E.'s mother, sharing custody. On the morning of Father's day, Eacho discovered that A.E. had been "up late using her cellphone." Eacho "shoved A.E. from her bathroom to the living room" then used his belt "to strike A.E. on her bottom and legs as she tried to get away." Eacho grabbed her cellphone and "ordered A.E. to 'pack her stuff and leave.'" Eacho continued to yell at A.E. and attempted to take A.E.'s cellphone, which A.E. refused because Eacho did not pay for the phone. A.E. also said "please don't touch me," but "Eacho wrenched her arm behind her back" before "grabb[ing] her by the hair and [swinging] her to the ground." A.E.'s older sister then took the phone and gave

> it to Eacho. A.E.'s nose was bleeding and, subsequently, Eacho "pushed her up against the back of a car" then "grabbed A.E. by the neck and squeezed, leaving visible bruises."
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> The circuit court convicted Eacho of domestic A&B, rejecting Eacho's argument that he acted "with a disciplinary purpose." The circuit court stated that, while Eacho claimed he was disciplining A.E. to remove her cellphone from her possession, he "recovered A.E.'s cellphone fairly early on, so any disciplinary purpose would have been accomplished." The circuit court "found no disciplinary purpose to be served when Eacho placed his hands on A.E.'s neck."
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> The CAV reiterated that one "legal justification is domestic authority, which is sometimes described as the parental privilege to discipline a child with physical force." (quoting Woodson v. Com., 74 Va. App. 685, 694 (2022)). But, "The parental privilege 'cannot cloak punishment that causes, or threatens, serious harm." (quoting id. at 695). If the force is "excessive or immoderate," the actions are not done with a disciplinary purpose." (same). The CAV found sufficient evidence for a rational factfinder to convict, again stating that the factfinder was entitled to reject "the defendant's attempted explanation as untrue . . . made falsely in an effort to conceal his guilt." (quoting Maust v. Com., 77 Va. App. 687, 703 (2023) (en banc)).

Hearn v. Com., Record No. 1524-22-3: (Chaney, J., writing for Huff and Malveaux, JJ.; Concurrence written by Malveaux, J.)
Sufficiency; Intent; Notice; Clerical error
Intent to kill is an issue of fact; therefore, the CAV found no error in Hearn's conviction for attempted first-degree murder when he set fire to Spiggle's trailer and blocked her door, regardless of his stated intent to scare her. Further, CAV found sufficient evidence that Hearn had "actual knowledge" of the contents of the protective order against him.

> Hearn was in a romantic relationship with Spiggle. Spiggle had moved her camper to Hearn's backyard and primarily resided in the camper. After some time, "Hearn began to threaten Spiggle and monitor her activity at home." Eventually, Hearn was convicted of A&B against Spiggle, and Spiggle obtained a protective order against Hearn. Hearn moved across the street but continued to be around the property, even speaking with Spiggle "at the camper." "Hearn often threatened Spiggle's life if she did not leave the property."
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> Frazier was hired to renovate Hearn's old property and expedite Hearn's and Spiggle's removal from the property. It appears that Frazier and Spiggle started a romantic relationship during this time, and Hearn was not happy with this. Frazier antagonized Hearn, as well. One day, Spiggle went to sleep in her camper and awoke to "flames reaching over the top of her window and engulfing the camper's entrance" which was also "locked from the outside." Spiggle escaped through an emergency window and called 911.

Surveillance footage from Hearn's mother's house showed a man wearing a pullover and blue jeans leave the area of Spiggle's camper carrying "a spray bottle." The man lit a cigarette and faced the area of Spiggle's camper, which lit up with "an active glow." Officers interviewed Hearn, who was wearing a fleece pullover and blue jeans. A "jury convicted Hearn of violating a protective order by stalking and attempted first-degree murder."

The CAV affirmed. The CAV first found that the circuit court found that Hearn "had actual knowledge of the [protective] order's contents." While the service return did not indicate that Hearn was served with the protective order, sufficient evidence demonstrated that the circuit court "was not plainly wrong in concluding . . . that Hearn had actual notice."

Hearn then argued that he only had "an intent to scare [Spiggle] rather than an intent to kill." The CAV rejected this argument because "the intent required for attempted murder . . . is generally a question for the trier of fact." (quoting Secret v. Com., 296 Va. 204, 228 (2018)). The CAV thus affirmed the finding of Hearn's specific intent to kill Spiggle.

Concurrence by Malveaux, J.: Judge Malveaux would have affirmed on the merits of Hearn's protective order violation but affirmed Hearn's conviction of attempted first-degree murder under a procedural default issue. The Commonwealth argued that Hearn was precluded from raising an attack on the sufficiency of evidence convicting Hearn of attempted first-degree murder because his motion to strike failed to articulate a basis for striking the attempted first-degree murder. The Majority of the panel affirmed on the merits of Hearn's attempted first-degree murder conviction, but Malveaux would not have reached the merits of the argument, finding that Rule 5A:18 precluded appellate review of the sufficiency on that charge.

Johnson v. Com., Record No. 1241-23-3: (White, J., writing for Ortiz and Friedman, JJ.)
Sufficiency; Intent; Reasonable hypothesis of innocence
The CAV affirmed Johnson's conviction of forging a public record where evidence contradicted Johnson's testimony that he had been "duped" and that the signer of the title was not the prior owner.

Johnson went to the DMV to apply for a new title for a vehicle. However, the DMV employee (Turner) told Johnson that the title was deficient (prior owner's signature was missing) and in such poor condition that a replacement title from the prior owner would be necessary. Johnson exited the DMV for less than 5 minutes before returning with a title that had a signature purporting to be the prior owner's. Johnson presented a woman who stated she was the prior owner. Turner recognized the

woman and "knew she was not" the prior owner of the vehicle. The DMV rejected Johnson's request for a new title.

Johnson went to a neighboring jurisdiction's DMV and obtained a new title for the vehicle. Johnson was investigated by DMV Special Agent Hicks. Hicks confirmed that the prior owner's signature did not match the one on the title and asked Johnson about the signature. Johnson stated that after the first DMV agent told him the title was deficient, he went to the location where he purchased the vehicle to obtain the appropriate signature. After a thorough search, Hicks was unable to locate the entity Johnson purchased the vehicle from. Subsequently, the circuit court convicted Johnson of forging a public record and unlawfully obtaining a document from DMV.

The CAV affirmed, finding sufficient evidence for a rational factfinder to conclude that Johnson had intentionally forged a public record, rejecting that Johnson had "been duped, as he claims." The CAV stated that the evidence that Johnson left the DMV for less than 5 minutes prior to obtaining a fraudulent signature indicated that Johnson was aware that the signer was not the prior owner. Further, his possession of the false title established "prima facie evidence that he either forged the instrument or procured it to be forged." (quoting Fitzgerald v. Com., 227 Va. 171, 174 (1984)).

Lilly v. Com., Record No. 1220-23-3: (Raphael, J., writing for Fulton and Causey, JJ.)
Financial exploitation; Reasonable compensation
Evidence sufficient to find that Lilly had misappropriated funds from his brother's bank accounts while acting with his brother's durable general power of attorney. CAV found no error in rejecting Lilly's defense of reasonable compensation for his duties.

Lilly's brother, Randy, was diagnosed with Alzheimer's disease in 2012. Randy signed a general durable power of attorney and appointed Lilly as his agent. Randy's condition worsened, and he became incapacitated. In 2018 or 2019, Lilly quit his job to provide full-time care to Randy. Lilly sought help from others, paying them with CashApp or PayPal.

In 2021, Harrisonburg Adult Protective Services (APC) was notified of "unusual charges" on Lilly's bank statements when reviewing an application for Medicaid benefits for Randy. "Large cash outflows and various charges that didn't seem to be appropriate." Detective Matthias began investigating Lilly for misappropriation of funds during 2019 and 2020. Matthias found that there were large deposits and withdrawals being made that did not appear normal. Lilly was charged with 5 counts of financial exploitation of a vulnerable adult under § 18.2-178.1. The charges alleged a total of approximately $340,000 in misappropriation.

Lilly testified in his own defense, identifying several charges as purchases for Randy and explained how Randy benefited from some of the other charges that appeared like misappropriation. Lilly stated that he did not take a paycheck and was

thus owed compensation in these types of purchases. The circuit court disagreed that the purchases were reasonable compensation and found Lilly guilty on all five counts, identifying the amounts and various payments that the circuit court believed constituted misappropriation in each of the 5 alleged time periods. The circuit court also found that some of Lilly's testimony was incredible.

The CAV thus affirmed, finding that the circuit court's interpretation of the evidence was not plainly wrong or without evidentiary support. "The relevant question is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (quoting Vasquez v. Com., 291 Va. 232, 248 (2016) (citation omitted)).

Davis v. Com., Record No. 1109-23-1: (O'Brien, J., writing for Huff and Athey, JJ.)
Motion to withdraw guilty plea
No abuse of discretion in denying Davis's motion to withdraw his Alford plea because Davis did not demonstrate his motion was in good faith and he did not present a reasonable defense.

In February 2019, Davis entered an Alford plea pursuant to a plea agreement to second-degree murder, use of a firearm in the commission of murder, and shooting a firearm from an occupied vehicle. The Commonwealth, as part of the agreement, had amended the first-degree murder charge to second-degree and entered a nolle prosequi in several charges. Davis stipulated to a written statement of facts presented by the Commonwealth that detailed Davis's involvement in a drive-by shooting and murder of a gang associate. The circuit court found that the facts were sufficient to sustain convictions and set a sentencing date.

In late 2019, counsel for Davis filed a motion to withdraw from the case, citing an irreconcilable conflict because Davis wanted to withdraw his pleas. The case was continued several times, in part due to 2 changes in counsel and in part because of the COVID-19 pandemic. Eventually, in July 2022, Davis filed a motion to withdraw his Alford pleas. Davis based this motion on his prior counsel's failure to communicate and properly advise Davis of the evidence against him and the burden on the Commonwealth. The circuit court rejected Davis's motion to withdraw, finding that Davis "failed to proffer a reasonable basis for contesting guilt," as well as finding that Davis acted in bad faith. The circuit court stated that entering a plea "merely because he was afraid" did not show that his plea was made unadvisedly.

The CAV stated that a denial of a motion to withdraw a plea is reviewed for abuse of discretion. Such a review is done with a 2-part test of (1) good faith and (2) defense raised in support of the motion is reasonable. (citing Branch v. Com., 60 Va. App. 540 (2012)). In this case, the CAV affirmed, finding that "the record supports the [circuit] court's conclusion that [Davis] was not moving to withdraw his guilty plea in good faith." Davis's testimony at the motion to withdraw demonstrated that "his attorney had, in fact, explained the elements of the offenses and had reviewed the plea agreement with him before he entered his pleas."

> The CAV also stated that the circuit court did not abuse its discretion in finding that Davis failed to present a reasonable defense. "A reasonable defense sufficient to withdraw a guilty plea is 'one based upon a proposition of law or one supported by credible testimony, supported by affidavit.'" (quoting Ramsey v. Com., 65 Va. App. 593, 602 (2015) (in turn quoting Williams v. Com., 59 Va. App. 238, 249 (2011))). Finally, the CAV also reiterated that prejudice to the Commonwealth is a valid factor for the circuit court to consider.

Halvorsen, et al. v. Powhatan County Sch. Bd., Record Nos. 0904-23-2 and 1039-23-2 (Consolidated Cases): (Lorish, J., writing for Decker, CJ., and Beales, J.)
Writ of mandamus; Individuals with disabilities education improvement act (IDEA); Adequate remedy at law; Motion craving oyer
The Halvorsens had an adequate remedy at law, so a writ of mandamus was an inappropriate vehicle for their claim that the School Board needed to pay for their disabled son's private education.

> The IDEA provides that all children with disabilities have access to a free and appropriate public education (FAPE). Schools are supposed to design individual education programs (IEP) to ensure that a child's education is appropriate. Additionally, if private school placement is recommended, the parents must sign a child services act (CSA) form. Disputes between parents and the educational agencies are supposed to be resolved by the Virginia Department of Education (VDOE).
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> The Halvorsens' son, A.H., is autistic and eligible for special education. His IEP recommended that he be placed into private school. The Halvorsens requested the school board's help in enrolling A.H. in a private school but "explicitly withheld consent" for the CSA to evaluate A.H. The school reached out to the Halvorsens and informed them that A.H. was conditionally accepted and that they needed to get a CSA consent form to approve funding. The Halvorsens were told that they needed to sign the form for an open exchange of information between the CSA, the school board, and the school.
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> The CSA denied funding because there was no consent form signed. The Halvorsens provided a modified consent form restricting certain information. The CSA again denied funding because the consent form was insufficient. The Halvorsens petitioned VDOE for a grievance hearing on the issue. The hearing officer found that the Halvorsens were at fault for CSA's denial of funding and thus rejected their request to force the school board to pay for A.H.'s schooling. The officer also informed them of their right to appeal.
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> The Halvorsens chose to petition for a writ of mandamus in the circuit court, requesting that the circuit court order the school board to pay for A.H.'s private school. The school board filed a motion craving oyer to include the hearing officer's opinions as part of the record and moved to dismiss the petition because the Halvorsens had an adequate remedy at law (appeal the hearing officer's decision).

The circuit court agreed and dismissed the petition. The Halvorsens filed a motion to reconsider and a notice of appeal. The circuit court denied the motion to reconsider, and the Halvorsens noticed a second appeal. The CAV consolidated the cases.

The CAV affirmed dismissal of the petition. "Mandamus is an extraordinary remedy that may be used 'to compel performance of a purely ministerial duty, but it does not lie to compel the performance of a discretionary duty.'" (quoting Moreau v. Fuller, 276 Va. 127, 135 (2008) (in turn quoting Ancient Art Tattoo Studio v. City of Va. Beach, 263 Va. 593, 597 (2002))). "A writ of mandamus may be issued only when there is a clear right to the relief sought, a legal duty to perform the requested act, and no adequate remedy at law." (quoting Ancient Art Tattoo Studio, 263 Va. at 597).

The CAV found that the Halvorsens had an adequate remedy at law to appeal the hearing officer's decision to the circuit court or a federal district court. Therefore, there was no error in the circuit court's dismissal of the petition for a writ of mandamus.

Rose v. Com., Record No. 0893-23-1: (Athey, J., writing for Huff and O'Brien, JJ.)
Admissibility of evidence; Inherent incredibility; Unconstitutional sentencing; § 19.2-268.3; Inter-panel accord doctrine
Mandatory life imprisonment does not violate U.S. or Virginia Constitutions nor the principle of separation of powers. The circuit court did not abuse its discretion in admitting the recorded forensic interview of O.L. under § 19.2-268.3, nor was her testimony inherently incredible.

The facts of the offense are generally irrelevant to the CAV's analysis of the case, so they are omitted from this synopsis. At trial, the Commonwealth introduced a recorded forensic interview of O.L., one of Rose's victims. The circuit court "found that there were sufficient indicia of reliability to render O.L.'s [recorded] statements not inadmissible hearsay" under § 19.2-268.3 and admitted the video. Rose testified in his own defense, denying the abuse. The jury convicted, and the circuit court imposed 2 terms of life imprisonment plus 25 years.

The CAV found no error in the admission of O.L.'s recorded interview because the circuit court properly evaluated the interview according to the factors listed in § 19.2-268.3(B). Under the totality of the circumstances, O.L.'s statements were sufficiently reliable and were properly admitted under the statute.

Rose also argued that O.L.'s testimony was inherently incredible "based on her inability to remember the answers to various questions." The CAV reiterated that "testimony may be contradictory or contain inconsistencies without rising to the level of being inherently incredible as a matter of law." (quoting Kelley v. Com., 69 Va. App. 617, 626 (2019)). Inconsistencies "go to the weight and sufficiency of the testimony, not the competency of the witness." (quoting Fordham v. Com., 13

Va. App. 235, 240 (1991)). The CAV found no reason to disturb the jury's finding of credibility as a matter of law. The CAV also reviewed the sufficiency of the evidence and found no error in convicting Rose.

Finally, Rose alleged that §§ 18.2-67.1(B)(2) and 18.2-67.2(B)(2)'s mandatory life imprisonment violates the U.S. Constitution and Virginia Constitution. Rose mounted a facial challenge under the cruel and unusual punishment clauses, which was rejected by the CAV under Harmelin v. Michigan, 501 U.S. 957 (1991) (citing Weems v. U.S., 217 U.S. 349 (1910)). Further, the CAV had previously held that the mandatory life imprisonment from these statutes were not cruel and unusual, in Cheripka v. Com., 78 Va. App. 480 (2023), and applied the inter-panel accord doctrine. Finally, the CAV found that mandatory life did not violate the separation of powers because the Commonwealth's Attorney has prosecutorial discretion to determine what charges should be brought.

Potter v. Com., Record No. 0885-23-2: (Petty, SJ., writing for Malveaux and Raphael, JJ.)
Abuse of discretion in sentencing
No abuse of discretion where Potter's sentence was within the maximum statutory range of punishment.

The general facts of Potter's conviction are irrelevant to much of the CAV's analysis and are thus omitted from this synopsis. Potter pleaded guilty to PWID Sch. I/II. At his sentencing hearing, the Commonwealth asked the circuit court to deviate from the guidelines and impose a lengthy sentence. The Commonwealth noted that Potter's criminal history dated 35 years and included 20 probation violations. On the instant charge, Potter had "50,000 lethal dosages of Fentanyl." Potter requested CCAP or a low-end sentence. The circuit court sentenced Potter to 30 years' incarceration with 15 suspended, exceeding the guidelines because "Potter's forty-year criminal record and his assessment that the guidelines have not caught up w/ Fentanyl."

The CAV found no abuse of discretion. The CAV referenced the abuse of discretion standard in Murry v. Com., 288 Va. 117, 122 (2014), which states that there are 3 ways a circuit court may commit an abuse of discretion; however, the CAV stated that "once it is determined that a sentence is within the limitations set forth in the statute under which it is imposed, appellate review is at an end." (quoting Minh Duy Du v. Com., 292 Va. 555, 565 (2016)). The only exception to this if there is "an alleged statutory or constitutional violation." (quoting Cellucci v. Com., 77 Va. App. 36, 49 (2023) (en banc)). Finding no such violation, the CAV affirmed the sentence.

Commentary: This is the latest in a string of sentencing cases in which the appellant cites to Murry or Lawlor v. Com., but the CAV does not engage with the substantive analysis of whether the circuit court improperly evaluated the evidence presented or evaluated an irrelevant factor. Once the CAV cites to Minh Duy Du, the CAV does not cite to Murry or Lawlor. This points to a different standard of review for

sentencing cases than other abuse of discretion cases, but neither the CAV nor the SCV has explicitly stated that there is a different standard of review, instead opting for an approach that references the standard and then in general says that there was no abuse of discretion.

Taylor v. Com., Record No. 0848-23-1: (O'Brien, J., writing for Huff and Athey, JJ.)
Admissibility of evidence; Motion for mistrial; Harmless error
The CAV found any error in admitting video of a hit-and-run was harmless because the only element at issue was identity, which was proved by several eyewitnesses. Because any error was harmless, the CAV found no abuse of discretion in denying the motion for a mistrial.

Taylor was loitering in and around a 7-Eleven near the Old Dominion University campus. Taylor got into a verbal altercation with several patrons and became aggressive. Taylor got into his car and drove into a group of patrons. Taylor pinned one victim's leg "against a stone trash receptacle." The victim "sustained a broken leg and severed femoral artery." The victim lacked mobility at the trial over a year later.

During its opening statement, the Commonwealth played a surveillance video that showed the incident. The Commonwealth played it again during testimony of one of the witnesses, and two witnesses identified Taylor as the driver of the vehicle. At the time, Taylor did not object to the video being played. On cross-examination one witness admitted that "she had never seen that footage previously and that she was not its custodian," but she identified it as accurate to what she observed on her own store surveillance footage. Taylor moved for a mistrial and objected to the admission of the evidence, stating that his non-objection during the Opening was based on his understanding that the custodian of the footage was present and going to testify. The circuit court ruled that the video would "remain in evidence" because the witness testified that the footage accurately depicted what she had seen. The jury convicted Taylor of the lesser-included charge of felony hit-and-run, and the circuit court denied the motion for a mistrial.

The CAV assumed error in the admission of the video, finding that any error was harmless under the non-constitutional standard based on overwhelming evidence of guilt and lack of "substantial influence on the verdict." (quoting Dandridge v. Com., 72 Va. App. 669, 685 (2021)). Because the identity of the defendant was proven independently by multiple witnesses and was the only fact at issue based on the jury's verdict of hit-and-run, the admission of the video did not influence the jury verdict. The CAV further found that the circuit court did not abuse its discretion in denying the motion for a mistrial because the circuit court did not err in admitting the video, which was the basis for the mistrial.

Taylor v. Com., Record No. 0811-23-3: (Friedman, J., writing for Chaney and Lorish, JJ.)
Sufficiency; Rule 5A:18; Ends of justice exception; Manifest injustice
Rule 5A:18 barred appellate review of Taylor's assignments of error, and no manifest injustice existed to apply the ends of justice exception.

> The facts of the case are not relevant to the CAV's analysis in the case and are thus omitted from this synopsis. At Taylor's trial for attempted second-degree murder, child endangerment, discharging a firearm in an occupied building, brandishing a firearm, and discharging a firearm in violation of local ordinance, Taylor moved to strike the evidence as it related to attempted murder. Taylor did not allege insufficient evidence on any of the other charges. At the close of all evidence, Taylor simply renewed her initial motion to strike and did not alter her argument.
>
> The CAV found that all of Taylor's arguments on appeal were procedurally defaulted under Rule 5A:18 because the jury acquitted Taylor of attempted second-degree murder which was the only charge she contested in her motions to strike. Taylor raised the ends of justice exception to Rule 5A:18, but the CAV declined to exercise the exception. The CAV stated that the exception requires "an appellant 'to present not only a winning argument on appeal but also one demonstrating that the trial court's error results in a grave injustice or a wholly inexcusable denial of essential rights.'" (quoting Winslow v. Com., 62 Va. App. 539, 546-47 (2013) (citation omitted)).
>
> Because the record does not "affirmatively prove that an element of the offense did not occur" or that "she was convicted for conduct that was not a criminal offense," the CAV found that the ends of justice exception did not apply to Taylor's convictions. (quoting Brittle v. Com., 54 Va. App. 505, 514 (2009)).

Poindexter v. Com., Record No. 0799-23-3: (Friedman, J., writing for Chaney and Lorish, JJ.)
Criminal culpability for conduct of child
CAV found no error in convicting Poindexter for her son's killing of Jones, where Poindexter should have known her actions were likely to cause Jones's death. Jones's threats and other actions were not intervening or superseding causes of his death.

> Poindexter was in a relationship with Jones and "had a history of domestic abuse and violence." Poindexter was having an argument with Jones when Jones escalated the situation and "punched Poindexter in the face." Poindexter "threw a pot of cold oil on Jones" before grabbing a kitchen knife and ultimately a firearm. Poindexter took a video on her phone showing that Poindexter was aiming the firearm at Jones while Jones held "N.P., Poindexter's son, in front of him as a human shield." Poindexter also told N.P. to grab a bat and "beat Jones's ass with [the] bat." Poindexter accused Jones of threatening to kill her multiple times.
>
> Poindexter left the house with N.P. to pick up P.P. from school, at first leaving the firearm, but "N.P. told Poindexter that he saw Jones putting ammunition in the firearm." Poindexter returned to the house to get the firearm, storing it in her car's

glove compartment. When Poindexter, N.P., and P.P. returned to the house, Poindexter started cleaning the mess from earlier, leaving the firearm on the coffee table in the living room. Jones started the argument again, and Poindexter told P.P. to call the police. Jones grabbed the phone from P.P., tossing the phone outside and holding P.P. while "stabb[ing] the couch with a knife." N.P. told Jones to let P.P. go, which he did. N.P. then grabbed the firearm and shot Jones as Jones "moved toward Poindexter." Jones died from the gunshot wound.

Poindexter was charged with involuntary manslaughter and two counts of felony child neglect. Poindexter moved to strike the evidence for all three charges, asserting that she did not demonstrate any gross negligence or callous disregard, arguing "it was unforeseeable that N.P. would shoot Jones." The circuit court disagreed, finding that Poindexter "engaged in actions that foreseeably caused Jones's death."

The CAV affirmed, finding that Poindexter's threats demonstrated intent and that she escalated the situation by introducing the firearm with N.P. in the room. When she returned back to the house, Poindexter left the firearm where anyone could access it. The CAV referenced the circuit court's direct finding that while Poindexter "did not tell N.P. specifically" what to do, she gave "him everything other than a direct command."

Further, the CAV found that "Jones's actions were not independent and intervening causes of his own death." Poindexter expressed a "desire to see Jones dead" and "placed a gun she knew was loaded on a coffee table for anyone to access" before she left the room. This and the rest of the evidence in the record supported the circuit court's conclusion that Jones was not at fault for his own death and Poindexter was directly responsible.

Finally, the CAV reviewed the sufficiency of Poindexter's child neglect convictions and found evidence sufficient to conclude she was guilty. "Poindexter knew, or should have known, that by pointing a gun to threaten someone holding her ten-year-old, there was a risk of physical harm to her child." Further, Poindexter "exposed both N.P. and P.P. to a substantial or probable risk of harm when she left the loaded gun within reach of both the children." (citing Wright v. Com., Record No. 0558-10-2 (Oct. 11, 2011)).

Estate of Joseph Williams v. Williams, Record No. 0708-23-2: (Lorish, J., writing for Decker, CJ., and Beales, J.)
Warrant in detinue; Improper action; Demurrer; Plea in bar; Best and narrowest grounds; § 8.01-114
Detinue action does not lie where complaint/warrant does not identify a particular or specific set of property. CAV left question of whether detinue applied to any claim for money for another day. CAV also refused to engage with a statute of limitations defense because of the best and narrowest grounds doctrine.

> Gary Williams, acting on behalf of himself and the estate of Joseph Williams (without identifying how he represented the estate), filed a warrant in detinue against Glenn Williams, Gary's brother. The warrant in detinue alleged that Glenn had wrongfully obtained $114,873.63 from the estate of Joseph Williams. Glenn demurred, which the circuit court sustained, granting leave for Gary to amend. Gary amended, filing a nearly-identical warrant. Glenn again demurred and filed a plea in bar, citing the statute of limitations and alleging that the detinue action was inappropriate for money because it was not specific property. The circuit court agreed on both counts and sustained the demurrer and granted the plea in bar.
>
> The CAV limited its holding to the conclusion that Gary's amended warrant "did not seek a specific item" or set of items. Instead, he only requested an amount of money. The CAV specifically did not determine whether an action "used to obtain a specific and identifiable pool of funds" could be supported by a warrant in detinue. Further, the CAV did not address whether the statute of limitations barred Gary's claim.
>
> *Commentary: Judge Lorish writes a brief history of detinue actions in Virginia, which had apparently fallen out of favor in the English Common Law. However, in Virginia, detinue actions had come back out of obscurity because of slavery and, apparently, the return of specific slaves. Judge Lorish and the CAV condemned the nature of the re-introduction of detinue actions but stated that it is now an often-used basis of action for the return of specific property.*

Booker v. Com., Record No. 0627-23-2: (Beales, J., writing for AtLee and Malveaux, JJ.)
Sufficiency; Rule 5A:18
CAV found "ample evidence" to identify Booker as the one who destroyed Clark's property. Booker's argument of inconsistent bench trial verdicts not properly preserved under Rule 5A:18.

> Booker went to Clark's house, and the two started an argument. Clark left before the altercation escalated because she knew Booker could get violent/physical. When Clark left, she noted that her house was "in good condition at that time" and left without locking her front door. She also forgot to take her cell phone with her.
>
> When Clark returned about an hour later, her house was in complete disarray and that Booker was gone. Her television was broken, two windows were damaged,

there was a hole in the wall, and her china cabinet had been destroyed along with its contents. She also could not find her cell phone.

Booker argued at trial that there was insufficient evidence to prove that he was the one to destroy Clark's property. The circuit court found sufficient evidence based on the brief amount of time Clark was gone from her house and the fact that Booker was in the house when Clark left and was known to be physical/violent when Clark and Booker argue.

The CAV affirmed, finding "ample evidence identifying Booker as the perpetrator." "The evidence demonstrated that Booker 'had motive, opportunity, and means, and the circumstantial evidence pointed to him as the perpetrator beyond a reasonable doubt." (quoting Hodges v. Com., 47 Va. App. 735, 785 (2004) (citation omitted)). For the first time on appeal, Booker argued that there were inconsistent verdicts because he was acquitted of the larceny of the cell phone. However, the CAV found that Booker failed to present this argument to the circuit court and was precluded from raising it on appeal pursuant to Rule 5A:18.

Commentary: For some reason, even though the CAV dispensed with the inconsistent verdict argument by finding Rule 5A:18 precluded appellate review, Judge Beales reviewed the merits briefly in footnote 3, finding that the extra element of specific intent to steal/permanently deprive meant that "there is nothing inherently inconsistent about verdicts that acquit a person of petit larceny but convict him of destruction of property."

Dooley v. Com., Record No. 0450-23-1: (Huff, J., writing for O'Brien and Fulton, JJ.)
Sufficiency; Conspiracy; Rule 5A:20
Dooley's assignments of error did not present a proper legal question for the CAV to review. However, the CAV reviewed the sufficiency of Dooley's conspiracy convictions and found sufficient evidence to support his convictions.

The facts recited in this synopsis are limited to those necessary for evaluation of the conspiracy charges only, as Dooley only contests the conspiracy charges and whether multiple people were involved in the murder at issue.

In May 2011, Dooley and Watson arrived at a house where Cummings and Carey lived to purchase some marijuana. One of Cummings's and Carey's friends, Gingerich, was present. After Dooley and Watson purchased the marijuana, they left, and Cummings asked them to close and lock the front door. Shortly after, Dooley and Watson came back with a gun. A struggle ensued, and both Dooley and Watson fled the area. Cummings called the police, but Cummings and Gingerich only able to identify Watson.

A few weeks later, Cummings was home alone, and he called Gingerich, claiming that the men from the incident "just tried to rob him" and thought they were going to come back. Gingerich refused to go over to Cummings house and told Cummings

to call the police. Carey came home to find Watson and Cummings "in a heated argument." Watson left, and Cummings told Carey what happened before they both went to sleep. Carey woke up to the front door of the house being kicked in. He heard multiple people enter the house and break into Cummings's room. Carey remained in his room and heard a physical altercation followed by gunshots. Carey waited until he thought the intruders had left and cracked open his door. He saw "a tall black figure wearing a white t-shirt run by [Carey's] room" and he saw Cummings on the ground at the bottom of the stairwell. Carey tried to reach Cummings but was shot multiple times and passed out. Other witnesses saw one person leaving the house, who was identified as Javon Doyle

After about 10 years, officers received information from one of Dooley's cellmates from 2015, who told officers that Dooley told the cellmate that Dooley "had been involved in a home invasion that resulted in a death. Dooley told the cellmate additional details about the robbery, including that one of the men involved was named Jay. A jury convicted Dooley of conspiracy to commit murder, conspiracy to commit robbery, and attempted robbery.

The CAV initially stated that Dooley's assignments of error did not "present a legal ground for this Court to conclude that the trial court erred in denying the motions to strike." However, the CAV then reviewed the sufficiency of the evidence on Dooley's conspiracy convictions. The CAV concluded that sufficient evidence was presented for a rational factfinder to find Dooley guilty of the conspiracy charges.

Commentary: This case is an interesting review of Rule 5A:20, wherein the CAV stated that it was applying Rule 5A:20 and found that Dooley's assignments of error did not present a proper legal question. Further, the CAV stated that Dooley raises arguments that are not encompassed by his assignments of error. After saying the CAV could not review the case, they continued to review the merits of Dooley's improper arguments. I think the only reason why would be to prevent the SCV from finding that the CAV misinterpreted 5A:20 and holding that Dooley's arguments were properly encompassed by the error and then remanding the case to the CAV for a merits analysis. The CAV may have thought it was easier to write the few extra pages of analysis in this instance rather than wait for a reversal from the SCV.

Ashburn Village Community Assoc., Inc. v. Waltonwood Ashburn, LLC, Record No. 0169-23-4: (AtLee, J., writing for Decker, CJ., and O'Brien, J.)
Demurrer; Breach of contract; Injunctive relief; Rezoning
No error in sustaining a demurrer where the Association failed to properly act after being notified of the rezoning the lot Waltonwood later purchased. Waltonwood not obligated to pay assessments under the Commercial Declaration because property was no longer a commercial lot.

The Association oversees commercial and residential properties and has different declarations for each type of property. Waltonwood contracted to purchase a commercial lot, but 2 months prior to the purchase, Loudoun County rezoned the

property "to permit the development of a congregate care facility for elderly adults. The Declarations declare this to be a "multifamily residential lot." However, the Association never withdrew the property from the Commercial Declaration, so when Waltonwood obtained the deed, it was subject only to the Commercial Declaration obligations, rights, and conditions. Waltonwood constructed a care facility on the lot.

The Association filed a complaint against Waltonwood, then a second amended complaint, then a third amended complaint. The third complaint alleged that Waltonwood breached its contract under the Commercial Declaration by failing to pay assessments and that Waltonwood breached the Residential Declaration by failing to pay assessments. The Association also requested injunctive relief because Waltonwood did not get the Association's approval before requesting rezoning. Waltonwood demurred.

The circuit court sustained the demurrer, finding that the property was not subject to assessments because it was not a commercial property and therefore was not subject to assessments under that Declaration. Since the Association never removed the lot from the Commercial Declaration to the Residential Declaration, assessments were not owed under the Residential Declaration. Finally, because Waltonwood was not the owner at the time of the rezoning, Waltonwood was not under any obligation to get approval from the Association.

The CAV affirmed for the same reasons as the circuit court. The CAV stated that if anyone was at fault for the rezoning issue and subject to an injunction/declaratory judgment, it was the prior owner of the lot, not Waltonwood.

Jones v. Com., Record No. 0137-23-1: (White, J., writing for Huff and Malveaux, JJ.)
4th Amendment Suppression; Sufficiency; Motion for mistrial; Best and narrowest grounds
Traffic stop not impermissibly extended when officer asked, "You got nothing in the car, right?" before finishing his traffic stop tasks.

In 2020, Investigator Natiello initiated a traffic stop on a vehicle after the vehicle sped through a stop sign without stopping. Jones was the sole occupant of the vehicle. Jones was polite and cooperative, and Natiello intended to let Jones off with a verbal warning. Natiello approached Jones and was about to issue the warning when Natiello asked "You got nothing in the car, right?" Jones immediately stated that there was marijuana on his person.

Natiello asked Jones to step out of the vehicle. Then Jones admitted that he had an unregistered firearm in the vehicle, that he was a felon, and that he did not have a concealed weapons permit. Jones further admitted that the firearm was loaded. Jones moved to suppress the evidence obtained after Natiello asked the question about anything illegal. The circuit court denied the motion to suppress, severed the marijuana charge from the firearm charge, and conducted a jury trial. The jury found Jones guilty of possessing a firearm by a felon. Jones moved for a mistrial

because of repeated mention of marijuana when small amounts of marijuana were legalized and irrelevant to the possession of the firearm charge. The circuit court denied the mistrial motion.

The CAV reiterated that even "a de minimis delay or extension of a stop" may "violate a citizen's constitutional rights." (quoting Matthews v. Com., 65 Va. App. 334, 345 (2015)). But, the action must delay or prolong the stop. Here, Natiello's actions did not extend the stop as he had not yet completed the tasks of the stop.

The CAV also affirmed the denial of the motion for mistrial, finding that the circuit court unequivocally instructed the jury to disregard any mention of marijuana. The CAV reiterated that appellate courts "will not reverse the denial of a motion for a mistrial unless a manifest probability exists that the trial court's ruling was prejudicial." (quoting Wright v. Com., 52 Va. App. 690, 707 (2008)). Since "juries are presumed to follow prompt, explicit, and curative instructions" and there was no evidence that the mention of marijuana was "so impressive that it probably . . . influenced [the jury's] verdict" there was no error in denying the motion. (quoting first Smith v. Com., 48 Va. App. 521, 531 (2006) then Terry v. Com., 5 Va. App. 167, 169 (1987)).

Finally, the CAV found sufficient evidence to for a rational factfinder to believe that the item located was a firearm. The Commonwealth does not have to prove that the firearm "was operable, capable of being fired, or had the actual capacity to do serious harm." (quoting Jones v. Com., 277 Va. 171, 183 (2009)).

Fore v. Com. Record No 0114-23-1: (Athey, J., writing for Huff and O'Brien, JJ.)
Plea agreement; Deferred disposition; Rule 5A:18; Rule 5A:20
No abuse of discretion in finding Fore violated his conditions of his deferred disposition when he failed to complete sex offender treatment. Fore procedurally defaulted on several of his arguments.

The facts of the case are omitted as they are irrelevant to the CAV's analysis. Fore pleaded guilty to indecent liberties with a child, and the case was taken under advisement with a deferred disposition. Ultimately, if Fore satisfied his obligations under the plea agreement, he would have been found guilty of misdemeanor sexual battery. The case was deferred prior to the enactment of § 19.2-298.02 and thus was not covered under that statute.

Fore failed to abide by the terms and conditions of his deferred disposition, but the circuit court extended the length of his probation/deferral for him to complete the conditions. Fore still failed to complete the conditions (sex offender treatment) and was found guilty of indecent liberties with a child.

The CAV affirmed, finding no abuse of discretion in the circuit court's decision to find Fore in violation of his conditions. In doing so, the CAV found that some of Fore's arguments on appeal were not properly preserved under Rule 5A:18, as he

did not raise them to the circuit court. One of Fore's main arguments, that the circuit court erred in implicitly finding that the sex offender treatment was "necessary" without evidence that it was necessary was not properly raised under Rule 5A:20, which requires "that an appellant's opening brief contain the principles of law, the argument, and the authorities relating to each question presented." (quoting Bartley v. Com., 67 Va. App. 740, 744 (2017)).