**VIRGINIA:**

*In the Court of Appeals of Virginia on* Friday *the* 7th *day of* April, 2006.

Wesley Clay Smith, Appellant,

against Record No. 2615-05-4
Circuit Court No. MI-2005-1559

Commonwealth of Virginia, Appellee.

From the Circuit Court of Fairfax County

The record does not contain a transcript of the trial proceedings. A written statement of facts is in the record; however, it has not been signed by the trial judge. In Proctor v. Town of Colonial Beach, 15 Va. App. 608, 425 S.E.2d 818 (1993) (*en banc*), we set forth the obligations of litigants and trial judges concerning the filing and handling of a written statement of facts. We stated:

> Rule 5A:8(c) states that a written statement becomes a part of the record when (1) it is filed in the office of the clerk of the trial court within fifty-five days after entry of judgment, (2) a copy of the statement is mailed or delivered to opposing counsel along with a notice that the statement will be presented to the trial judge between fifteen and twenty days after filing, and (3) the trial judge signs the statement and the signed statement is filed in the office of the clerk.

Id. at 610, 425 S.E.2d at 819 (footnote omitted).

Appellant complied with element (1) of Rule 5A:8(c); however, he failed to meet the requirements of element (2). Specifically, appellant has not established that "a copy of the statement [was] mailed or delivered to opposing counsel along with a *notice* that the statement will be presented to the trial judge between fifteen and twenty days after filing." Proctor, 15 Va. App. at 610, 425 S.E.2d at 819 (emphasis added). The November 23, 2005 letter to the clerk does not constitute a notice of presentation. It is the duty of an appellant, not the clerk, to notice a hearing and to bring the matter

before the court within the requisite period. Accordingly, appellant has not established *prima facie* compliance with Rule 5A:18(c)(1).

Because appellant "has not established *prima facie* compliance, we hold that a remand for compliance by the trial judge is inappropriate. Consequently, the statement of facts is not 'a part of the record.'" Clary v. Clary, 15 Va. App. 598, 600, 425 S.E.2d 821, 822 (1993) (*en banc*) (quoting Mayhood v. Mayhood, 4 Va. App. 365, 369, 358 S.E.2d 182, 184 (1987)).

In light of our determination that the statement of facts is not a part of the record, we must consider whether a transcript or statement of facts is indispensable to a determination of the issues on appeal. See Anderson v. Commonwealth, 13 Va. App. 506 508-09, 413 S.E.2d 75, 76-77 (1992); Turner v. Commonwealth, 2 Va. App. 96, 99-100, 341 S.E.2d 400, 402 (1986). Appellant presents six questions on appeal:

I. Can a trial judge intentionally deprive an indigent defendant of a court record upon which to base an appeal?

II. Is the defendant by virtue of being a noncustodial parent unworthy of due process, attorney, court reporter?

III. Does the refusal of the Public Defender's Office to represent the defendant remove the obligation of the court to provide counsel for him, or does the state have an obligation to provide court-appointed counsel?

IV. Does a trial judge have the ability to deprive a defendant of due process and constitutional rights because he is upset about the defendant's website?

V. Can a trial judge, without proper jurisdiction, prevent a jury from hearing/seeing evidence that would impact their decision and impeach the testimony of prosecution witnesses?

VI. Can a trial court convict a defendant when the basic elements of criminal trespass have not been proven?

We conclude that a transcript or statement of facts is indispensable to a determination of these issues. Therefore, we dismiss the appeal.

This order shall be certified to the trial court.

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:

Deputy Clerk