

VIRGINIA:
IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

COMMONWEALTH OF VIRGINIA,	)	
Plaintiff,	)	<u>CASE NOS.</u>
	)	
v.	)	CR21000451-00; -02
	)	
RONALD BOYD PAINTER,	)	
Defendant.	)	

STENOGRAPHIC REPORT of the PLEA AND SENTENCING hearing of
the defendant in the cases of Commonwealth of Virginia v. Ronald Boyd
Painter, heard on 3rd day of November 2022, in the Circuit Court of
Montgomery County, Virginia. All of said proceedings being heard before
The Honorable K. Mike Fleenor, Jr., Judge of said Court.

APPEARANCES:

Nicholas Lauer,
Assistant Commonwealth's Attorney

Mark Q. Anderson,
Attorney for the Defendant

Ronald Boyd Painter,
In person and by counsel

INDEX OF PROCEEDINGS

PAGE NUMBER

Plea and Sentencing Hearing – November 3, 2022

Call of Case.....	03
Defendant Waives Bench Trial.....	03
Defendant's Request to Enter Bare Plea and Be Sentenced	03
Court Appoints Counsel on Failure to Appear	04
Guilty Pleas.....	04
Plea Colloquy.....	05
Commonwealth's Proffer of Evidence.....	09
Commonwealth's Exhibit No. 1: Certificate of Analysis	10
Court Finds Defendant Guilty of Both Charges	11
Counsel Submits Guidelines to Court.....	11
Defense Waives Presentence Report	12
Commonwealth Waives Presentence Report	12
Commonwealth's Proffer of Criminal History	12
Commonwealth's Argument.....	13
Defense Argument	13
Commonwealth's Rebuttal Argument	14
No Allocution from Defendant	15
Court's Sentencing.....	15
Commonwealth Requests 4 th Amendment Waiver.....	15
Court Denies Request	15
Certificate.....	17

PLEA AND SENTENCING HEARING**November 3, 2022****(09:59 a.m.)**

DEPUTY CLERK: Commonwealth of Virginia versus Ronald Painter.

JUDGE FLEENOR: All right. This is the case of Commonwealth versus Ronald Painter. Mr. Painter is present in person with his attorney, Mr. Anderson. The Commonwealth's represented by Mr. Lauer. And I guess are we here for a plea; is that right, Mr. Lauer?

MR. LAUER: This was added to the docket yesterday, Your Honor. I'm expecting a...a bare plea if I understand correctly.

MR. ANDERSON: Your Honor, we were here for a to be set. I did meet with Mr. Painter before. He...he resides in the Radford area. He's had some trouble getting back to court when he's been let out.

JUDGE FLEENOR: Okay.

MR. ANDERSON: So what we would like to do today...I went over everything again with him. I went over the colloquy with him. He'd like to enter a plea of no contest today --

JUDGE FLEENOR: All right.

MR. ANDERSON: -- and waive the bench trial, go ahead and sentence. There were some guidelines that were prepared by the Commonwealth when a plea agreement was considered. I'd submit those guidelines and go ahead and be sentenced today.

1 JUDGE FLEENOR: Okay. Is that all agreeable with the
2 Commonwealth?

3 MR. LAUER: Yes, Your Honor.

4 JUDGE FLEENOR: All right.

5 MR. ANDERSON: I have the colloquy, Your Honor.

6 JUDGE FLEENOR: Okay and is there also a charge of failing to
7 appear from yesterday, is that right? Is that what that was?

8 MR. ANDERSON: There is a failure to appear, Your Honor.
9 He'd just...he'd enter no contest pleas to both.

10 JUDGE FLEENOR: Okay. I don't know that I've appointed you
11 on it but I will appoint you for that so we'll include that in your --

12 MR. ANDERSON: Thank you.

13 JUDGE FLEENOR: -- materials at the end. All right. Okay. So
14 we have a single count of possession of a schedule II controlled substance and a
15 failure to appear. Sir, how do you plead to those charges?

16 THE DEFENDANT, MR. PAINTER: Guilty.

17 JUDGE FLEENOR: All right, sir. Would you raise your right
18 hand and be sworn please?

19

20 (And the defendant was sworn.)

21

1 JUDGE FLEENOR: All right, sir. I need to go over these
2 questions with you real quickly. You can take a seat if you'd like while we're
3 doing that and I need you to answer out loud for me. What is your full name?

4 THE DEFENDANT, MR. PAINTER: Ronald Boyd Painter, Sr.

5 JUDGE FLEENOR: And what is your date of birth?

6 THE DEFENDANT, MR. PAINTER: 01/30/1968.

7 JUDGE FLEENOR: And what's the highest level of education
8 you've completed?

9 THE DEFENDANT, MR. PAINTER: Eleventh.

10 JUDGE FLEENOR: And are you the person charged in this
11 indictment and the failure to appear?

12 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

13 JUDGE FLEENOR: All right and do you fully understand those
14 charges against you?

15 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

16 JUDGE FLEENOR: And have you discussed the charges and
17 their elements with your attorney?

18 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

19 JUDGE FLEENOR: And do you understand what the
20 Commonwealth must prove before you may be found guilty of these charges?

21 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

22 JUDGE FLEENOR: And have you had enough time to discuss
23 with your attorney any possible defenses you may have to these charges?

1 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

2 JUDGE FLEENOR: And have you discussed with your attorney
3 whether you should plead not guilty, guilty or no contest?

4 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

5 JUDGE FLEENOR: And you are pleading no contest I
6 understand?

7 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

8 JUDGE FLEENOR: All right and after that discussion did you
9 decide for yourself that you should plead no contest?

10 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

11 JUDGE FLEENOR: And are you entering your plea freely and
12 voluntarily?

13 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

14 JUDGE FLEENOR: And are you entering your pleas because
15 you are in fact guilty of the crimes charged?

16 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

17 JUDGE FLEENOR: All right. Do you understand because of this
18 plea you're not entitled to a trial by jury?

19 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

20 JUDGE FLEENOR: And do you understand because of this plea
21 you waive your right not to incriminate yourself?

22 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

1 JUDGE FLEENOR: And do you understand because of this plea
2 you waive your right to confront and cross-examine your accusers?

3 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

4 JUDGE FLEENOR: And do you understand because of this plea
5 you waive your right to defend yourself?

6 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

7 JUDGE FLEENOR: And are you on probation or parole
8 anywhere?

9 THE DEFENDANT, MR. PAINTER: Yes.

10 JUDGE FLEENOR: Okay. Do you understand that your plea
11 today and any finding by the Court could affect your probationary status?

12 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

13 JUDGE FLEENOR: Okay. I'm not saying it will or it won't, it
14 just it could. Okay. And are you under the influence of any drugs or alcohol
15 today?

16 THE DEFENDANT, MR. PAINTER: No, sir.

17 JUDGE FLEENOR: All right. Has anyone connected with your
18 arrest and prosecution such as the police or the Commonwealth's Attorney, or any
19 other person, threatened you or forced you to enter this plea?

20 THE DEFENDANT, MR. PAINTER: No sir, Your Honor.

21 JUDGE FLEENOR: All right. Have they made any promises
22 concerning your plea?

23 THE DEFENDANT, MR. PAINTER: No sir, Your Honor.

1 JUDGE FLEENOR: All right and do you understand what the
2 maximum punishment is for this offense?

3 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

4 JUDGE FLEENOR: Okay. What is it?

5 THE DEFENDANT, MR. PAINTER: Ninety days.

6 MR. ANDERSON: Ten days.

7 MR. LAUER: Ten years.

8 THE DEFENDANT, MR. PAINTER: Ten years.

9 MR. ANDERSON: Ten years, yeah.

10 JUDGE FLEENOR: The maximum is...the maximum you could
11 get is ten years on that and I believe on the failure to appear it'd be up to ten days
12 in jail, do you understand that?

13 THE DEFENDANT, MR. PAINTER: Yes.

14 JUDGE FLEENOR: All right and have you discussed the
15 sentencing guidelines with your attorney?

16 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

17 JUDGE FLEENOR: And do you understand the Court's not
18 required to follow the guidelines?

19 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

20 JUDGE FLEENOR: And are you aware that there's no parole in
21 Virginia?

22 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

1 JUDGE FLEENOR: And are you entirely satisfied with the
2 services of your attorney in this matter?

3 THE DEFENDANT, MR. PAINTER: Oh yes, Your Honor.

4 JUDGE FLEENOR: All right and do you understand that by
5 pleading guilty you may waive any right to appeal the decision of this Court?

6 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

7 JUDGE FLEENOR: All right and there's no plea agreement so I
8 won't go through those questions. Do you understand all the questions that I've
9 asked you?

10 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

11 JUDGE FLEENOR: And do you have any questions for me?

12 THE DEFENDANT, MR. PAINTER: No sir, Your Honor.

13 JUDGE FLEENOR: All right. Could we have a summary of the
14 Commonwealth's evidence, please?

15 MR. LAUER: Had this case gone to trial the
16 Commonwealth's evidence would have been that on or about August 26 of 2020,
17 Deputy Meadows with the Montgomery County Sheriff's Office initiated a traffic
18 stop on a vehicle that he paced going 59 miles per hour in a 45 mile per hour
19 zone. There were four occupants in the vehicle and the right-rear passenger was
20 identified as Ronald Painter, the defendant. While Deputy Meadows was getting
21 the identifying information for all the occupants the deputy...he saw the
22 defendant rolling up a small plastic baggy and attempting to hide it. The baggy
23 was of the type commonly used for packing illegal narcotics. The deputy asked

1 the defendant to show him what he had been trying to hide and the defendant
2 denied having the plastic baggy. All occupants were asked to exit the vehicle and
3 a probable cause search was conducted. In the seat where the defendant had been
4 sitting the deputy found a small plastic baggy containing a crystal-like substance.
5 No other contraband was found during the search. The baggy was seized and sent
6 to the lab for analysis. A certificate dated October 22, 2020, labeled FS lab
7 number W20-10342 returned showing a positive result for methamphetamine, a
8 schedule II controlled substance. All of these events occurred in Montgomery
9 County and at this time I would move to admit the lab into evidence.

10 JUDGE FLEENOR: All right. Any objection to the lab?

11 MR. ANDERSON: No, Your Honor.

12 JUDGE FLEENOR: All right. The lab report dated October 2,
13 2020 has been marked as Commonwealth's Exhibit No. 1 and will be admitted
14 into evidence without objection and made a part of the record. All right. Anything
15 else, Mr. Lauer?

16 MR. LAUER: No, Your Honor.

17 JUDGE FLEENOR: All right. Mr. Painter, would you please
18 stand? Mr. Painter, would you agree that that would be the Commonwealth's
19 evidence against you?

20 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

21 JUDGE FLEENOR: And do you agree that the Commonwealth
22 could prove your guilt beyond a reasonable doubt?

23 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

1 JUDGE FLEENOR: All right and do you also agree that there's
2 sufficient evidence to convict you of the failure to appear?

3 THE DEFENDANT, MR. PAINTER: Yes, Your Honor.

4 JUDGE FLEENOR: All right. All right, sir. Based upon your
5 pleas of guilty and the statement of facts by the Commonwealth and the evidence
6 received by the Court, the Court does find you guilty of possession of a schedule
7 II controlled substance and the misdemeanor failure to appear. All right. So I
8 understand you all would like to submit guidelines and maybe have a joint
9 recommendation or just leaving it to the Court?

10 MR. ANDERSON: We would just I think leave the sentencing
11 to the Court. Your Honor, I do...I have a set of guidelines.

12 MR. LAUER: I have a set and you have a set.

13 MR. ANDERSON: Whichever ones you wish to submit to...the
14 Commonwealth's I guess is --

15 MR. LAUER: All right.

16 MR. ANDERSON: -- but they're the same.

17 JUDGE FLEENOR: All right. That's good.

18 MR. ANDERSON: And I don't think --

19 JUDGE FLEENOR: Don't need to be arguing about that.

20 MR. ANDERSON: Don't do anything underhanded so.

21 JUDGE FLEENOR: All right. All right. Okay so the Court has
22 received the sentencing guidelines and...and let me just ask for the record. Mr.
23 Anderson, is your client willing to waive presentence report?

1 MR. ANDERSON: We would like to waive the presentence
2 report. You would like to Mr. Painter.

3 JUDGE FLEENOR: Okay we'll just go ahead and go forward
4 with sentencing. All right. Mr. Lauer, I take it the Commonwealth also waives the
5 presentence report as well?

6 MR. LAUER: Yes, Your Honor.

7 JUDGE FLEENOR: All right. Is there anything you'd like to
8 present, Mr. Lauer, with respect to sentencing?

9 MR. LAUER: Yes. I would – I can read...proffer to you
10 his criminal history.

11 JUDGE FLEENOR: All right.

12 MR. LAUER: 1998: three counts of felony larceny; one out
13 of Botetourt, the other two out of Floyd. Two counts of breaking and entering out
14 of Floyd. 1994: a misdemeanor larceny. 1995: a felony shoplifting and another
15 misdemeanor shoplifting. 1999: a misdemeanor possession of marijuana. 2000: a
16 misdemeanor destruction of property. 2002: a felony DUI third. 2003: a felony
17 burglary, also five counts of felony larceny or a theft third or subsequent, a felony
18 destruction of property and misdemeanor destruction of property. 2009: seven
19 counts of felony probation violations and a misdemeanor probation violation.
20 2010: six counts of felony probation violations. 2011: two counts of felony
21 probation violations and a misdemeanor probation violation. And then 2022 about
22 May 18 he was convicted of a misdemeanor shoplifting and a failure to appear out
23 of Pulaski.

1 JUDGE FLEENOR: All right. Okay. Anything else from the
2 Commonwealth?

3 MR. LAUER: The Commonwealth would just say that this
4 was set for a bench trial I believe it at one point and the officers – I'm told, I was
5 not the prosecuting attorney on that one – but the prosecutor on that case said that
6 the officers were here and the defendant did not appear so the Commonwealth
7 would say that the defendant initially did not accept responsibility.

8 JUDGE FLEENOR: All right. Okay.

9 MR. LAUER: And that's the gist of the
10 Commonwealth's evidence. He initially was a C.I. and that did not go well, there
11 was also a note of that.

12 JUDGE FLEENOR: Okay. All right. All right, Mr.
13 Anderson?

14 MR. ANDERSON: The...whether or not he accepts
15 responsibility I don't think really causes too much of a difference in the
16 guidelines, Your Honor. There was a trial set that day. Do you just want me to
17 proffer some things on your behalf or do you want to testify, or do you just let me
18 speak for you?

19 THE DEFENDANT, MR. PAINTER: Yes.

20 MR. ANDERSON: Just a proffer on his behalf. The
21 serious charges that he's had in his previous history, the B&Es and things that
22 sometimes trouble the Court, they were a little bit further back in the distance and
23 now we've had some behavior here in the last two years that do indicate an

1 individual that was having some issues keeping clean and I think probation here at
2 this point at his age will hopefully have a better effect on him and keeping him on
3 the straight and narrow. There was a period of time where we didn't see any
4 criminal activity or convictions or anything on his part. Radford is where he lives
5 and calls home. He has income because he gets a disability check. So he has
6 disability, he would have insurance, he would have things with where he's
7 working with his probation officer where he could seek health treatment and
8 certainly substance abuse treatment and he acknowledges he didn't show up the
9 last time. That was some inconvenience to the officers and part of that is why he's
10 going forward today and wanting to get this thing taken care of so that they
11 wouldn't have to come back for a trial and more inconvenience on their part so in
12 that regard he is going to accept responsibility and get this behind him. So what
13 we would ask the Court to do is consider something near the low end for an active
14 sentence and place him on probation, Your Honor.

15 JUDGE FLEENOR: All right. Mr. Lauer, any final
16 comment?

17 MR. LAUER: The Commonwealth would ask for
18 quite the opposite <inaudible> because of the numerous, you know, upwards of
19 twenty, you know, probation violation convictions he's had. It doesn't appear that
20 he does well on probation and the Commonwealth would ask for more –
21 something more towards the high end or above the high end of the guidelines and
22 less probation in this type of case, Your Honor.

1 JUDGE FLEENOR: All right. Mr. Painter, having found
2 you guilty of a possession of a schedule II controlled substance and a failure to
3 appear; is there anything you'd like to say before the Court pronounces its
4 judgment and sentence?

5 THE DEFENDANT, MR. PAINTER: No, sir.

6 JUDGE FLEENOR: All right. All right, Mr. Painter, on
7 the possession charge I'm going to sentence you to three years with the Virginia
8 Department of Corrections. After you have served sixty days the balance of that
9 will be suspended. I'm going to sentence you to ten days in jail on the failure to
10 appear to run consecutively. That will give you a total of seventy days to serve.
11 Upon your release I'm going to place you on two years of active supervised
12 probation and one of the conditions of probation is that you participate in a
13 substance abuse assessment and participate in any sort of treatment program that
14 they recommend based upon the results of that.

15 THE DEFENDANT, MR. PAINTER: Yes, sir.

16 MR. LAUER: Your Honor, the Commonwealth would
17 request a fourth amendment waiver too as its standard with our practice.

18 JUDGE FLEENOR: Well, Mr. Anderson, the
19 Commonwealth has requested a fourth amendment waiver, you know, I don't
20 think the Court can order that. I think the Court can accept that when it's an
21 agreement between parties but I don't think it's appropriate for the Court to order
22 it.

1 MR. ANDERSON: I tend to agree with that although I'm
2 not really up to date on the case law on that, Your Honor.

3 JUDGE FLEENOR: I believe it's a...it's a state and a
4 constitutional right that I don't think...I just don't think I can do it. I mean I'm
5 perfectly willing to accept those as a plea agreement, you know, when the parties
6 agreed to it but I don't think I can order it. Okay.

7 MR. LAUER: Yes, Your Honor.

8 JUDGE FLEENOR: All right. Okay. I declined to do that,
9 Mr. Anderson.

10 MR. ANDERSON: Yes, sir.

11 JUDGE FLEENOR: All right. Anything else, Mr. Lauer?

12 MR. LAUER: That's it on that case.

13 (And this matter was concluded at 2:09 p.m.)
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CERTIFICATE

I, Hailey M. Bonds, Notary Public in and for the Commonwealth of Virginia, do hereby certify that the foregoing plea and sentencing hearing on November 3, 2022, in the proceedings of Commonwealth of Virginia v. Ronald Boyd Painter, was recorded electronically by and was transcribed by me, Hailey M. Bonds, to the best of my ability the foregoing is a true and correct transcript of the hearing.

I further certify that this hearing was heard before The Honorable K. Mike Fleenor, Jr., Judge of the Twenty-Seventh Judicial Circuit, in Montgomery County, Virginia, on November 3, 2022.

I further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand at Christiansburg, Virginia on the 27th day of December, 2022.



HAILEY M. BONDS, Court Reporter
NOTARY PUBLIC No. 7667988
55 East Main Street, Suite 430
Christiansburg, Virginia 24073

My Commission expires March 31, 2024.



