

Tuesday

5th

March, 1996.

Kimberly Rose O'Toole,

Appellant,

against

Record No. 2347-93-1
Circuit Court No. 93-421

Commonwealth of Virginia,

Appellee.

Upon Rehearing En Banc

Before Chief Judge Moon, Judges Baker, Benton, Coleman,
Willis, Elder, Bray, Fitzpatrick, Annunziata and Overton

Andrew G. Wiggin, Assistant Public Defender
(Office of the Public Defender, on brief),
for appellant.

Grace DiLiberto, Assistant Attorney General
(James S. Gilmore, III, Attorney General,
on brief), for appellee.

By opinion dated June 27, 1995, a majority of a panel of this Court affirmed Kimberly Rose O'Toole's conviction for possession of cocaine. O'Toole v. Commonwealth, 20 Va. App. 540, 458 S.E.2d 595 (1995). Upon O'Toole's motion, we stayed the mandate of that decision and granted a rehearing en banc. Upon such rehearing, the judgment of the trial court is affirmed for those reasons set forth in the panel's majority opinion. Accordingly, the stay of this Court's June 27, 1995 mandate hereby is lifted and its directives reinstated.

Judges Benton and Elder would reverse the judgment of the trial court for those reasons set forth in the panel's dissenting opinion. See id. at 544-46, 458 S.E.2d at 597-98 (Benton, J., dissenting).

The Commonwealth shall recover of the appellant an additional \$200 for services rendered the appellant by the Public Defender on the rehearing portion of this appeal, in addition to counsel's costs and necessary direct out-of-pocket expenses. This amount shall be added to the costs due the Commonwealth in the June 27, 1995 mandate.

This order shall be published and certified to the trial court.

A Copy,

Teste:

Clerk