

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday the 12th day of September, 2017.

Jahsen Heard, Appellant,
against Record No. 1576-16-1
Circuit Court Nos. CR16-114-00 through CR16-114-02
Commonwealth of Virginia, Appellee.

From the Circuit Court of the City of Hampton
Before Judges Humphreys, Decker and Russell

This petition for appeal is granted in part and denied in part. And an appeal is awarded to the appellant from a judgment of the Circuit Court of the City of Hampton, dated September 21, 2016, with respect to the following assignment of error:

The trial court erred in denying Heard's motion to strike (and motion to set aside) the charges of robbery, attempted carjacking, and conspiracy to commit carjacking, where: 1) with regard to all three offenses, the victim, Roy Keddy, never identified Heard as one of the participants in the robbery and thus there remained a reasonable doubt whether Heard actually committed or otherwise aided or abetted those offenses; 2) with regard to the conspiracy, there was no proof that Heard entered into an agreement to commit robbery beforehand and the robbery might have been committed spontaneously; and 3) with regard to the robbery of the phone, there was no proof that the taking of the phone had been accomplished through the use of force, threat, or intimidation, where no demands were made for the phone and the victim was unable to say whether the phone had been taken in the course of the robbery.

No bond is required. The clerk is directed to certify this action to the trial court and to all counsel of record.

Pursuant to Rule 5A:25, an appendix is required in this appeal and shall be filed by the appellant at the time of the filing of the opening brief.

After a petition for appeal has been denied as a result of the one-judge review authorized by Code § 17.1-407(C), an appellant, pursuant to Rule 5A:15(a) or Rule 5A:15A(a) “may demand consideration of the petition by three-judge panel pursuant to Code § 17.1-407(D).” Rule 5A:15(a) and Rule 5A:15A(a) require that such a demand “include a statement identifying how the one-judge order is in error” In this case, appellant’s demand for consideration by a three-judge panel did not aver that the one-judge denial order is in error regarding the second or third assignments of error in his petition, and therefore, those assignments of error were not reviewed by the three-judge panel. Accordingly, the remainder of the petition for appeal in this case remains denied for the reasons set forth in the order of this Court dated May 5, 2017.

This Court’s records reflect that Charles E. Haden, Esquire, is counsel of record for appellant in this matter.

This order shall be published.

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By: *original order signed by a deputy clerk of the
Court of Appeals of Virginia at the direction
of the Court*

Deputy Clerk

CERTIFICATE OF CLERK

I, Cynthia L. McCoy, Clerk of the Court of Appeals of Virginia, do hereby certify that on September 12, 2017 an appeal was awarded as described in the order to which this certificate is appended. A copy of this certificate and a copy of the order to which it is appended were this day sent to the trial court indicated in the order and to all counsel of record.

Given under my hand this 12th day of September, 2017.

Cynthia L. McCoy, Clerk

By: *original order signed by a deputy clerk of the
Court of Appeals of Virginia at the direction
of the Court*

Deputy Clerk