

SUPREME COURT OF VIRGINIA

Robert Nelson, Jr. v. Warden of the Keen Mountain Correctional Center, 262 Va. 276

552 S.E.2d 73 (2001) · No. Record No. 002301 · Decided September 14, 2001

SUMMARY

The Supreme Court of Virginia held that failure to notify a juvenile's parent of juvenile-court proceedings rendered the resulting adult convictions voidable rather than void when the error was not timely preserved. The Court overruled *David Moore v. Commonwealth* to the extent it treated the notice requirement as jurisdictional and held that Nelson's habeas petition was barred by waiver. Several justices dissented, maintaining that the convictions were void and subject to collateral attack.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Chief Justice Harry L. Carrico; Justice Koontz; Justice Hassell; Justice Keenan; All other justices
JURISDICTION	Virginia
DECIDED	September 14, 2001
DOCKET	Record No. 002301
DISPOSITION	dismissed
PROCEDURAL POSTURE	Nelson filed an original petition for a writ of habeas corpus in the Supreme Court of Virginia, challenging convictions entered after his transfer from juvenile court to circuit court for trial as an adult. He alleged that his father had not been notified of the initiation of the juvenile proceedings or the transfer hearing.
STANDARD OF REVIEW	De novo review of the legal and jurisdictional issues presented by the original habeas petition.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Robert Nelson, Jr. v. Warden of the Keen Mountain Correctional Center

TOPICS

- state post-conviction relief
- habeas corpus
- statutory interpretation
- legislative intent
- criminal procedure

PRACTICE AREAS

criminal procedure

state post-conviction relief

habeas corpus

juvenile justice

QUESTIONS PRESENTED

1. Whether failure to notify a juvenile's parent of the initiation of juvenile proceedings renders subsequent circuit-court convictions void or merely voidable.
2. Whether the failure to raise the lack-of-notice issue in a timely manner waived the alleged error.
3. Whether Nelson's habeas petition was barred by the habeas statute of limitations in Code § 8.01-654(A) (2).
4. Whether *David Moore v. Commonwealth* and *Baker v. Commonwealth* should be overruled or limited.

HOLDINGS

1. Under the statutory framework applicable to Nelson's 1985 offenses, failure to notify a parent was procedural rather than jurisdictional; the resulting convictions were voidable, not void, and the defect could be waived by failure to object.
2. *David Moore v. Commonwealth* was overruled to the extent it held that failure to comply with parental-notice requirements rendered subsequent convictions void and nonwaivable.
3. Nelson waived the lack-of-notice error by failing to raise it timely, and his habeas petition was dismissed.

KEY QUOTATIONS

“the statutory requirement of notice to parents was not jurisdictional but procedural in nature, that a failure to notify parents could be waived by a failure to object, and, correspondingly, that a failure to comply with the requirement rendered subsequent convictions voidable and not void.” (77)

“Because Nelson's convictions were merely voidable, his failure to raise the issue in a timely manner constitutes a waiver of the error and results in the dismissal of his petition.” (78)

FACTUAL BACKGROUND

Nelson was seventeen when arrested in January 1985 on two counts each of armed robbery and abduction, and on charges of receiving stolen property and sexual assault. The juvenile court conducted a transfer hearing and transferred him to the Fairfax County Circuit Court for trial as an adult, where he pleaded guilty and received a forty-eight-year sentence. Nelson alleged that his father was not notified of the initiation of the juvenile proceedings or of the transfer hearing, but he did not object to the lack of notice until filing his habeas petition.

PROCEDURAL HISTORY

Nelson was arrested in 1985 at age seventeen, transferred from the Fairfax County Juvenile and Domestic Relations District Court to the Circuit Court of Fairfax County, and pleaded guilty to multiple offenses. He received a forty-eight-year sentence. He filed his habeas petition in the Supreme Court of Virginia in September

2000, asserting that the lack of parental notice rendered his convictions void under *Commonwealth v. Baker* and *David Moore v. Commonwealth*.

DISPOSITION

dismissed

CASES CITED

- *Commonwealth v. Baker*, 258 Va. 1, 516 S.E.2d 219 (1999) (per curiam)
- *Baker v. Commonwealth*, 28 Va. App. 306, 504 S.E.2d 394 (1998)
- *David Moore v. Commonwealth*, 259 Va. 431, 527 S.E.2d 406 (2000)
- *Dennis Moore v. Commonwealth*, 259 Va. 405, 527 S.E.2d 415 (2000)
- *Peyton v. French*, 207 Va. 73, 147 S.E.2d 739 (1966)
- *Gregory v. Peyton*, 208 Va. 157, 156 S.E.2d 624 (1967)
- *Gogley v. Peyton*, 208 Va. 679, 160 S.E.2d 746 (1968)
- *Pruitt v. Peyton*, 209 Va. 532, 165 S.E.2d 288 (1969)
- *Jones v. Commonwealth*, 213 Va. 425, 192 S.E.2d 775 (1972)
- *Turner v. Commonwealth*, 216 Va. 666, 222 S.E.2d 517 (1976)
- *Jamborsky v. Baskins*, 247 Va. 506, 442 S.E.2d 636 (1994)
- *Morrison v. Bestler*, 239 Va. 166, 387 S.E.2d 753 (1990)
- *Selected Risks Ins. Co. v. Dean*, 233 Va. 260, 355 S.E.2d 579 (1987)
- *Nunnally v. Artis*, 254 Va. 247, 492 S.E.2d 126 (1997)
- *United States v. Dixon*, 509 U.S. 688, 113 S. Ct. 2849, 125 L. Ed. 2d 556 (1993)
- *Humphreys v. Commonwealth*, 186 Va. 765, 43 S.E.2d 890 (1947)