

SUPREME COURT OF VIRGINIA

Commonwealth v. Southerly, 262 Va. 294

551 S.E.2d 650 (2001) · No. Record No. 002866 · Decided September 14, 2001

SUMMARY

The Supreme Court of Virginia held that a post-conviction motion to vacate a criminal judgment based on an alleged lack of jurisdiction, filed after the conviction became final, is civil in nature. Accordingly, the Court of Appeals lacked jurisdiction over the appeal, but the matter should be transferred to the Supreme Court under Code § 8.01-677.1. The court reversed and remanded without deciding whether notice to the defendant’s biological father was required.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Harry L. Carrico, Chief Justice; All the Justices
JURISDICTION	Virginia
DECIDED	September 14, 2001
DOCKET	Record No. 002866
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Commonwealth appealed the Court of Appeals of Virginia's decision holding that Southerly's convictions were void because the juvenile court failed to provide notice to his biological father before certifying the cases to circuit court. The Supreme Court of Virginia addressed the threshold question whether the Court of Appeals had jurisdiction over Southerly's appeal from the circuit court's denial of his post-final-judgment motion to vacate.
STANDARD OF REVIEW	Statutory and subject-matter appellate jurisdiction were reviewed de novo.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Virginia
PARTIES	Commonwealth of Virginia v. Nathan Todd Southerly

TOPICS

- appellate jurisdiction
- appellate procedure
- post-conviction relief
- habeas corpus
- statutory interpretation

PRACTICE AREAS

criminal procedure

appellate jurisdiction

post-conviction relief

juvenile justice

QUESTIONS PRESENTED

1. Whether the Court of Appeals of Virginia had jurisdiction to hear an appeal from the denial of a motion to vacate a criminal conviction when the motion was filed after the conviction had become final and sought a declaration that the trial court lacked jurisdiction.
2. Whether the Court of Appeals' decision should be treated as a nullity and the appeal transferred to the Supreme Court of Virginia under Code § 8.01-677.1.
3. Whether notice to Southerly's biological father was unnecessary under the juvenile-notice statutes.

HOLDINGS

1. When a motion to vacate is filed after a criminal conviction has become final and seeks a declaration that the trial court lacked jurisdiction to enter the conviction, the motion and any appeal from its denial are civil in nature rather than criminal.
2. The Court of Appeals lacked jurisdiction because Code § 17.1-406(A) limits its criminal appellate jurisdiction to appeals from final criminal convictions and from action on motions filed and disposed of while the trial court retains jurisdiction over the case.
3. The appeal should not be dismissed; under Code § 8.01-677.1, the Court of Appeals should transfer the appeal to the Supreme Court because the appeal was otherwise proper and timely but filed in the wrong appellate court.

KEY QUOTATIONS

“Rather, it is the nature of the method employed to seek relief from a criminal conviction and the circumstances under which the method is employed that determine whether an appeal is civil or criminal in nature.” (551 S.E.2d 652-53)

“We hold, therefore, that the Court of Appeals lacked jurisdiction to entertain Southerly's appeal, and we will reverse that court's judgment and declare its decision a nullity.” (551 S.E.2d 653)

FACTUAL BACKGROUND

Before turning eighteen, Nathan Todd Southerly committed multiple criminal offenses in Harrisonburg. After he turned eighteen, police filed twenty-two juvenile petitions alleging grand larceny, forgery and uttering, and breaking and entering; the petitions identified his mother but left the father's name blank. The juvenile court certified the cases to circuit court, where Southerly was convicted and sentenced, but no issue concerning notice to his father was raised before the conviction became final. Southerly later established that his biological father was alive, resided in West Virginia, and had a known or reasonably discoverable address, but had not been notified of the juvenile proceedings.

PROCEDURAL HISTORY

Southerly was convicted in the Circuit Court of Rockingham County after juvenile proceedings were certified to that court and was sentenced to sixty-two years, with thirty-one years suspended. After the conviction became final, he filed a motion to vacate based on the alleged failure to notify his biological father of the juvenile proceedings. The circuit court denied the motion; the Court of Appeals reversed and held the convictions void. The Supreme Court of Virginia reversed the Court of Appeals, declared its decision a nullity, and remanded with directions that the appeal be transferred to the Supreme Court for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the Court of Appeals' judgment, declare its decision a nullity, and remand to the Court of Appeals with direction to transfer the matter to the Supreme Court of Virginia for further proceedings in accordance with the Supreme Court's rules.

CASES CITED

- Baker v. Commonwealth, 28 Va. App. 306, 504 S.E.2d 394 (1998), aff'd per curiam, 258 Va. 1, 516 S.E.2d 219 (1999)
- Virginia Department of Corrections v. Crowley, 227 Va. 254, 316 S.E.2d 439 (1984)
- Smyth v. Godwin, 188 Va. 753, 51 S.E.2d 230 (1949), cert. denied, 337 U.S. 946, 69 S. Ct. 1503, 93 L. Ed. 1748 (1949)
- Asby v. Commonwealth, 34 Va. App. 217, 539 S.E.2d 742 (2001)
- Nicely v. Commonwealth, 23 Va. App. 327, 477 S.E.2d 11 (1996)
- Brame v. Commonwealth, 252 Va. 122, 476 S.E.2d 177 (1996)
- Matthews v. Commonwealth, 216 Va. 358, 218 S.E.2d 538 (1975)