

SUPREME COURT OF VIRGINIA

McGinnis v. Commonwealth

821 S.E.2d 700 (Va. 2018) · No. Record No. 180055 · Decided December 13, 2018

SUMMARY

The Supreme Court of Virginia reviews Daniel Ernest McGinnis's convictions for three counts of larceny by worthless check under Code § 18.2-181. The court reverses the Court of Appeals' procedural ruling concerning preservation of the sufficiency challenge and assumes without deciding that the issue was properly before it. The opinion proceeds to address whether § 18.2-181 applies to checks issued for existing debts involving goods or services.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Senior Justice Lawrence L. Koontz, Jr.; Chief Justice Lemons; Justice Goodwyn; Justice McClanahan; Justice Powell; Justice Kelsey; Justice McCullough; Senior Justice Koontz
JURISDICTION	Virginia
DECIDED	December 13, 2018
DOCKET	Record No. 180055
DISPOSITION	reversed
PROCEDURAL POSTURE	McGinnis appealed to the Supreme Court of Virginia from the Court of Appeals of Virginia's judgment affirming his convictions for three counts of larceny by worthless check. The Court of Appeals had affirmed on preservation grounds without reaching the sufficiency issue. The Supreme Court reversed and vacated the Court of Appeals' judgment, assumed without deciding that the sufficiency issue was properly before it, reached the merits, and reinstated the circuit court's judgment.
STANDARD OF REVIEW	The Supreme Court reviews de novo the Court of Appeals' application of its procedural rules when the Court of Appeals determines that a procedural bar prevents review of an assignment of error. For the sufficiency issue, the reviewing court asks whether the evidence and reasonable inferences, viewed in the light most favorable to the Commonwealth, establish the statutory elements; the circuit court's

	factual determination is not plainly wrong or without evidentiary support.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Daniel Ernest McGinnis v. Commonwealth of Virginia

TOPICS

[preservation of error](#)
[appellate procedure](#)
[criminal procedure](#)
[statutory interpretation](#)
[plain meaning rule](#)

PRACTICE AREAS

[Virginia criminal law](#)
[criminal appellate procedure](#)
[statutory interpretation](#)
[larceny by worthless check](#)

QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly held that McGinnis's sufficiency assignment of error was not preserved under Rule 5A:18 because his post-verdict motion was signed by him rather than trial counsel.
2. Whether Code § 8.01-271.1 permits an attorney to cure, during the appeal, the absence of an attorney signature on a motion signed by a represented criminal defendant.
3. Whether the 1978 amendment to Code § 18.2-181 limited larceny by worthless check to checks delivered as present consideration for goods or services.
4. Whether the evidence was sufficient to prove that McGinnis knowingly delivered worthless checks with intent to defraud, in violation of Code § 18.2-181.

HOLDINGS

1. The Court could assume without deciding that the circuit court's ruling on McGinnis's motion was properly before the Court of Appeals and resolve the appeal on the best and narrowest grounds.
2. The 1978 amendment did not limit Code § 18.2-181 to checks passed as present consideration for goods or services. Larceny by worthless check applies to the passing of any worthless check with intent to defraud, regardless of the object of the payment.
3. The evidence was sufficient to establish that McGinnis knew the checks were worthless when he delivered them and intended to defraud the Kirkley. The convictions were therefore affirmed.

KEY QUOTATIONS

“We hold that as defined by Code § 18.2-181, larceny by worthless check is not limited to checks passed as present consideration for goods and services.” (at 15-16)

“Thus, regardless of the object of the payment, the burden on the Commonwealth is to establish that the defendant knew or had reason to know that the check was worthless because there were insufficient funds in his bank account at the time the check was passed and that in passing the check he intended to defraud the receiver.” (at 16)

FACTUAL BACKGROUND

McGinnis owned Quest Media, an event-planning business that conducted events at the Kirkley Hotel and was authorized to collect and pay the hotel for rooms, facilities, food, and beverages. He issued three checks totaling \$4,554.44 on Quest Media bank accounts for hotel-related expenses; all three checks were returned for insufficient funds. McGinnis admitted that he knew the accounts lacked sufficient funds when he delivered the checks, but claimed he expected future events to generate money and that the hotel had agreed to delay depositing the checks. The circuit court found that alleged agreement not credible and convicted him of three counts of larceny by worthless check.

PROCEDURAL HISTORY

After a bench trial in the Circuit Court of the City of Lynchburg, McGinnis was convicted of three felony counts of larceny by worthless check and sentenced to nine years' imprisonment, with six years and six months suspended. He filed a pro se motion to set aside the convictions on the twentieth day after final judgment; the circuit court denied it. The Court of Appeals affirmed without reviewing the sufficiency claim, holding that the claim was not preserved under Rule 5A:18 because the motion was signed by McGinnis but not trial counsel. The Supreme Court reversed that judgment, vacated the Court of Appeals' opinion, decided the statutory and sufficiency issues, and reinstated the circuit court's judgment.

DISPOSITION

reversed

REMAND INSTRUCTIONS

No remand. The Court reversed the judgment of the Court of Appeals, vacated its December 12, 2017 opinion, and entered final judgment reinstating the circuit court's judgment and convictions.

CASES CITED

- McGinnis v. Commonwealth, 68 Va. App. 262, 274 (2017)
- Davis v. Commonwealth, 282 Va. 339 (2011)
- Jay v. Commonwealth, 275 Va. 510, 517 (2008)
- Commonwealth v. Bass, 292 Va. 19, 26 (2016)
- Granado v. Commonwealth, 292 Va. 402, 408 (2016)
- Shipe v. Hunter, 280 Va. 480, 482-85 (2010)
- Aguilera v. Christian, 280 Va. 486, 487-89 (2010)
- Kone v. Wilson, 272 Va. 59, 61-63 (2006)
- Nerri v. Adu-Gyamfi, 270 Va. 28, 29-31 (2005)
- Wellmore Coal Corp. v. Harman Mining Corp., 264 Va. 279, 281-83 (2002)
- Spencer v. Commonwealth, 238 Va. 295, 302-03 (1989)
- Holsapple v. Commonwealth, 266 Va. 593, 599 (2003)

- *Burlike v. Commonwealth*, 261 Va. 501, 511 (2001)
- *Washington v. Commonwealth*, 272 Va. 449, 459 (2006)
- *Commonwealth v. White*, 293 Va. 411, 419 (2017)
- *Town of Leesburg v. Giordano*, 280 Va. 597, 611 (2010)
- *Appalachian Power Co. v. State Corp. Comm'n*, 284 Va. 695, 705 (2012)
- *Blake v. Commonwealth*, 288 Va. 375, 386 (2014)
- *Payne v. Commonwealth*, 222 Va. 485, 487-88 (1981)
- *Cook v. Commonwealth*, 178 Va. 251, 256-57 (1941)
- *Board of Supervisors v. Marshall*, 215 Va. 756, 762 (1975)
- *Commonwealth v. Williams*, 295 Va. 90, 98 (2018)