

JAIL NOTES 4 (About Jail Notes)

This edition of JAIL NOTES is the first in a new format for HARGETT & WATSON, PLC. We currently publish two newsletters with selected topics of interest to defendants, inmates, family members, and others individuals who are facing trial or sentencing in trial courts or who are otherwise incarcerated. Simply write to us for previous editions of JAIL NOTES or LEGAL NOTES. JAIL NOTES is free, so please share with others.

JAIL NOTES is a publication by HARGETT & WATSON, PLC. David B. Hargett, Esquire, and W. Todd Watson, Esquire, are the founding members of HARGETT & WATSON, PLC, which is located in Richmond, Virginia.

Legal proceedings can be very complex, and JAIL NOTES is not intended as a substitute for legal advice. It is advisable to seek the assistance of counsel whenever possible.

We welcome letters and phone calls. If possible, we will attempt to answer your questions, but not all letters can be answered and not all phone calls can be accepted.

You might be able to call from a local or regional jail (such as Riverside Regional Jail), or you may write to us. If you write, please provide information regarding your case such as the charges, the jurisdiction, and the status of the case. If you have trouble contacting HARGETT & WATSON, PLC, you might ask a friend or family member to call the office on your behalf.

JAIL NOTES

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KNOW THE LAW AND
EXERCISE YOUR RIGHTS

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JAIL NOTES 1 (Exculpatory Evidence & Discovery)

Exculpatory Evidence: Information that tends to show that the defendant did not commit the crime with which he is charged, or information that would mitigate punishment for the offense. Exculpatory evidence does not have to be specifically requested. The Commonwealth is under an obligation to reveal exculpatory information of which they should reasonably be aware; however, a specific request should be made, particularly if an accused has any reason to believe that helpful material exists.

Discovery Rights: A defendant's rights to discovery are extremely limited in Virginia; however, every attempt should be made to obtain any available discovery as early as possible in the process. A discovery motion should be filed as soon as an attorney is appointed or retained. In felony cases or misdemeanors to be tried in Circuit Court, an accused is only allowed to receive or inspect his statements to law enforcement, scientific reports generated for his case, and certain designated tangible items, such as photographs, books, papers, etc. Nevertheless, an accused should be aware that by requesting these items in discovery, certain discovery can be required of the defendant. An accused may have to reveal to the Commonwealth his scientific tests and reports, whether he intends to rely on an alibi defense, and whether he intends to rely on an insanity defense.

JAIL NOTES 2 (Sentencing)

Sentencing: A hearing by the court which is usually weeks or months after a guilty verdict from a plea or from a trial. A separate hearing is conducted before the court imposes sentence, and a wide variety of evidence may be presented to the court.

Every defendant should be aware that if a jury trial is selected (by the defendant, the Commonwealth, or the court) and the jury returns guilty verdicts, the jury sets a sentence just after the jury trial. The jury may hear additional evidence beyond what they heard during the trial, including information about the defendant's record, if any, and other relevant information. The jury's verdict may be suspended, in whole or in part, although many courts will not deviate from a jury verdict when the court later imposes sentence.

Generally, before a sentence is imposed, a pre-sentence report (PSR) is ordered by the court and prepared by a probation officer. The PSR will contain information including prior record, health, education, and information from both parties about the offense in question. The PSR will also contain the sentencing guidelines worksheets which will provide the court with a recommendation of a sentencing range and midpoint. As previously stated, *the guidelines are simply a recommendation* (unlike the federal guidelines that present a mandatory range of sentencing), and a deviation from the guidelines is not a basis for appeal or any other relief.

JAIL NOTES 3 (Sentencing continued & Cases of Interest)

Sentencing is a defendant's last opportunity to convince the court to deal with him as leniently as possible. All efforts should be made to prepare for this stage of the proceedings, even in cases where a defense to the charge exists. Your life is too important to ignore the possibility that the trial may not go the way you hoped. A good sentencing hearing, before the jury or the court, can make a difference of months or years in your life.

Cases of Interest:

Sapp v. Commonwealth 263 Va. 415 (2002). In a criminal case, the trial court abused its discretion in finding that the trial testimony of two frightened witnesses was "unavailable" and thereafter admitting their prior testimony from a preliminary hearing. The conviction is reversed and remanded.

Commonwealth v. Williams 262 Va. 661 (2001). The trial court did not abuse its discretion in denying the defendant's request to withdraw his prior waiver of jury trial rights because his request was not timely made and would have caused undue delay in the trial of the matter. Generally, a waiver of jury trial may be withdrawn and a jury demanded unless the motion is untimely or would cause undue delay.