

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 7th day of May, 2010.

Erik Steve Martinez, Appellant,

against Record No. 092111
Circuit Court No. 19942

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Loudoun County.

Upon consideration of the record, briefs, and argument of counsel, the Court dismisses this appeal for the failure of appellant to assign error as required by Rule 5:17(c).

This appeal arises out of an incident where Appellant, Erik Steve Martinez, seriously injured the victim as a result of striking the victim once in the head with his bare fist. Martinez was indicted for one count of aggravated malicious wounding in violation of Code § 18.2-51.2. Martinez pled not guilty by reason of insanity. The Commonwealth did not oppose the plea. The only issue that remained to be resolved at trial was the offense for which Martinez was to be found not guilty by reason of insanity. Under Code § 19.2-182.5, an individual found not guilty by reason of insanity of a felony can be civilly committed indefinitely, but an individual found not guilty by reason of insanity of a misdemeanor can only be committed for one year. The Commonwealth asserted that the evidence was sufficient to support a finding of a felony charge. Martinez asserted that the evidence supported a charge no greater than assault and battery.

Following a bench trial, the circuit court found Martinez not guilty by reason of insanity of unlawful wounding in violation of Code § 18.2-51. By order dated October 22, 2008, the court entered its finding and committed Martinez to the temporary custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services ("Commissioner") for evaluation pursuant to Code § 19.2-182.2.

After subsequent evaluations and a civil commitment hearing, the circuit court found that Martinez needed inpatient hospitalization and committed him to the custody of the Commissioner by order dated March 13, 2009. On March 30, 2009, Martinez filed a notice of appeal of that order to the Court of Appeals. The Court of Appeals, finding that it did not have subject matter jurisdiction over the appeal because Martinez was not convicted of a crime, transferred the appeal to this Court pursuant to Code § 8.01-677.1.

We awarded Martinez an appeal on the following assignment of error:

The evidence was insufficient, as a matter of law, to establish that Mr. Martinez acted with the intent to maim, disfigure, disable or kill when he punched the victim a single time with his bare fist and thus was insufficient to support a finding that Mr. Martinez was not guilty by reason of insanity of unlawful wounding.

Once Martinez was found not guilty by reason of insanity the criminal proceeding in which that finding was made became a civil proceeding. See Code § 19.2-182.3 (a civil commitment hearing for a not guilty by reason of insanity acquittee is a civil proceeding). Martinez has filed a notice of appeal of the March 13, 2009 civil commitment order. Martinez's assignment of error, however, only challenges the not guilty by reason of insanity finding by the circuit court in the criminal proceeding which was

concluded by the October 22, 2008 order. Accordingly, we conclude that Martinez failed to assign error as required by Rule 5:17(c) because he did not assign error to the civil proceeding which he appealed.

For these reasons, the Court dismisses this appeal.
Justice Mims took no part in the consideration of this case.
This order shall be certified to the said circuit court.

A Copy,

Teste:

*original order signed by the
Clerk of the Supreme Court of
Virginia at the direction of the
Court*