

October 16, 2006

Clerk, Court of Appeals of Virginia
109 North Eighth Street
Richmond, Virginia 23219-2305

Re: Wesley C. Smith v Cheri Smith
Record No: 2187-06-4

Dear Clerk:

Please file the enclose APPELLANT'S OPENING BRIEF and APPENDIX. I am not an attorney nor am I rich but I have made a good faith effort to comply with the rules and submit this in the proper format.

Given my financial (see order to proceed without fees/costs) situation (and court rulings see below) I'd appreciate you (or the court) accepting this even if it has minor violations as long as it is sufficient to rule on the merits. Please contact me if I have done something so wrong that would prevent the court from ruling on the merits and I will attempt to correct it.

Pro Se pleadings are to be considered without technicality; pro se litigants pleadings are not to be held to the same high standards of perfection as lawyers. HAINES V. KERNER, 92 S.Ct. 594; JENKINS V. MCKEITHEN, 395 US 411, 421 (1969); PICKING V. PENNA. RWY. CO. 151 F.2d 240; PUCKETT V. COX, 456 F.2d 233.

Defendant has the right to submit pro se briefs on appeal, even though they may be inartfully drawn but the court can reasonably read and understand them. See, Vega v. Johnson, 149 F.3d 354 (5th Cir. 1998). Courts will go to particular pains to protect pro se litigants against consequences of technical errors if injustice would otherwise result. U.S. v. Sanchez, 88 F.3d 1243 (D.C.Cir. 1996).

Pro se litigants' court submissions are to be construed liberally and held to less stringent standards than submissions of lawyers. If the court can reasonably read the submissions, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with rule requirements. Boag v. MacDougall, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982); Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)(quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)); Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); McDowell v. Delaware State Police, 88 F.3d 188, 189 (3rd Cir. 1996); United States v. Day, 969 F.2d 39, 42 (3rd Cir. 1992)(holding pro se petition cannot be held to same standard as pleadings drafted by attorneys); Then v. I.N.S., 58 F.Supp.2d 422, 429 (D.N.J. 1999).

Thank you for your assistance in this matter,

Sincerely,

Wesley C. Smith
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(no phone – can't afford one)
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