V I R G I N I A:

IN THE COURT OF APPEALS OF VIRGINIA

WESLEY SMITH,	)	
	)	
APPELLANT / Defendant	)	
	)	
v.	)	**Record No. 2187-06-4**
	)	
CHERI SMITH,	)	
	)	
APPELLEE / Plaintiff	)	

From Prince William County Circuit Court, Cheri Smith v. Wesley C. Smith, Chancery No. 53360 & Chancery No. 53810, Final Divorce Decree 06/09/2006

An electronic copy of this appendix with related background info, motions, and orders is available at: http://www.liamsdad.org/court_case/divorce_appeal/

#1 - REPLY & MOTION, Re: APPENDIX

On Oct 23, the Court Of Appeals ordered that I must file a reply regarding the supposed failure to file an appendix per Rule 5A:25(a) or that the case would be dismissed. Mr. Smith, who is not any attorney and who has been ruled indigent, did submit an appendix.

The appendix provided included paper documents to help rule on the issue of jurisdiction due to lack of service and lack of merging with Chancery No. 53810. The appendix also provided links to electronic copies of other court documents that may be needed. The Court easily could have used to links to view any needed motion, or order related to this case. The appendix may not have followed Rule 5A:25 in every specific but it did provide necessary information needed to rule on the merits of the case.

The Court may not legally dismiss a case simply because an indigent pro se party, unable to afford attorney, is not able to comply strictly with the myriad of complex rules used to govern submissions by attorneys:

> 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.
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> 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).

In other words, should the Virginia Court Of Appeals follow the multiple rulings above, it may not dismiss my appeal on the grounds of technical failure to comply with rules and must rule on the merits of the case if possible. If the Virginia Court Of Appeals is not going to follow precedence and provide pro se litigants Due Process, then instead of dismissing the case it should forward it to the Virginia Supreme Court or the Federal Courts.

If the Court is looking for a quick way to dismiss the case (and with your case load who wouldn't), the easiest is for lack of jurisdiction. Unless the case is vacated due to lack of jurisdiction than a ruling on the errors cited and constitutional issues is required, if the Court is going to fulfill its obligation.

To dismiss the case without ruling on the merits is unconstitutional as it violates the Equal Protection Clause:

In Griffin v. Illinois, [351 U.S. 12 (1956)], we held that a State may not grant appellate review in such a way as to discriminate against some convicted defendants on account of their poverty. There, as in Draper v. Washington, [372 U.S. 487 (1963)], the right to a free transcript on appeal was in issue. Here the issue is whether or not an indigent shall be denied the assistance of counsel on appeal. In either case the evil is the same: discrimination against the indigent**. For there can be no equal justice where the kind of an appeal a man enjoys "depends on the amount of money he has."** Douglas, 372 U.S. at 355 (quoting Griffin, 351 U.S. at 19).

there is no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and one which effectively denies the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance. It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. See, e. g., McKane v. Durston, 153 U.S. 684, 687 -688.

> The Equal Protection Clause proclaims that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of laws." U.S. Const. amend. XIV, § 1. The central mandate of the equal protection guarantee is that "the sovereign may not draw distinctions between individuals based solely on differences that are irrelevant to a legitimate governmental objective." Lehr v. Robertson, 463 U.S. 248, 265 (1983).
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> **"[the State cannot adopt procedures which leave an indigent defendant `entirely cut off from any appeal at all,'** by virtue of his indigency, or extend to such indigent defendants merely a `meaningless ritual' while others in better economic circumstances have a `meaningful appeal.' " Ross v. Moffitt, 417 U.S. 600, 612 (1974)
>
> the Supreme Court explained in Douglas, an indigent appellant forced to proceed without the assistance of appellate counsel **"has only the right to a meaningless ritual, while the rich man has a meaningful appeal."** 372 U.S. at 358.
>
> the Court has consistently recognized that a typical indigent is completely incapable of identifying and raising any kind of issue in a first direct appeal without the assistance of counsel. As the Court put it in Evitts, "To prosecute the appeal, a criminal appellant must face an adversary proceeding that—like a trial—is governed by intricate rules that to a layperson would be hopelessly forbidding. An unrepresented appellant—like an unrepresented defendant at trial—is unable to protect the vital interests at stake." 469
> U.S. at 636.

Had Mr. Smith been wealthy enough to afford an attorney, all submissions would have been done in accordance with the Rules and the case would not be dismissed. Thus any dismissal is due only to Mr. Smith's financial status and that is unconstitutional.

Thus as shown above, the Court must either rule that any supposed failure of Rule 5A:25(a) is not grounds to dismiss the case, or the Court must rule that Rule 5A:25(a) is Unconstitutional as applied to indigent pro se litigants due to it being in violation of Equal Protection.

> Also note the rules provide for hearing a case without an Appendix:
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> § vscr-5:34 Hearing of Appeals on the Original Record Without an Appendix or With an Abbreviated Appendix. Notwithstanding the provisions of Rule 5:32(a), this Court may by rule for all cases, or for classes of cases, or by order in specific cases, dispense with the requirement of an appendix and permit appeals to be heard on the original record, with such copies of the record, or relevant parts thereof, as this Court may require.

Wherefore Mr. Smith requests that the Court take the following action:

1. Accept the revised Appendix as "Good enough for a Pro Se litigant"
2. To ignore any supposed violation of the Rule(s) and hear the case on the merits.
3. Order that Rule 5A:25(a) is Unconstitutional as applied to indigent pro se litigants.

4. Or in the alternative, suspend any time-limits for filing, and appoint / provide an attorney for Mr. Smith to submit his appeal, appendix etc in accordance with the Rules. Note this will require MUCH more than the puny amounts the legislature provides, at least several thousand dollars.
5. Or in the alterative, forward the case to a court willing to rule on the merits, given the Constitutional issues, forwarding it on to the Virginia Supreme Court is appropriate.

Respectfully submitted,
WESLEY C. SMITH, Appellant / Defendant, pro se

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Wesley C. Smith
5347 Landrum Rd APT 1, Dublin VA 24084-5603, liamsdad@liamsdad.org, No Phone - can't afford

CERTIFICATE

I hereby certify that a true and accurate copy of the foregoing was mailed first-class to Loretta Vardy 12388 Silent Wolf Dr, Manassas VA 20112 and Ronald Fahy 9236 Mosby St # A, Manassas VA 20110 on November 2nd, 2006.

Submitted By Appellant/Defendant: (no attorney)
Wesley Smith, 5347 Landrum Road, #1, Dublin, Virginia 24084, liamsdad@liamsdad.org, No phone

Counsel for Appellee/Plaintiff:
Loretta Vardy,12388 Silent Wolf Dr, Manassas VA 20112, (703) 919-1417
Guardian Ad Litem:
Ronald Fahy, 9236 Mosby St # A, Manassas VA 20110, (703) 369-7991

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Wesley Smith