Public Def.

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

PUBLIC DEFENDER OFFICE

STATE OF WEST VIRGINIA,

Plaintiff,

vs. CASE NO. 10-F-20

BRENT LEVI VICTOR MCGILTON,

Defendant.

RECEIVED
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SENTENCING ORDER

On the 23rd day of November, 2010, came the State of West Virginia by Stephen L. Vogrin, Assistant Ohio County Prosecuting Attorney; and as well came said Defendant, Brent Levi McGilton, in person and by his counsel, Thomas Moore, Assistant Public Defender, this day and time having been set for a Sentencing Hearing.

WHEREUPON, Mr. Moore advised the Court that on today's date he filed a motion to continue the Sentencing Hearing, as the Defendant's version of events was not included in the Pre-sentence Investigation Report, prepared by Ohio County Adult Probation Officer, William Ball.

WHEREUPON, counsel for the State objected to the continuance of the Sentencing Hearing in this matter indicating to the Court that the Defendant could have provided a Defendant's version at any point prior to today's hearing and did not need Mr. Ball to do the same.

WHEREUPON, the Court inquired of Mr. Ball and Mr. Ball advised the Court

that the Defendant was given the opportunity to submit his version of events to be included within the Pre-sentence Investigation Report and Mr. McGilton decided not to do the same.

Specifically, Mr. Ball advised the Court that, with Defendant's counsel's knowledge, he arranged a meeting with the Defendant at the WV Northern Regional Jail. Mr. Ball further advised that Defendant's counsel did not attend the aforementioned meeting and that the Defendant chose not to provide Mr. Ball with a Defendant's version. Mr. Ball also stated that it has been his experience that defendants oftentimes choose not to provide a Defendant's version when, as in this matter, Defendant is pursuing an appeal or has testified at trial. Mr. Ball explained that defendants sometimes inadvertently make a confession to him. Accordingly, Mr. Ball advises defendants that the defendant should meet with his/her counsel and decide whether a Defendant's version is to be submitted. In this matter, Mr. Ball advised the Defendant not to submit a Defendant's version until the Defendant first met with his counsel, Mr. Moore. Finally, Mr. Ball advised the Court that neither the Defendant nor Mr. Moore informed him until the day before the sentencing hearing that they indeed wished to submit a Defendant's version.

WHEREUPON, the Court provided the Defendant the opportunity to permit the eleven page letter that the Defendant wrote to the Court containing the Defendant's version of events and/or, to allow the Defendant to make any statements he wants to the Court that would not be subject to any cross-examination by counsel for the State.

WHEREUPON, Mr. Moore advised the Court that Mr. McGilton does not desire to have the eleven page letter be submitted as his version but would choose to exercise his right of allocution at the appropriate time.

THEREUPON, the Court, based upon the representation of counsel and the record herein, does accordingly FIND that the Defendant has had sufficient opportunity to present his version of events to be included in the Pre-sentence Investigation Report and chose not to do the same. Therefore, it is accordingly

ORDERED the Defendant's Motion to Continue Sentencing Hearing, is and shall hereby be DENIED. It is further

ORDERED Defendant's objection shall be noted and preserved for the record.

WHEREUPON, the Court inquired of both parties as to whether or not both parties had received a copy of the Pre-sentence Investigation Report and whether or not either party had any objections, clarifications, or additions or subtractions to make to the Pre-sentence Investigation Report. To which each party advised the Court that they had in fact received a copy of the Pre-sentence Investigation Report and had no objections, clarifications, additions or subtractions to make to the Pre-sentence Investigation Report.

WHEREUPON, Mr.Moore orally moved to exclude the Pre-sentence Investigation Report, based upon the Motion to Continue the Sentencing Hearing in this matter, to which the Court DENIED said motion.

WHEREUPON, the Court advised the Defendant of his right to allocution and the Defendant exercised said right continually denying any involvement in this incident.

WHEREUPON, Thomas Moore spoke to sentencing in this matter and requested that the Court sentence the Defendant to concurrent sentences for a total sentence of not less than four(4) nor more than ten (10) years in the penitentiary, to be suspended for probation.

WHEREUPON, the victim spoke to sentencing in this matter, making a victim impact statement, recommending to the Court that the Defendant receive the maximum sentence. Also,

Officer William Nolan, Wheeling Police Department, spoke to sentencing in this matter, and as well recommended that the Defendant receive the maximum sentence.

WHEREUPON, counsel for the State spoke to sentencing in this matter, reminding the Court of the Defendant's violent criminal history, the death threats made to the victim during the pendency of this action and as well the fact that the Defendant was arrested for a burglary offense while on bond in this matter. As a result, the State recommended the maximum sentence of not more than eight (8) nor more than thirty (30) years in the penitentiary.

THEREUPON, the Court, based upon the representation of counsel and the record herein, does accordingly FIND that this matter is a crime of violence. The

Court further FINDS that the Defendant has an extensive violent criminal history. The Court further FINDS the Defendant has made serious threats to the victim in this matter during the pendency of this action. Therefore, it is accordingly

ADJUDGED and **ORDERED** that pursuant to Defendant's conviction of Count One, "Malicious Assault", the Court does hereby sentence the Defendant to not less two (2) nor more than ten (10) years in the West Virginia Penitentiary. The Court further

ADJUDGED and **ORDERED** that pursuant to Defendant's conviction of Count Two, "Malicious Assault, the Defendant is sentenced to not less than two (2) nor more than ten (10) years in the West Virginia Penitentiary. The Court further

ADJUDGED and **ORDERED** that pursuant to Defendant's conviction of Count Three, "Malicious Assault", and the finding by the Jury that the Defendant has a prior felony conviction pursuant to a Recidivist Action, the Defendant shall be sentenced to not less than four (4) nor more than ten (10) years in the West Virginia Penitentiary. It is further

ORDERED that all sentences shall run CONSECUTIVE and not concurrent to each other for a combined sentence of not less than eight (8) nor more than thirty (30) years in the West Virginia Penitentiary. The Court further

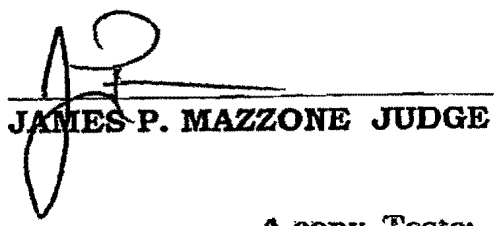
ORDERED that the Defendant receive credit for all time served. The Court further

ORDERED that the Defendant shall not be assessed any fines but shall be responsible for all court costs incurred in this matter.

THEREUPON, the Court did advise the Defendant of all his various and several appellate rights in this matter. There being nothing further, the Court

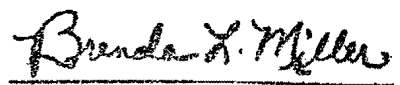
ORDERED that the Clerk of the Circuit Court of Ohio County provide an attested copy of this Order to respective counsel and William Ball, Ohio County Adult Probation Officer.

ENTER this 12th day of January, 2011.



JAMES P. MAZZONE JUDGE

A copy, Teste:



Circuit Clerk