

11-0555

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

OCT 27 2010 11:57

Plaintiff,

DELL CHANDLER
CIRCUIT CLERK
CABELL CO. WV

v.

INDICTMENT NO: 10-F-235
Judge Alfred E. Ferguson

MARCELLA LORENZA DUNBAR,

Defendant.

ORDER

On the 27th day of October, 2010, came the State of West Virginia, by its Prosecuting Attorney, Joseph Adams, and came the Defendant, Marcella Dunbar, in person and by counsel, R. Matthew Vital and Vital & Vital, L.C., pursuant to the Defendant's previously filed Motion to Suppress Evidence. After hearing argument of counsel and evidence presented, the Court denied the Defendant's Motion via Order dated October 28, 2010.

On the 7th day of January, 2011, came the State of West Virginia, by its Prosecuting Attorney, Joseph Adams, and came the Defendant, Marcella Dunbar, in person and by counsel, R. Matthew Vital and Vital & Vital, L.C., pursuant to the Defendant's second Motion to Suppress Evidence. After hearing argument of counsel and evidence presented, the Court denied the Defendant's second Motion to Suppress Evidence via Order dated January 11, 2011.

On the 1st day of February, 2011, came the State of West Virginia, by its Prosecuting Attorney, Joseph Adams, and came the Defendant, Marcella Dunbar, in person and by counsel,

R. Matthew Vital and Vital & Vital, L.C., and the Court being advised that the Defendant, Marcella Dunbar, based upon the Court's prior rulings on the pretrial motions, desired to enter a

2-22-11
By: _____
Certified copies sent to:
 counsel of record
 parties
 other _____
(check initials)
By:
 certified/for class mail
 fax
 hand delivery
 interdepartmental
Other directives accomplished:

Deputy Circuit Clerk

conditional Kennedy plea of guilt pursuant to Rule 11(a)(2) of the West Virginia Rules of Criminal Procedure to the felony offense of possession of a controlled substance with intent to deliver, namely Oxycodone, in violation of West Virginia Code § 60A-4-401(a)(i), and as reflected in Indictment No. 10-F-235. The Court then proceeded to inquire of both the Defendant and his counsel concerning the matters pertinent to the Defendant's entering of a Kennedy plea before this Court; and,

After due consideration of the facts and circumstances developed by said inquiry, and the responses and statements made by both counsel for the Defendant and counsel for the State, this Court does accordingly find as follows:

1. The Court finds that the Defendant fully understands that he has the following rights concerning the criminal charge now pending against him:

A right to a trial by an impartial jury of twelve (12) persons, in which the State would be required to prove its case beyond a reasonable doubt, but by entering a Kennedy plea, thoroughly understands that he waives such a trial and he would not receive such a trial; and,

A right to stand silent during all proceedings;

A right to confront and cross-examine his accusers;

A right to present witnesses in his own defense and to testify in his own defense;

A right to petition for appeal of any jury's conviction for any errors of law; and

The right to move the Court to suppress illegally obtained evidence and illegally obtained confessions, if any, and the right to challenge in the trial court and on appeal of all pre-trial proceedings.

2. The Court also finds that the Defendant understands all of the following:

- A. That he may be sentenced to imprisonment in the penitentiary of this State for not less than one (1) nor more than fifteen (15) years and a fine of up to Twenty-Five Thousand Dollars (\$25,000.00), or both, in the discretion of the Court;
- B. That, under the Kennedy plea agreement agreed to between Mr. Dunbar and the State of West Virginia, the State through its Prosecuting Attorney agrees that it will not seek any additional indictments, informations, or warrants for known or unknown offenses and/or acts arising out of or related to the transaction or series of transactions that were the subject of the indictment;
- C. That, under the Kennedy plea agreement, the State, through its Prosecuting Attorney, has agreed to the dismissal of Count II and Count III of the indictment;
- D. That, under the Kennedy plea agreement entered into between Mr. Dunbar and the State of West Virginia, the State through its Prosecuting Attorney agrees that the Defendant may remain out on bond throughout the pending appeal;
- E. That, under the Kennedy plea agreement agreed to between Mr. Dunbar and the State of West Virginia, the State is ordered to return the currency it seized in the amount of Two Thousand Six Hundred Thirty Dollars (\$2,630.00) payable to Vital & Vital, L.C., within ten (10) days of the

entry of this Order;

F. That, under the Kennedy plea agreement agreed to between Mr. Dunbar and the State of West Virginia, the Defendant can appeal the Court's pretrial rulings to the Supreme Court of Appeals of West Virginia.

3. The Court finds that the Defendant has counsel competent in criminal matters and that the Defendant is totally satisfied with the representation and advice he has received from said counsel; that the Defendant has counseled with, and has been advised by his counsel, with respect to his constitutional rights; and that the Defendant and his counsel have received a copy of the indictment in this case, and further, that the Defendant understands the nature and meaning of the charges contained in the indictment.

4. The Court further finds that the Defendant has knowingly and intelligently waived all of his constitutional rights, except those preserved unto the Defendant under the Kennedy plea agreement; and that he freely, voluntarily, intelligently, knowingly, and understandingly tendered unto this Court his oral Kennedy plea to the charge of possession of a controlled substance with intent to deliver, a provable offense as contained in said indictment.

THEREFORE, this Court is of the opinion to, and does hereby accept the Defendant's oral and written Kennedy plea tendered unto this Court.

Upon said plea this Court does hereby ADJUDGE the Defendant GUILTY of possession of a controlled substance with intent to deliver, a provable offense as contained in the indictment.

It is further ORDERED of the Court that this matter be referred to the Probation Department of this Court for a pre-sentence investigation and that this matter shall stand continued until the 7th day of March, 2011, at 9:00 a.m.; and that the Defendant shall be

permitted to stand upon his present bond to secure his appearance at the bar of this Court on that date and that time for sentencing and disposition.

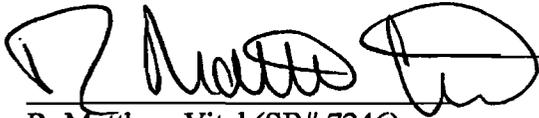
It is further ORDERED that should the Defendant fail to appear for his sentencing, this Court will not require the State to dismiss Count II and Count III of the indictment as contained in the Kennedy plea.

It is further ORDERED that the Clerk forward certified copies of this Order to all counsel of record.

ENTERED this _____ day of _____, 2011.

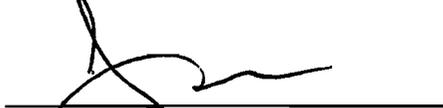

Judge Alfred E. Ferguson

Prepared by:



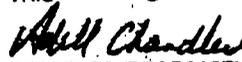
R. Matthew Vital (SB# 7246)
James A. Spenia (SB# 9487)
Vital & Vital, L.C.
536 Fifth Avenue
Huntington, West Virginia 25701
(304) 525-0320
Counsel for Defendant, Marcella Lorenza Dunbar

Approved by:



Joe Adams, Esquire
Assistant Prosecuting Attorney
750 Fifth Avenue
Huntington, WV 25701

ENTERED Circuit Court Criminal Order No. 268 Page 764 this _____ day of FEB 22 2011

STATE OF WEST VIRGINIA
COUNTY OF CABELL
ADELL CHANDLER, CLERK OF THE CIRCUIT COURT FOR THE COUNTY AND STATE AFORESAID DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT ENTERED ON 2-22-11 GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 22 2011
 CLERK
CIRCUIT COURT OF CABELL COUNTY WEST VIRGINIA