

ORDERED, ADJUDGED, and DECREED that Defendant's Motion for Judgment of Acquittal and Alternative Motion for New Trial be, and they hereby are, **DENIED**, and any objection or exception thereto is hereby noted and saved.

WHEREUPON, the Court inquired as to the parties as to whether they had each received a copy of the presentence investigation report previously Ordered prepared by the Court in accord with Rule 32(b)(1), W. Va. R. Crim. P., and Rule 43.01, T.C.R., to which the parties replied, respectively, that they had; and

THEREUPON, the Court inquired as to whether either the State or Defendant had any additions, corrections or objections to the same, to which Defendant noted that several of the misdemeanor offenses listed therein were erroneous; and

WHEREUPON, the Court noted Defendant's corrections; and

THEREUPON, the Court entertained argument from the State concerning Defendant's sentence, the State noting Defendant's lengthy criminal history and the nature of the offense, and advocating for the maximum potential penalties, to-wit: one year of incarceration and a fine of five hundred dollars (\$500.00); and

WHEREUPON, counsel for Defendant argued that, based upon the fact that the evidence in the matter proved that Michael Yoho and not Michael McGill was the aggressor in the altercation and in light of additional punishments already heaped upon Defendant for his related felony escape conviction and yet to be heaped upon Defendant for violating the terms of his federal supervised release, Defendant's eight (8) months of incarceration already served was ample punishment; and

THEREUPON, the Court extended to Defendant his right of allocution pursuant to Rule 32(c)(3)(C), W. Va. R. Crim., P., which right Defendant declined; and

WHEREUPON, the State offered argument in rebuttal.

The Court, upon mature reflection of the argument of both counsel for the State and counsel for Defendant, in light of Defendant's criminal history and in consideration of the nature of the offense,

ORDERED, ADJUDGED, and DECREED that, pursuant to Defendant's conviction for the offense of battery under W. Va. Code § 61-2-9(c), Defendant be, and he hereby is, **SENTENCED** to a period of incarceration of one (1) year in the custody of the Northern Regional Jail, said sentence to run consecutively to Defendant's period of incarceration now being served in the unrelated case charged in 10-F-51, Circuit Court of Marshall County, and said instant sentence to commence running upon the discharge of Defendant's sentence in 10-F-51; the Court further

DENIED Defendant credit for all actual pretrial incarceration time served on the instant offense, to-wit: from June 15, 2009, to February 26, 2010; and the Court further **FINES** Defendant five hundred dollars (\$500.00).

WHEREUPON, the Court notified Defendant of his various and several appellate rights under Rule 32(c)(5), W. Va. R. Crim. P., advising Defendant, specifically, that he was required to file a Notice of Intent to Appeal within thirty (30) days of the date of entry of any sentencing Order that he and inquired of Defendant as to whether his financial status had changed since the filing of his last pauper's affidavit, to which Defendant that he had not worked in two (2) years, that he had no income, and that his indigent status had remain unchanged; and

THEREUPON, the Court inquired of counsel for Defendant as to whether he wished to assume responsibility as Defendant's appellate counsel, to which Defendant's counsel stated that he would so serve. The Court, **FINDING** that Defendant qualifies for Court-appointed counsel, accordingly, **APPOINTED** Robert G. McCoid, Esq., of

McCamic, Sacco & McCoid, P.L.L.C., FEIN: 61-143-4744, a discrete and competent attorney licensed to practice before the Bar of the Courts of the State of West Virginia, to serve as Defendant's appellate counsel; the Court thereafter

ORDERED Defendant **REMANDED** for service of his sentence; the Court further

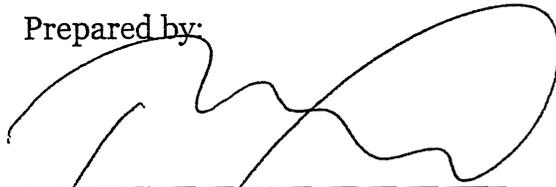
ORDERED, ADJUDGED, and DECREED that the Clerk is hereby directed to transmit attested copies of this Order to counsel of record. The objections and exceptions of any party aggrieved by this Order are hereby noted and saved.

ENTERED this 4TH day of SEPTEMBER, 2011.



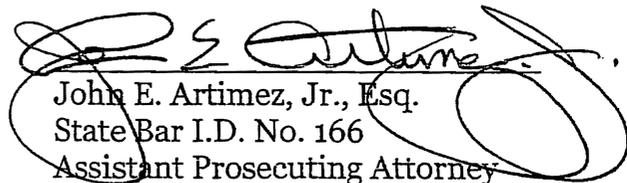
HONORABLE MARK A. KARL,
CIRCUIT JUDGE.

Prepared by:



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Reviewed and approved by:



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