



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**STATE OF WEST VIRGINIA, Plaintiff Below,
Petitioner,**

Vs.

**No. 12-1304
(Cabell County No. 12-F-73)**

**CHARLES ANTHONY FORD, Defendant Below,
Respondent.**

**RESPONDENT'S BRIEF IN ANSWER TO THE QUESTION
CERTIFIED TO THE COURT**

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Now comes the Respondent, by Brent W. Walters, Assistant Public Defender of Cabell County, West Virginia, and respectfully submits the following:

I.

CERTIFIED QUESTION

This matter comes before this Honorable Court upon an Order of Certification to the West Virginia Supreme Court of Appeals from the Circuit Court of Cabell County. By scheduling order dated November 5, 2012, this Honorable Court placed the matter upon its docket. The question certified by the Circuit Court is:

Does a person who suffers from a brain injury due to toxic exposure and who has been determined by a qualified evaluator as someone who will never regain competency have to register as a sex offender pursuant to West Virginia Code Section 15-12-2(b) and pursuant to his having been found not guilty by reason of mental illness to some sex offenses?

The Circuit Court answered this question in the negative.

This brief on behalf of the Respondent is filed in support of the decision of the Circuit Court in answering this certified question in the negative.

II.

PROCEDURAL HISTORY

The defendant, a twenty-five year old male, was indicted in February, 2012, for eight separate counts of Third Degree Sexual Assault on the same fifteen year old female victim, all allegedly occurring between January 17, 2011 and September 17, 2011. Thereafter, defense counsel moved for a competency evaluation of the defendant, which the State did not oppose, and an order was entered June 7, 2012, ordering the competency evaluation, which the order reflects was already scheduled for June 18, 2012, with Dr. Ralph Smith, Charleston Psychiatric Group, Inc. The defendant was examined on June 18, 2012, by Dr. Smith and found to be not competent to stand trial, as set forth in Dr. Smith's report dated July 30, 2012. Thereafter, on September 10, 2012, the trial court entered an order finding the defendant not guilty by reason of mental illness on Courts I, II, and III of the indictment and, upon motion of the State, dismissed the remaining counts of the indictment. The Court also committed the defendant to the William R. Sharp, Jr. Hospital.

On June 10, 2012, there was also a hearing on the issue of whether or not the defendant would be required to register as a sexual offender upon his release from Sharpe Hospital. The trial court agreed with the defense attorney that he should not be required to register and also agreed to certify that question to this Court for a determination of this issue.

III.

SUMMARY OF THE ARGUMENT

Mr. Ford is committed to a psychiatric hospital for 15 years. If Mr. Ford is required to register after his 15 year detention, he will not be able to understand or comply with the requirements of the sex offender registration. And will therefore, in a very short amount of time, be arrested and reinstitutaionalized for the offense of failure to register as a sex offender.

Surely this is not the lifetime civil commitment procedure the legislation had in mind.

IV.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Mr. Ford suffers from brain damage due to toxic exposure. Mr. Ford cannot and will not ever be able to comply with sexual registration requirements. We ask the Court to consider Mr. Ford's condition, because the statute, as written, contemplates some who can be restored after treatment. Mr. Ford can not.

If everyone in the state of West Virginia had to register with the State Police in this manner, it would be an unenforceable law as it applied to children or those members of society who are incapable of complying with the law due to mental disabilities. Thus it follows, a law requiring everyone with Mr. Fords condition to comply with these registration requirements would not be effective do to the incapacity of the intended registrants.

If it is the State's intention to have Mr. Ford committed for the remainder of his life, requiring him to register as a sex offender will accomplish it. Mr. Ford's condition will result in charges being filed for failure to register, not guilty by reason of mental illness, and commitment in a psychiatric hospital for the maximum term allowed under the statute. This

pattern will reoccur until Mr. Ford's death.

Although, Mr. Ford's condition is not unique, counsel holds good faith belief that it is an issue of first impression in this Court. This fact pattern is not enumerated by the legislature, leaving us to certify this question.

VI.

CONCLUSION

For the foregoing reasons, Respondent respectfully moves this Honorable Court to **AFFIRM** the judgment of the Circuit Court of Cabell County by ruling that someone having been found not guilty by reason of mental illness and who will never regain competency **DOES NOT** have to register as a sex offender pursuant to West Virginia Code Section 15-12-2(b).

Charles Ford, by counsel



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CERTIFICATE OF SERVICE

I, Brent W. Walters, do hereby certify that I have served a copy of the foregoing motion upon the following, by hand delivery to his box in the Cabell Court House:

Christopher D. Chiles
Prosecuting Attorney
Cabell County Court House
Huntington, WV 25071

Service was made on this first day of March, 2013



Brent W. Walters, WV #8615
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