

12-1183

33

IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA
DIVISION II

STATE OF WEST VIRGINIA,

Plaintiff,

v.

ROY FRANKLIN HILLBERRY, II
Defendant.

Case Nos.: 09-F-94 & 12-F-83

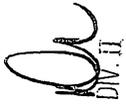
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IN
CIRCUIT CLERKS OFFICE
2012 SEP 24 PM 5
BARBARA A. CORE
CIRCUIT CLERK
FINAL ORDER

SENTENCING ORDER

On the 29th day of August, 2012, came the State of West Virginia, by Jeffrey L. Freeman, its Assistant Prosecuting Attorney, came the Defendant, ROY FRANKLIN HILLBERRY, II, in person and by his counsel, Kevin Tipton, and came the Adult Probation Office, by Heather Campbell, all for the purpose of a sentencing hearing in the above-styled case, following the completion and return of the pre-sentence investigation and report previously ordered in Case No. 09-F-194.

Whereupon, the Court, having received and reviewed the pre-sentence report, heard the arguments and representations of counsel for both Defendant and the State, as well as the statements of Defendant, himself, regarding sentencing.

In consideration of same, and of all matters of record, herein, and Defendant having been convicted of ROBBERY IN THE FIRST DEGREE WITH THE USE, PRESENTMENT AND BRANDISHING OF A FIREARM in Case No. 09-F-94 and subsequently found guilty of THIRD OR SUBSEQUENT OFFENSE FELONY in Case No. 12-F-8, the Court ORDERED that Defendant be, and hereby is, Sentenced to imprisonment in the penitentiary for life, to be served consecutively to the sentence in Monongalia County Circuit Court Case No. 10-F-60, with credit for time served from the 27th day of July, 2009, to the 10th day of August, 2009, in the


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amount of fourteen (14) days and from the 12th day of April, 2012, to the this 29th day of August, 2012, in the amount of one hundred forty (140) days for a total of one hundred fifty-four (154) days previously served.

CONVICTION DATE: August 29, 2012

SENTENCE DATE: August 29, 2012

EFFECTIVE SENTENCE DATE: March 28, 2012

Whereupon, the Court ORDERS defendant to pay the court costs of these proceedings in the amount of two thousand ten dollars (\$2,010.00) in Case No. 09-F-194 and seven hundred ninety dollars (\$790.00) in Case No. 12-F-83 and attorney fees in the amount of \$ 09-F-194 \$3,609.39 763.70, to be paid within two (2) years of Defendant's release from incarceration, to and through the Marion County Circuit Clerk's Office, Marion County Courthouse, Fairmont, WV 26554.

Defendant is hereby advised of the following rights concerning his conviction and sentence:

- (1) Within sixty (60) days from the date of your sentence, you may petition the presiding judge of the Circuit Court of Marion County, pursuant to West Virginia Code § 62-12-3, for suspension of the execution of our sentence and release on probation.
- (2) Within one hundred twenty (120) days from the date of your sentence, you may petition the judge of the Circuit Court of Marion County, pursuant to Rule 35(b) of the West Virginia Rules of Criminal Procedure, for correction or reduction of your sentence.
- (3) Pursuant to rule 32 of the West Virginia Rules of Criminal Procedure, you can appeal your conviction and/or sentence to the West Virginia Supreme Court of Appeals in Charleston, West Virginia. In order to protect and keep this right of appeal you must:
 - A. Within thirty (30) days from the date of your sentence, file with the Clerk of the West

Virginia Supreme Court of Appeals in Charleston, West Virginia, your notice of intent to appeal, and;

B. Within four (4) months from the date of your sentence, file your petition for writ of error with the West Virginia Supreme Court of Appeals in Charleston, West Virginia.

(4) If you are an indigent and cannot afford an attorney, then this Court will appoint an attorney to represent you to protect your appellate rights as set out in paragraph three (3) above.

A. You must notify the Court in writing of your request to have an attorney for you to exercise these rights.

(5) You are further notified that failure to pay court imposed assessments, including, but not limited to, fines, costs, restitution, et cetera, shall result in the suspension of your license or privilege to operate a motor vehicle in the State of West Virginia and that such suspension could result in the cancellation of, the failure to renew, or the failure to issue an automobile insurance policy providing coverage for yourself or your family.

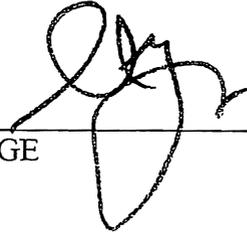
The foregoing notice was read in open court, and a blue copy of same will be given to Defendant on the 29th day of August, 2012.

It is further ORDERED that the Clerk of the Court tender certified copies of this Order to **Prosecuting Attorney**, 213 Jackson Street, Fairmont, WV 26554; **Kevin Tipton**, Attorney at Law, 316 Merchant Street, Fairmont, WV 26554; **Marion County Adult Probation Office**, 314 Monroe Street, Fairmont, WV 26554; **North Central Regional Jail**, 1 Lois Lane, Greenwood,

WV; and the West Virginia Division of Corrections, 112 California Avenue, Building 4, Room 300, Charleston, West Virginia 25305.

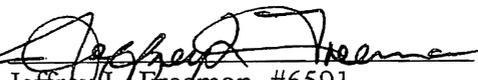
ENTER: 9/24/12

JUDGE



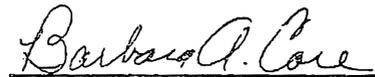
ORDER PREPARED BY:

ORDER APPROVED BY:


Jeffrey C. Freeman, #6591
Assistant Prosecuting Attorney

Kevin Tipton,
Counsel for Defendant

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CLERK OF THE CIRCUIT COURT
MARION COUNTY, WEST VIRGINIA

IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA
DIVISION II

STATE OF WEST VIRGINIA,
PLAINTIFF,

VS.

ROY FRANKLIN HILLBERRY,
DEFENDANT.

RECEIVED & FILED
IN
CIRCUIT CLERK'S OFFICE
2012 SEP 17 PM 8:14
BARBARA A. CORSE
CIRCUIT CLERK
CASE NO. 09-F-104

ORDER DENYING DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL
AND/OR NEW TRIAL

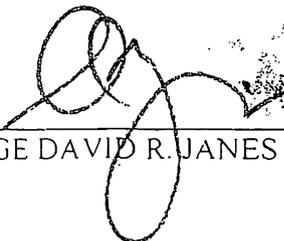
On April 18, 2012, "Defendant's Motion for Judgment of Acquittal and/or New Trial" was filed by the defendant's attorney, Kevin T. Tipton, in the Circuit Clerk's office. No copy of the motion was delivered by Mr. Tipton to the Court as required by Trial Court Rule 22.01, and the Court was unaware that this motion had been filed until September 13, 2012,

Having now reviewed the defendant's written motion, as well as the entire court file, this Court is of the opinion that the defendant is not entitled to the relief sought and, further, that no hearing with regard thereto is warranted.

Accordingly, it is ORDERED that, "Defendant's Motion for Judgment of Acquittal and/or New Trial" be, and the same is hereby DENIED, without hearing.

The Circuit Clerk of Marion County is hereby directed to provide a certified copy of this order to Jeffrey L. Freeman, Esquire, Assistant Prosecuting Attorney for Marion County, at his address: 213 Jackson Street, Fairmont, West Virginia 26554; and to Kevin T. Tipton, Esquire, at his address: 316 Merchant Street, Suite 100, Fairmont, West Virginia 26554.

ENTER: 9-17-12



JUDGE DAVID R. JANES

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CIRCUIT CLERK
MARION COUNTY, WEST VIRGINIA

TESTE

IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA
DIVISION II

STATE OF WEST VIRGINIA,
PLAINTIFF,

VS.

ROY FRANKLIN HILLBERRY,
DEFENDANT.

CASE NO. 12-F-83

RECEIVED & FILED
IN
CIRCUIT CLERK'S OFFICE
2012 SEP 17 AM 8 44
BARBARA A. CORE
CIRCUIT CLERK

ORDER DENYING MOTION FOR JUDGMENT OF ACQUITTAL

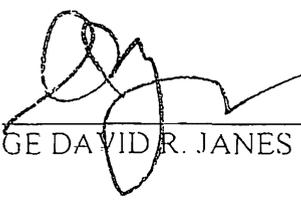
On August 30, 2012, "Defendant's Motion for Judgment of Acquittal" filed by the defendant's attorney, Kevin T. Tipton, was filed in the Circuit Clerk's office. No copy of the motion was delivered by Mr. Tipton to the Court as required by Trial Court Rule 22.01, and the Court was unaware that this motion had been filed until September 13, 2012.

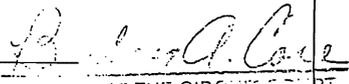
Having now reviewed the defendant's written motion, as well as the entire court file, this Court is of the opinion that the defendant is not entitled to the relief sought and, further, that no hearing with regard thereto is warranted.

Accordingly, it is ORDERED that "Defendant's Motion for Judgment of Acquittal" be, and the same is hereby DENIED, without hearing.

The Circuit Clerk of Marion County is hereby directed to provide a certified copy of this order to Jeffrey L. Freeman, Esquire, Assistant Prosecuting Attorney for Marion County, at his address: 213 Jackson Street, Fairmont, West Virginia 26554; and to Kevin T. Tipton, Esquire, at his address: 316 Merchant Street, Suite 100, Fairmont, West Virginia 26554.

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JUDGE DAVID R. JANES

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CIRCUIT CLERK
MARION COUNTY, WEST VIRGINIA

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IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA
DIVISION II

STATE OF WEST VIRGINIA,
Plaintiff,

v.

ROY FRANKLIN HILLBERRY, II,
Defendant.

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IN
CIRCUIT CLERKS OFFICE
2012 SEP 12 AM 10 18
BARBARA A. CORE
CLERK
Case No. 12-00000000

TRIAL ORDER

On the 29th day of August, 2012, came the State of West Virginia, by Jeffrey L. Freeman, its Assistant Prosecuting Attorney, and also came the Defendant, ROY FRANKLIN HILLBERRY, II, in person and by his counsel, Kevin Tipton, and the parties announced that they were ready for trial upon the indictment heretofore returned in this action and the issues thereon were joined between the State of West Virginia and Defendant as set forth in the indictment.

Whereupon, a jury was empanelled, namely: Candace Jarrett, James Johnson, John Sigley, Randy Underwood, Laura Bosco, Brad Doddrell, Larry Swain, Jordan Murphy, Charles Layman, Jennifer Poling, Mary Martin, and Kevin Rogers, and alternates Melissa Crislip and Deborah Hopeford lawful jurors elected, impaneled, tried and sworn in a manner provided by law to well and truly try the issues joined between the parties hereto as required by law, and a true verdict render according to the evidence.

The parties then proceeded to introduce and present their evidence and the testimony of their respective witnesses. After having heard all the evidence presented in the case, on

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16th JUDICIAL CIRCUIT DIV II

behalf of both the State of West Virginia and Defendant, the jury received the instructions of the Court, heard the arguments of counsel for both the State of West Virginia and Defendant, and thereupon retired to deliberate, and the Court released the alternate jurors

Whereupon, the jury then returned after a time and in open Court announced its verdict to be as follows:

Whereupon, the Court received the verdict upon Count I as follows.

COUNT I

We, the jury, find Defendant, ROY FRANKLIN HILLBERRY, II, GUILTY of the offense of THIRD OR SUBSEQUENT OFFENSE FELONY'

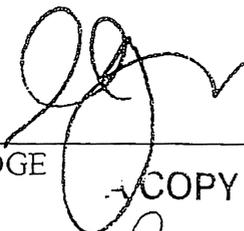
/s/ John Sigley
Foreperson

Whereupon, the Court inquired of the jury if this was the verdict of each juror, and each juror announced in the affirmative that the verdicts and findings aforesaid were and are their respective verdicts and findings and the Court thereupon discharged the jury from further service, herein. The Court directed counsel to file any post-trial motions within the prescribed time period(s).

It is further ORDERED that the Clerk of this Court shall provide a copy of this Order upon entry to: Counsel for Defendant, **Kevin Tipton**, 316 Merchant Street, Fairmont, WV 26554; the State of West Virginia, **Jeffrey L. Freeman**, 213 Jackson Street, Fairmont, WV 26554; **Marion County Adult Probation Office**, 314 Monroe Street, Fairmont, WV 26554; and to the **North Central Regional Jail**, 1 Lois Lane, Greenwood, WV 26415.

All until further Order of the Court.

ENTER: 9/12/12



JUDGE

COPY 1234

Approved By: 

CLERK OF THE CIRCUIT COURT
MARION COUNTY WEST VIRGINIA

Prepared By:


Jeffrey L. Freeman, #6591
Assistant Prosecuting Attorney

Kevin Tipton,
Counsel for Defendant