

14-0173

IN THE CIRCUIT COURT OF ROANE COUNTY, WEST VIRGINIA  
STATE OF WEST VIRGINIA, Plaintiff,

Vs.

KENNETH J. SEEN,  
Defendant

CIRCUIT COURT  
ROANE COUNTY, W. VA.  
13 DEC 23 AM 9:35  
ANDREW S. FRUMMER  
CIRCUIT CLERK

Case No. 13-M-02  
Judge Thomas C. Evans III

**MISDEMEANOR SENTENCING ORDER**

On December 16, 2013, came the State of West Virginia by Joshua W. Downey, Prosecuting Attorney for Roane County, West Virginia, and came also the defendant, Kenneth Seen, in person, and by counsel, David K. Moore. Also present for these proceedings were Stephen M. Frum, Probation Officer.

Whereupon, noted receipt of the Defendant's Motion for a New Trial. The Defendant presented supporting evidence. The State objected to the Defendant's Motion for a New Trial.

The Court **DENIES** the Defendant's Motion for a New Trial, stating reasons on the record.

With no objections, the Court proceeded with the sentencing of this matter.

The Court reviewed the procedural history of the above-captioned matter for the record.

It appeared to the Court that a previous verdict of guilty to the offense of Battery was entered following a bench trial.

It was, therefore, **ORDERED** that the defendant, Kenneth Seen, stood and was adjudged convicted of the misdemeanor offense of Battery.

The Court hereby finds that the defendant was sexually motivated in the commission of the offense of Battery. Thereupon, the Court advised the defendant of the requirements of the Sexual Offender Registration Act, and the Court, the

P.A.  
D. Moore  
S. Frummer  
12/23/13

defendant Kenneth Seen, and counsel for the defendant signed in open Court the Notice of Sex Offender Registration Requirements. The defendant received a copy of the Notice of Sex Offender Registration Requirements entered by the Court. The Court **ORDERS** that the Defendant shall register as a sex offender for a period of ten (10) years.

Thereupon, the Court, without objection of counsel for the State and counsel for the defendant, **ORDERED** that the Presentence Investigation Report, prepared by Stephen M. Frum, bearing the date of December 5, 2013, be filed and made a part of the record in this case.

Thereupon, the Court heard the sentencing recommendations of counsel for the State and counsel for the defendant.

The Court thereupon advised the defendant of his right of allocution and the defendant, Kenneth Seen, thereupon addressed the Court prior to imposition of sentence.

Thereupon, on the motion of the defendant and over the objection of the State, and further based upon a careful review of the reports and other information presented, it was determined to the satisfaction of the Court that the circumstances indicate that the defendant is not likely again to commit crime and that the public good does not require that the defendant be fined or incarcerated and it was further **ORDERED** that the execution of the sentence be suspended, and the defendant be placed on probation for a period of two (2) years upon the conditions and terms set forth in this Order.

It was further **ORDERED** that the defendant, Kenneth Seen, pay the mandatory costs assessed by the Circuit Clerk in this matter, and the State of West

Virginia was granted a judgment for these costs as further and fully reflected upon the final taxation of the costs prepared by the Circuit Clerk.

Thereupon, the Court advised the defendant that pursuant to Chapter 62, Article 4, Section 17 of the Code of West Virginia, if costs, fines, forfeitures, penalties and restitution imposed by the Court on the defendant in this matter are not paid in full when ordered to do so by the Court, the Circuit Clerk shall notify the West Virginia Division of Motor Vehicles of such failure to pay and upon such notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the costs, fines, forfeitures, penalties or restitution are paid. The original notice advising the defendant of the same was **ORDERED** filed and made a part of the record in this case and a copy of this notice provided to the defendant, counsel for the defendant and counsel for State.

The Court further **ORDERED** that the defendant meet with a Probation Officer immediately following these proceedings and complete a Sex Offender Registration Sheet, which sheet shall be submitted within three days by the Probation Officer to the Sex Offender Registry.

#### **TERMS AND CONDITIONS OF PROBATION**

It was further **ORDERED** that the terms and conditions of the defendant's probation shall be as follows:

1. Defendant shall register with the West Virginia State Police as a sex offender within three business days of release on probation.
2. Pursuant to West Virginia Code § 62-12-9(5), and based upon the Court's determination of the defendant's ability to pay without undue hardship, the defendant shall pay a probation supervision fee of Five Dollars (\$5.00)

per month, paid to the Circuit Clerk, who shall remit these payments monthly to the State Treasurer for deposit in the State general revenue fund.

3. Pursuant to West Virginia Code § 62-11C-4(b), and based upon the Court's determination of the defendant's ability to pay without undue hardship, the defendant shall pay a community corrections fee of Five Dollars (\$5.00) per month, to the Circuit Clerk for disbursement to the State Treasurer to be credited to the West Virginia Community Corrections Fund.
4. Defendant shall perform three hundred (300) hours of community service as Ordered and approved by his Probation Officer
5. Defendant shall report as directed to the Court or defendant's probation officer and permit the officer to visit defendant's home, place of employment or school. Defendant shall answer truthfully all reasonable inquiries made by defendant's probation officer. Defendant shall submit to any and all searches of defendant's person, residence, property or effects by defendant's probation officer at any time defendant's probation officer, upon reasonable suspicion, deems it necessary; and voluntarily agrees to the seizure of any property found or discovered as a result of the search.
6. Defendant shall cooperate with the probation officer and abide by all rules and regulations promulgated by the probation officer, and the defendant shall be given a copy of the same in writing.
7. Defendant shall not violate any laws of the State of West Virginia, any other State, any County or municipality or of the United States of America, and

will notify defendant's probation officer within 24 hours of any arrest for any reason.

8. Defendant shall submit at defendant's own expense to random drug and alcohol tests of defendant's blood, breath, saliva or urine at the discretion of the probation officer. Failure to provide a sample within a reasonable time and attempts to alter, adulterate, substitute or tamper with a test sample will be a violation of these terms and conditions. Any attempt to alter, adulterate, substitute or tamper with a sample will be a violation of these terms and conditions, and may result in a new criminal charge.
9. Defendant shall not associate with persons of disreputable character or persons engaged in any criminal activity.
10. Defendant shall not carry or possess in the approved residence any firearms, ammunition, destructive device, or any other dangerous weapons.
11. Defendant shall participate in any and all counseling or treatment programs as directed by the probation officer, and at defendant's own expense.
12. Defendant shall not consume nor possess any controlled substances, narcotics (other than what is prescribed for defendant by a licensed physician), or alcoholic beverages, including wine and the so-called non-intoxicating beer; nor associate with anyone possessing or consuming the same; nor frequent any establishment where alcoholic beverages including wine and the so called non-intoxicating beer are served or sold for consumption on the premises; nor shall defendant possess any drug paraphernalia, nor associate with anyone possessing the same. In the

event the defendant is taking any prescription medications or over-the-counter medicines, the same shall only be taken in the prescribed dosages on the package.

13. All court costs and probation fees required from the defendant shall be paid no later than the end of the probation period.

14. Unless otherwise authorized, the defendant shall maintain a single, verifiable residence within Roane County, at which the defendant shall reside. Defendant's probation officer must approve any change of address, within the county or otherwise.

15. Defendant is required to inform all persons with whom the defendant lives about all of defendant's conditions of probation.

16. Defendant shall maintain full-time employment or perform community service as approved by defendant's probation officer until fully employed. Defendant's probation officer must first approve any employment or community service, and locations, and may contact defendant's employer at any time. Defendant will not work in certain occupations that involve being in the private residences of others, such as, but not limited to, door-to-door sales, soliciting, home service visits or delivery.

17. Defendant shall not be present at nor enter for any reason within two blocks of any park, school, playground, swimming pool, daycare center, or other specific locations where children are known to congregate unless approved by defendant's probation officer.

18. Defendant shall not participate in any activity which involves children under 18 years of age, such as, but not limited to youth groups, Boy Scouts, Girl Scouts, Cub Scouts, Brownies, 4-H, YMCA, youth sports teams, baby

sitting, volunteer work, or any activity defendant's probation officer deems inappropriate.

19. Defendant must report any incidental contact with a child or children to defendant's probation officer within 24 hours of the contact.
20. Defendant shall not miss any appointments for treatment, psychotherapy, counseling, or self-help groups such as any 12-Step Group or Community Support Group, without the prior approval of defendant's probation officer. Defendant shall comply with the attendance policy for appointments as outlined by defendant's probation officer.
21. Defendant shall continue to take any medication prescribed by a physician until otherwise directed.
22. Defendant shall sign a waiver of confidentiality, release of information, and any other document required that permits defendant's probation officer and other behavioral management or treatment provider to collaboratively share and discuss behavioral management conditions, treatment progress, and probation needs, as a team. This permission may extend to: (1) sharing relapse prevention plan and treatment progress with significant others and/or any victim's therapist as directed by defendant's probation officer or treatment provider(s); and (2) sharing of defendant's modus operandi behaviors with law enforcement personnel.
23. Defendant will not leave the State of West Virginia without first obtaining the consent of defendant's probation officer or of this Court.
24. Defendant shall appear and truthfully testify as to all matters within your personal knowledge when summoned or subpoenaed in any criminal,

juvenile or civil matter.

25. Defendant shall not provide false information to your Probation Officer or any law enforcement officer.
26. Defendant shall notify your Probation Officer within 24 hours of any arrest, indictment, citation, or questioning by law enforcement officials.
27. Defendant shall notify your Probation Officer within 24 hours of any change of address or employment.
28. Defendant must report to your Probation Officer at the time and place designated.
29. It is understood that your Probation Officer has no authority to waive or forgive any violations of your probation.

It was further **ORDERED** that if the defendant violates any of the terms and conditions of this Order, a probation officer may arrest the defendant, and the defendant may be taken into custody by a probation officer or any law enforcement officer and committed to the Central Regional Jail and Correctional Facility pending further procedures under West Virginia Code §§ 62-12-6 and 62-12-10. If the defendant is taken into custody, a prompt and summary hearing will be held within 10 days by the Sentencing Court to determine whether the defendant's probation should be revoked. If the Court finds that any condition of probation has been violated while the probationary term was in effect, the Court may revoke suspension of the execution of the original sentence and order that the defendant be incarcerated, without credit for the time released on probation.

It was further **ORDERED** that payment of Court costs, fines, restitution and fees shall be paid by the defendant through the Office of the Clerk of the Circuit Court of Roane County, West Virginia.

Thereupon, the Court advised the defendant of rights with respect to appeal.

The Court hereby directs the Clerk of this Court, within 72 hours of entry of this Sentencing Order, to send copies of the: 1) Notice of Sex Offender Registration Requirements form; and 2) a certified copy of this Sentencing Order to: Sex Offender Registry, Criminal Records, West Virginia State Police, 725 Jefferson Road, South Charleston, WV 25309. .

It was further **ORDERED** that the Clerk of this Court transmit a copy of this Order, duly certified, to the following parties: (1) Joshua W. Downey; (2) David K. Moore; and (3) Stephen M. Frum, Jackson County Probation Department-P.O. Box 800, Ripley, WV 25271.

ENTER: 12/20/13



JUDGE Thomas C. Evans, III

SUBMITTED BY:



Joshua W. Downey; WVSBN: 10569  
Roane County Prosecuting Attorney

Entered In C.O.B. No. CR 108 Page 280  
this 23 day of December, 2013