

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

NO. 14- 1043

**JIM RUBENSTEIN, COMMISSIONER OF
THE WEST VIRGINIA DIVISION OF CORRECTIONS,**

Petitioner,

v.

**LOUIS BLOOM, CIRCUIT JUDGE
OF KANAWHA COUNTY, WEST VIRGINIA,**

Respondent.

PETITION FOR WRIT OF PROHIBITION

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**LOUIS BLOOM, CIRCUIT JUDGE
OF KANAWHA COUNTY, WEST VIRGINIA,**

Respondent.

PETITION FOR WRIT OF PROHIBITION

This petition seeks a writ prohibiting the Circuit Court from enforcing an unlawful order that forces the West Virginia Division of Corrections (“Division of Corrections” or “Corrections”) to take custody of a convicted felon, while at the same time removing from Corrections its statutory responsibility to determine whether the felon can safely participate in work release. After the defendant in the present case pleaded guilty to felony embezzlement and was sentenced to up to 10 years in prison, the Circuit Court of Kanawha County (“Circuit Court”) “remanded [her] to the Department of Corrections” to serve her sentence. A-2. But then, just two weeks later, before Corrections even had the opportunity to classify the inmate, and without seeking Corrections’ input or expertise, the Circuit Court ordered the felon to be placed on “work release” five days a week. A-3 (hereinafter “the Work Release Order”).

The Work Release Order is unlawful and its enforcement should be prohibited immediately. A Circuit Court only has the authority to order that a convicted criminal be placed on work release where the criminal has been sentenced to a term of “one year or less.” W. Va.

Code § 62-11A-1. When an inmate is convicted for committing a felony and remanded to the custody of the Division of Corrections to serve a term of longer than a year, the situation is entirely different. In that case, Corrections, not the courts, employs a carefully crafted procedure to determine the appropriate level of custody, including whether the felon can safely take part in work release. *See* W. Va. Code § 25-1-3(d). Even more specifically, when—as is the case here—the felon committed to Corrections’ custody has not yet been transferred out of the regional jail into a Corrections facility, the West Virginia Code unambiguously provides that “the Commissioner of the Division of Corrections . . . shall first determine the eligibility of [an] inmate for participation in the work program . . . and consent to such inmate’s participation therein.” W.V. Code § 31-20-31(a) (emphasis added).

In the Work Release Order, the Circuit Court “exceed[ed] [its] legitimate powers” because the Court ignored these laws and assigned the convicted felon to work release, without even consulting Corrections. Syl. Pt. 3, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996) (quoting Syl. Pt. 1, *Crawford v. Taylor*, 138 W.Va. 207, 75 S.E.2d 370 (1953)). The Court thus exceeded its own statutory sentencing authority to order work release only for inmates sentenced to a term of a year or less. The Court also unlawfully preterminated Corrections’ statutory responsibility to “first determine the eligibility” of the inmate for work release and, in appropriate circumstances, to “consent to such inmate’s participation” in work release. W.V. Code § 31-20-31(a). In short, the Circuit Court had no “legitimate power[.]” to force Corrections to take custody of a felon and then to adjudicate that felon’s eligibility for work release in the first instance.

Corrections is seeking this Court’s prompt intervention because the Work Release Order strips from Corrections its core functions. The Legislature recognized Corrections’ unique

experience with the felon population and gave to Corrections—not to courts—the responsibility to make work release determinations for felons in Corrections’ custody. In the Order, however, the Circuit Court took the extraordinary step of cutting Corrections entirely out of the decision of whether a felon placed into Corrections’ care should be receive the privilege of work release.

The Division of Corrections therefore respectfully asks this Court to issue immediately a writ prohibiting the Respondent from enforcing the Work Release Order. *See, e.g., State ex rel. Moomau v. Hamilton*, 184 W.Va. 251, 254, 400 S.E.2d 259, 262 (1990) (issuing a writ of prohibition stopping respondent judge from placing the defendant in work release where the “judge’s order exceeded his lawful powers”).¹

QUESTION PRESENTED

Whether a circuit court has the legal authority to order that a felon committed to Corrections’ custody must be placed in work release, thus preterminating Corrections’ statutory responsibility to determine whether such work release accords with public safety.

STATEMENT OF THE CASE

I. THE DIVISION OF CORRECTIONS ESTABLISHES COMPREHENSIVE PROCEDURES FOR DETERMINING WORK RELEASE ELIGIBILITY FOR CONVICTED FELONS

The Division of Corrections has the statutory responsibility to house felons placed in its custody in a manner consistent with “public safety,” while also establishing a “just, humane and efficient corrections program.” W. Va. Code § 25-1-1a. As part of Corrections’ discharge of this obligation, the Legislature has committed to Corrections’ discretion the authority to “establish work and study release units as extensions and subsidiaries of those state institutions under his or

¹ The Legislature later reversed the statutory holding of *State ex rel. Moomau* by legislation. *See State v. Yoak*, 202 W.Va. 331, 504 S.E.2d 158 (1998).

her control and authority.” W. Va. Code § 25-1-3(d).

Corrections has implemented detailed regulations to permit inmates to “serve their sentences at the lowest possible custody level, keeping in mind the needs and safety for the community, correctional staff, and other inmates.” Appendix (“A”)-12 (Policy Directive 455.02). Corrections classifies inmates into “five [] general classifications/security custodies,” which classification then guides the level of custody for any particular felon. A-24 (Policy Directive 401.01). Level V is the most restrictive classification, and includes inmates in segregation, administrative segregation, and detention. A-24-25. Level IV is the next most severe classification, and involves close supervision. A-25. Level III “permits the inmate to function somewhat freely within the confines of the institution/facility/center,” while still being ineligible for work outside of the facility. A-25. Level II classification allows eligibility for work crew or job assignment outside of the facility. A-25. Finally, Level I permits “eligib[ility] to be considered for placement in community programs or Work Release.” A-25-26. Inmates are classified at one of these five levels by Corrections’ Classification Committee, and are thereafter re-classified “at least annually” by that Committee. A-30. By following Corrections’ rules, an inmate that is not classified at Level I can progress to higher classification levels. A-23-24.

Corrections has also established specific procedures for community-based placement, including work release. To be eligible for community-based placement, the inmate must, among other things, be classified at Level I or Level II, be within 18 months of release, and have avoided recent disciplinary violations. A-13. For each inmate that satisfies all the criteria for community-based placement, a three member panel conducts an “in-depth review” of such an inmate’s confinement at least once a month. A-15. Following this regular review, this panel

compiles a list of inmates eligible for transfer to community-based facilities that can accommodate work release, and then classifies those inmates from least to most “risk” they would impose to the public from community-based placement. A-15. The panel then forwards this list to the Division of Corrections’ Inmate Movement Coordinator for review, who then approves or disapproves transfer to community-based facilities for any particular felon. A-16. Actual transfers occur only as space becomes available at Corrections’ community-based centers. A-16.

In addition to housing inmates in its own facilities, Corrections has the legal authority to contract with regional jails to domicile inmates committed to Corrections custody. *See* W. Va. Code § 62-13-5. Such a contract with a regional jail does not absolve Corrections of its statutory duties for those inmates housed in a regional jail on its behalf. In particular, “with regard to an inmate sentenced to the Division of Corrections that is domiciled at a regional jail facility under the supervision of the authority, the Commissioner of the Division of Corrections or designee shall first determine the eligibility of such inmate for participation in the work program authorized by this section and consent to such inmate’s participation therein.” W. Va. Code § 31-20-31(a).

As relevant to the present case, Corrections may contract with the regional jails to house temporarily convicted felons pending transfer to Corrections’ own permanent facilities. Under this arrangement, felons that have been committed to Division custody and are currently housed at regional jails have not yet been classified by Corrections, consistent with the above-described procedures. A-35. Corrections presumptively considers such unclassified inmates high security risks and thus not eligible for work release. A-35.

II. THE CIRCUIT COURT ISSUES THE WORK RELEASE ORDER, THUS EFFECTIVELY NULLIFYING THE DIVISION OF CORRECTIONS’ WORK RELEASE PROCEDURES

On July 29, 2014, the Kanawha County Circuit Court, Judge Louis Bloom presiding,

sentenced Tracie Dennis to one to ten years in prison for felony embezzlement and then “remanded [her] to the Department of Corrections.” A-2. The Circuit Court ordered that the sentence will be suspended on December 1, 2014 and that Dennis will be placed on five years of probation thereafter. While awaiting transfer of Dennis to Corrections’ Lakin Correctional Center, Corrections temporarily housed Dennis at the South Central Regional Jail. A-6. In the two weeks following this sentencing, Corrections had not yet classified Dennis, or even begun the procedure for determining whether Dennis could safely be placed in one of Corrections’ community-based facilities after transfer from the South Central Regional Jail.

Then, on August 14, 2014, the Circuit Court issued the Work Release Order, granting to Dennis work release from the South Central Regional Jail, thus permitting Dennis to leave the Regional Jail at 7:00 a.m. and return at 4:30 p.m., Monday through Friday, to work at her job. A-3-4. The Order explains that Dennis remains in Corrections’ custody, and notes that the Order was not intended to serve as an impediment to Corrections’ decisions regarding the placement of Dennis in a facility of its choosing. A-4. The Order does not, however, articulate whether Corrections would be required to keep Dennis in work release if it transferred Dennis to a Corrections’ facility. The Circuit Court did not consult Corrections before issuing the Work Release Order, and Corrections did not even receive a copy of the Order until August 19, 2014.

On August 27, 2014, Corrections filed a motion to set aside the Work Release Order. A-7-11. In that motion, the Division of Corrections articulated that Corrections, not the courts, has the legal authority to determine whether and when felons placed into Corrections’ custody are ready for the privilege of work release, “consistent with the public safety.” A-8. “This responsibility includes the authority to decide whether to house certain inmates in work release centers and, if so, under what conditions.” A-8. Corrections explained that the Work Release

Order prevented it from “carrying out its discretionary authority in providing for the care and custody of its inmates.” A-8. Corrections also noted that it had no particular objection if the Court decided to place Dennis on probation—*outside of Corrections’ care and responsibility*—and then put whatever conditions on that probation permitted by law. A-9.

To this date, the Circuit Court has not ruled on Corrections’ motion. As a result of this delay, as well as the confusion caused by the Work Release Order, Corrections has not yet classified or transferred Dennis to a Corrections facility. Instead, Dennis is still housed at South Central Regional Jail and continues participate in the court-ordered work release program without Corrections’ approval.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner believes that the Work Release Order is so clearly unlawful that this Court can issue a writ prohibiting the enforcement of that Order without oral argument. But should this Court choose to hold argument, Petitioner requests argument pursuant to West Virginia Rule of Appellate Procedure 20 because the Petition raises issues of fundamental public importance.

SUMMARY OF ARGUMENT

The present petition is a paradigmatic case of a circuit court that has “exceed[ed] its legitimate powers,” such that a writ of prohibition is warranted. W. Va. Code § 53-1-1.

The Work Release Order is clearly erroneous. West Virginia law authorizes a circuit court to order an inmate to work release *only* as “to persons who are sentenced or committed for a term of one year or less.” *State v. Kerns*, 183 W.Va. 130, 133, 394 S.E.2d 532, 535 (1990) (citing W. Va. Code § 62-11A-1). West Virginia law further provides that when a felon is committed to Corrections’ custody, and then is placed by Corrections in a regional jail, that felon can only be granted work release upon Corrections’ explicit “consent.” W. Va. Code § 31-20-31(a).

In the present case, the Circuit Court in the Work Release Order placed the convicted felon on work release, even though the felon had been sentenced to up to ten years in state custody, had been remanded to the Corrections' custody, and was being housed at a regional jail by Correction's consent. The Work Release Order is thus beyond the Circuit Court's "legitimate powers" for two independently sufficient reasons: (1) because the Court had no authority to order work release for a felon sentenced to more than a year in state custody, W. Va. Code § 62-11A-1, and (2) because Corrections did not "determin[e]" the felon's eligibility for work release from a regional jail and "consent" to such release, W. Va. Code § 31-20-31(a). As this Court has previously held, an unlawful work release order justifies the issuance of a writ of prohibition. *See State ex rel. Moomau v. Hamilton*, 184 W.Va. 251, 254, 400 S.E.2d 259, 262 (1990).

Special additional considerations militate strongly in favor of granting the writ of prohibition in this case. The Work Release Order is an extraordinary device, by which the Circuit Court stripped the Division of Corrections of its core statutory responsibility for the care of convicted felons placed into its custody. In discharging that solemn responsibility, Corrections has brought its considerable expertise to bear in developing a measured work release program, which balances the requirements of public safety with rehabilitation and compassion. The Work Release Order runs roughshod over this entire regime by interjecting circuit courts into Corrections' statutory responsibility for determining the proper care of felons in Corrections' custody. A writ from this Court declaring the Order unenforceable will send a clear signal to circuit courts that such unlawful usurpation of Corrections' authority will not be tolerated.

STANDARD OF REVIEW

"The writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has no jurisdiction of the subject matter in controversy, or, having

such jurisdiction, exceeds its legitimate powers.” W. Va. Code § 53-1-1. When the petition for a writ of prohibition is based upon the argument that the inferior court has “exceed[ed] its legitimate powers,” this Court looks at five “general guidelines” to resolve the petition:

(1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal’s order is clearly erroneous as a matter of law; (4) whether the lower tribunal’s order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal’s order raises new and important problems or issues of law of first impression.

Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996). “[A]ll five factors need not be satisfied” for a writ to issue. *Id.* It is the third factor—“whether the lower tribunal’s order is clearly erroneous”—that must “be given substantial weight.” *Id.* “In determining the third factor, the existence of clear error as a matter of law, [this Court] employ[s] a *de novo* standard of review, as in matters in which purely legal issues are at issue.” *State ex rel. Gessler v. Mazzone*, 212 W.Va. 368, 372, 572 S.E.2d 891, 895 (2002) (citing Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 459 S.E.2d 415 (1995)).

ARGUMENT

I. THE WORK RELEASE ORDER IS CLEARLY ERRONEOUS AS A MATTER OF LAW

The most important reason that this Court should grant the writ of prohibition is that the Circuit Court exceeded “its legitimate powers” by ordering a felon to be placed on work release while in Corrections’ custody. Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996); *State ex rel. Moomau v. Hamilton*, 184 W.Va. 251, 254, 400 S.E.2d 259, 262 (1990) (granting a writ of prohibition because a circuit court ordered work release “beyond the scope of his discretion” under the relevant statute).

The Legislature has clearly delineated the respective spheres of courts and the Division of Corrections in deciding when inmates can be permitted to participate in a work release program. When dealing with a defendant sentenced to a term of “one year or less,” a circuit court “may in its order grant to the defendant the privilege of leaving the jail during necessary and reasonable hours. . . [t]o work at his or her employment.” W. Va. Code § 62-11A-1. As this Court has explained, “the statute providing for work release, W. Va. Code § 62-11A-1 [1988], restricts consideration for work release to persons who are sentenced or committed for a term of one year or less by a court of record.” *State v. Kerns*, 183 W.Va. 130, 133, 394 S.E.2d 532, 535 (1990).

The situation is entirely different when the defendant is a convicted felon, who is placed into the custody of the Division of Corrections to serve a sentence longer than one year. Corrections, not the courts, is “responsible for developing and implementing the policies and procedures which are designed to guarantee that the various goals of incarceration are realized.” *State ex rel. Anstey v. Davis*, 203 W. Va. 538, 544, 509 S.E.2d 579, 585 (1998); *see* W. Va. Code § 25-1-1a. As part of carrying out that duty, Corrections has the authority to “establish work and study release units as extensions and subsidiaries of those state institutions under [its] control and authority” (W. Va. Code § 25-1-3(d)), and Corrections has established just such a careful work release program (*see supra*, at 4-6). Even more specifically, when Corrections has been assigned responsibility for an inmate, but chooses to contract with a regional jail to house the inmate for some period of time, the Legislature has specifically provided that Corrections retains the authority to determine whether work release is appropriate: “with regard to an inmate sentenced to the Division of Corrections that is domiciled at a regional jail facility under the supervision of the authority, the Commissioner of *the Division of Corrections or designee shall first determine the*

eligibility of such inmate for participation in the work program authorized by this section and consent to such inmate's participation therein." W. Va. Code § 31-20-31(a) (emphasis added).

Applying these statutes to the present case, the Work Release Order is *doubly* clearly erroneous because it both exceeds the Circuit Court's statutory sentencing authority *and* violates Corrections' explicit statutory responsibility for Corrections' inmates housed at regional jails.

First, as described above, where an inmate has been sentenced to a term of more than one year in state custody, and then placed in Corrections' care, a circuit court has no statutory authority to determine whether the felon can safely participate in work release. *See supra*, at 10. Here, the Circuit Court sentenced Dennis to up to ten years for felony embezzlement, and placed her in Corrections' custody. Two weeks later, before Corrections even had the chance to begin determining whether Dennis should be permitted work release, the Court issued the Work Release Order, which mandated that Dennis be allowed work release five days a week. This Order exceeded the Circuit Court's statutory authority because the Court's power to order work release is limited to criminals sentenced to a term of one year or less. *See* W. Va. Code § 62-11A-1.²

Second, as detailed above, when Corrections is housing a felon in a regional jail, any work release can only take place after Corrections *explicitly* consents to such release. *See supra*, at 11.

² Nor did any other statutory authority give to the Circuit Court the power to place Dennis in Corrections' custody, while requiring work release. For example, the Court had the discretion to order an "alternative to the sentence imposed by statute." W. Va. Code § 62-11A-1a. Among these options are "sentencing alternatives . . . such as the weekend jail program, public works program or community service program," a list that conspicuously does not include work release after placing the convicted felon in Corrections' custody. *Kerns*, 183 W.Va. at 133 n.3, 394 S.E.2d at 535 n.3. In addition, the Circuit Court arguably had the authority to order Dennis to be released on probation at the time of her sentence, thus entirely avoiding placement in Corrections' custody. *See* W. Va. Code § 62-12-2. The Court, after appropriate findings, could have conditioned such probation on Dennis "serv[ing] a period of confinement in jail of the county in which he or she was convicted." W. Va. Code § 62-12-9(b)(4). Again, such an alternative approach would not involve any assignment of duty to Corrections.

Here, Dennis is being housed at a regional jail by contract with the Division of Corrections, and remains Corrections' statutory responsibility. *See supra*, at 5-6. In the Work Release Order, however, the Circuit Court placed Dennis on work release, directly violating Corrections' statutory right to "first determine the eligibility" of Dennis for work release and to "consent to such inmate's participation therein" in appropriate circumstances. W. Va. Code § 31-20-31(a).

II. THE WORK RELEASE ORDER IS EXTRAORDINARY AND THUS PRESENTS A "NEW" AND "IMPORTANT" ISSUE OF "FIRST IMPRESSION"

The writ is also warranted because the Work Release Order "raises new and important problems or issues of law of first impression." Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996). No decision of this Court has opined upon the authority of a circuit court to evade the plain statutory text of the West Virginia Code by requiring that a convicted felon that has been placed in the custody of the Division of Corrections be awarded work release in the first instance. The responsibility for determining whether and when to place convicted felons on work release belongs by statute exclusively to Corrections, and whether a circuit court can override that statutory mandate is a "new" and "important" issue, which only this Court can finally decide.

III. THE DIVISION OF CORRECTIONS HAS "NO OTHER ADEQUATE MEANS" TO STOP "DAMAGE[]" TO ITS VITAL INTERESTS

The writ should also issue because the Division of Corrections "has no other adequate means, such as direct appeal, to obtain the desired relief," and because that requested relief is necessary to protecting Corrections' vital interests from being "damaged." Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996). The Circuit Court issued the Work Release Order in a proceeding where Corrections is not a party, and thus Corrections had no ability to appeal the Order. *See Wade v. Carney*, 68 W.Va. 756, 756, 70 S.E. 770, 770 (1911) ("No one

can appeal unless he has been an actual litigant in the cause below, or stands in the place of a party as a legal representative.”). Corrections, upon learning of the Order, promptly filed a motion to set aside the Order, and then gave the Circuit Court more than a month to rule on the motion. To this date, the Circuit Court has not ruled on Corrections’ motion, and no ruling appears imminent.

All of this leaves Corrections in an impossible position, which only prompt intervention by this Court can cure. Corrections has been forced by the Work Release Order into a situation where its statutory responsibilities are being violated on an ongoing basis. Dennis—a convicted felon that has been placed in Corrections’ custody—is presently leaving state custody five days a week, even though Corrections has never determined whether she can safely be trusted with such a responsibility without returning to her felonious ways. Pursuant to the Work Release Order, Corrections can do nothing about this unacceptable state of affairs while Dennis remains housed at the South Central Regional Jail. If Corrections were to transfer Dennis immediately to another facility, moreover, Corrections does not know whether the Work Release Order would still have some operative effect. A-4 (acknowledging Corrections’ authority to transfer Dennis, but otherwise remaining silent on the effect of the transfer on the Work Release Order). And even if it were clear that such a transfer would effectively eliminate the operation of the Work Release Order, such an expedited transfer would delay the orderly operation of Corrections’ movement and intake of other prisoners, who may be waiting to be transferred and to start a new phase in their rehabilitation plan. The Circuit Court’s decision to place Corrections into this unlawful situation necessarily undermines Corrections’ ability to carry out its statutorily assigned responsibility for the proper care and custody of the many inmates it houses.

The harm wrought by the Work Release Order is not only to Corrections’ statutory interests, but to the public interest as a whole. The Legislature correctly determined that because

of Corrections' hard-won experience with housing and rehabilitating the most dangerous criminals in the West Virginia penal system, when dealing with convicted felons sentenced to more than one year in Corrections' custody, Corrections is best positioned to determine accurately whether and when such felons can safely be permitted to participate in a work release program. *See supra*, at 3-5. If, however, the Work Release Order is permitted to stand, circuit courts throughout the State may well feel empowered to usurp Corrections' statutory powers, and to take it upon themselves to foist upon Corrections the responsibility for housing felons, without the concomitant authority to determine—in the first instance—how best to rehabilitate those felons.

Finally, it bears emphasis that the Division of Corrections does not have any particular objection as to the proper housing and treatment of inmate Dennis, should Dennis be lawfully removed from Corrections' responsibility. After all, Corrections has not been given the opportunity to process Dennis in the normal course and thus has come to no conclusion as to Dennis' likely future actions. If the Circuit Court believes that Dennis' crimes and circumstances are of such a nature that no Corrections confinement is appropriate, the Circuit Court remains free to use the full extent of its *lawful* powers to require such a result, including imposing an alternative sentence or conditional probation. *See, e.g.*, W. Va. Code § 62-11A-1a; W. Va. Code § 62-12-9(b)(4). What Corrections and the law cannot countenance is for the Circuit Court to place responsibility over a felon in Corrections' hands, and then to unilaterally remove from Corrections its statutory responsibility to determine how best to house and rehabilitate the inmate.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Petitioner respectfully prays this Court to issue the writ and to prohibit the Circuit Court from enforcing the Work Release Order.

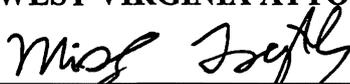
Respectfully submitted,

JIM RUBENSTEIN,

Petitioner

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JIM RUBENSTEIN, COMMISSIONER OF
THE WEST VIRGINIA DIVISION OF CORRECTIONS,
PETITIONERS,

VS.

CASE NO. _____.

UNDERLYING CASE NO. 14-F-312(I)
KANAWHA COUNTY CIRCUIT COURT

LOUIS BLOOM, CIRCUIT JUDGE
OF KANAWHA COUNTY, WEST VIRGINIA,
RESPONDENT.

VERIFICATION

I, hereby, verify that the contents of this Petition for Writ of Prohibition are true or that,
in as much as I do not have direct knowledge, are upon information and belief, true.



Jim Rubenstein, Commissioner of Corrections

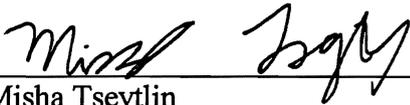
CERTIFICATE OF SERVICE

I, Misha Tseytlin, Deputy Attorney General, verify that I have served a copy of the foregoing Petition For Writ Of Prohibition upon the following persons, by depositing a copy of it in the United States Mail, postage pre-paid, this 15th day of October 2014, addressed as follows:

Honorable Judge Louis "Duke" Bloom
Kanawha County Circuit Judge
Kanawha County Courthouse
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